

White paper on Disability Inclusive Digital Legislative Environments – Protecting the Rights of Persons with Disabilities in the age of Digitalization and Artificial Intelligence in the Digital Fitness Check.

This whitepaper brings together the legislative obligations concerning Digitalization and Artificial Intelligence in Europe as well as the obligation in protection of human rights to ensure full participation of the European Disability community. With current proposal – simplification and consolidation of the Digital Rulebook translated into the Digital Omnibus¹ – earlier strong regulations connecting both together, will be undermined and can result in a new step back for the disability community. While digitalization and Artificial Intelligence are growing fast into our fast-digitalizing world. Now it is the time to act and prevent new barriers before they can even be created in the first place.



¹ In this whitepaper the term Digital Omnibus refers to the referenced proposed revised legislation by the EC as published by the EC: <https://digital-strategy.ec.europa.eu/en/policies/digital-rulebook>

Disability Responsible Digitalization and AI

The European Union (EU) ratified the UN CRPD (Convention on the Rights of Persons with Disabilities) in 2006. With this ratification the EU took on the obligation to assure that new legislation cannot harm persons with disabilities. In current proposed Digital Omnibus² with the aim to lower costs for compliance with digital legislative requirements in the EU, the rights of persons with disabilities are under distress, and this is not in line with the obligations up living the UN CRPD.

Europe has strong legislation protecting minorities and should be proud of these, especially given the positive impact this has on reducing inequalities. Still, Europe has a long way ahead, closing the gap of decades of discrimination against persons with disabilities and other minorities. This is found in many statistics, from increased poverty to lower employment rates, reducing these inequalities calls for continuous attention by lawmakers. The Digital Rulebook/Fitness Assessment³ is the opportunity to bring digital harmonization in line with legal requirements set by the UN CRPD Article 4.b⁴ – “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;” Whether you see this Digital Fitness Check as update on legislation, new legislation, or a policy program, the responsibility under Article 4 (as a whole) remains applicable in support of disability inclusion in Europe in line with the obligations of the UN CRPD signed by the European Union in 2006.

Barriers continue to exist.

In the fast digitalization of the world, people with disabilities face a double barrier, one of these relates to accessibility of the digital environment. This is covered by the WAD⁵ 2016/2102 (Wad Accessibility Directive) and extended with the EAA⁶ 2019/882 (European Accessibility Act). Secondly the barrier of exclusion by characteristics related to disability, these can be related to appearance, behavior, and/or capabilities, and beyond. Next to the barriers, the risks of data bias call for action by EU lawmakers. Where current legal proposals aim to reduce financial burden on businesses, it puts persons with disabilities the burden to advocate for inclusion by design of digital and AI systems which were supposed to increase their independence.

² Information page Digital Omnibus: <https://digital-strategy.ec.europa.eu/en/library/digital-omnibus-regulation-proposal>

³ This whitepaper refers to the Digital Rulebook/Fitness Check as: Digital Fitness Check throughout this paper.

⁴ UN CRPD, Article 4: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html>

⁵ WAD legislation: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=EN>

⁶ EAA legislation: <https://eur-lex.europa.eu/eli/dir/2019/882/oj/eng>

Many legislative requirements concerning accessibility and disability inclusion, such as employment⁷ Council Directive 2000/78/EC offer exceptions for accessibility and inclusion by the clause of: **disproportionate burden**. The intent of this clause is to avoid extremely high costs for inclusion because of new legislative requirements. Which does not apply when designing new systems according to the law – this includes AI systems under the AI Act – which is gradually enrolled in Europe. In contrary, the AI Act opens the opportunity to build systems based on inclusion and accessibility from the start – inclusive and accessible for all – both cost effective in the long run and in line with the obligations of the UN CRPD.

“Legislation should not be eased up to reduce costs for businesses and governments – at the cost of the rights of European citizens with disabilities.”

The responsibility to act.

With the Digital Fitness Check the EU has the opportunity to comply with UN CRPD Article 4; obligation to comply with the general obligations, Article 9; (digital) accessibility, Article 12; equal recognition before the law and financial services, Article 21; accessible and understandable information. And indirectly, for example Article 27 on equal opportunities in employment, Article 24 on equal access to education. Because the increased impact of AI and digitalization on these sectors can directly result in negative impact on persons with disabilities without proper action assuring equitable access = equitable participation.

This whitepaper addresses the most eminent topics in digitalization and AI regulation under Digital Fitness Check. The impact of proposed harmonization goes far beyond the topics discussed in this white paper. Assuring fully equitable participation of EU citizens with disabilities requires continuous attention, interaction with representative organizations and experts, and finally monitoring by the European Commission. This can be realized in the form of a dedicated Chief Accessibility Officer – or equal role with the mandate to demand action by monitoring authorities/EP/EC, and sufficient budget to adequately fulfill this role responsibly.

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⁷ Employment directive: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

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Digital Fitness Check

Harmonizing digital legislation, not without accessibility

Proposed harmonization of digital legislation in Europe, surely brings benefits for businesses increasing innovation and reducing costs. Equally this cannot go at the cost of fundamental rights of European citizens, or the point where accessibility can be included and connected to harmonization and it is found to be forgotten. This chapter focusses on the overall legislative harmonization, and next chapters specify the AI Act and proposed harmonization effects concerning persons with disabilities.

Digital accessibility is a strategic market opportunity.

This call for evidence also includes competitiveness for European businesses and innovators, one of Europe's core strategic differences has been about not exchanging fundamental rights for competitiveness. This has been highly valued by many EU businesses, and even when under pressure by the US, it is important to keep this alive in the future. Because strategic competitiveness increasingly emphasizes being the better business for people and environment, instead of the cheaper solution.

Especially under current political environment, accessibility is at risk of becoming a burden in competitiveness with for example US Businesses which are facing less regulatory requirements by their domestic legislator. Equally providing accessible and inclusive services, improves customer satisfaction and success rate, creating long-term relationships and reducing customer care costs. This is reported by various reports by EY⁸, Accenture⁹, and Deloitte¹⁰. The benefits of accessibility by design increase competitiveness and extend markets to the largest growth market of persons with disabilities. For Europe and the UK, the disability market roughly represents 1.3 trillion USD = 1.1 trillion Euro, an estimated 22% of the working population (25-65) experiences a disability, and 27% of the consumers (15+). These markets are huge, and this is even without their family and friends also benefiting from accessibility because it makes it easier to use products and services together. (Source Return on Disability Group¹¹) It is safe to say, do not underestimate the disability market, and with less empathy on

⁸ EY report on the benefits of accessibility for business: https://www.ey.com/en_gl/about-us/inclusiveness/inclusive-design

⁹ Accenture Getting to Equal report: <https://www.accenture.com/content/dam/accenture/final/a-com-migration/pdf/pdf-89/accenture-disability-inclusion-research-report.pdf>

¹⁰ Deloitte publication on extending markets by accessible design: <https://www.deloittedigital.com/fr/en/insights/perspective/for-high-performance-products-design-accessible.html#:~:text=Many%20countries%20have%20laws%20in,the%20standards%20to%20comply%20with>

¹¹ Return on Disability Group annual report 2024: <https://www.rod-group.com/research-insights/annual-report-2024/>

accessibility by US businesses, accessibility becomes a strategic benefit for European businesses compared to US (Big Tech) businesses.

Harmonization accessibility goes beyond public services.

Within current harmonization a huge opportunity is missed out on, this is adding specific accessibility requirements in line with WAD and EAA to assure accessibility for users with disabilities. Especially given the fact that even with WAD and EAA, many online channels and services are still excluded for accessibility requirements as result of local implementation of the law and different views on how these laws apply on for example, health services, education, and other areas outside public sector (WAD) and markets (EAA). Result in many countries, for example The Netherlands for excluding hospitals and educational institutions to comply with WAD and EAA, this is seriously impacting persons with disabilities negatively. Current efforts for harmonization where accessibility is included seem to focus on public services, and not on private sector markets and services.

For example: Digital public service #1 - European data governance and transparency infrastructure

“Accessibility Requirements (Directives (EU) 2016/2102 and (EU) 2019/882) (Recital 62). Directive (EU) 2016/2102 (Web Accessibility Directive): Public registers and digital services must be accessible to persons with disabilities; Directive (EU) 2019/882 (European Accessibility Act): Digital services must comply with accessibility requirements.” Under article 1 of the: Digital public service #1 - European data governance and transparency infrastructure. This does not seem to extend to digital markets and employment. Excluding these from accessibility requirements, directly impacts the enjoyment of fundamental rights of persons with disabilities. Because market access and employment should be guaranteed as consequence of signing the UN CRPD.

Harmonizing digital legislation with the WAD obligations provides the opportunity to assure accessibility in both the public and private sectors of European digital environments. This is in line with the legal obligations of the UN CPRD, to improve the rights of persons with disabilities in legislation. A revision of these rights in current digital legislation must be part of any harmonizing proposal.

Adopting accessibility from the start is cost saving.

When accessibility becomes a standard requirement under Digital Fitness Check. All new digital and AI systems must comply with accessibility requirements, and these can directly be connected to the requirements set in the WAD, as is currently the case with the EAA. WAD in itself is only applicable to public organizations, connecting the requirements listed in the WAD to all digital and AI environments, creates accessibility harmonization without new regulations. This can be done equally as has been applied to the EAA:

EAA Directive 2019/882, recital 46 “.....The accessibility requirements of this Directive should be aligned to the requirements of Directive (EU) 2016/2102, despite differences, for example, in monitoring, reporting and enforcement.”

This approach brings an end to current issues of not including persons with disabilities in digital and AI systems, by proclaiming “unapportionable burden” fixing accessibility. For the simple reason that applying accessibility from the start results in non-until-low additional costs for new digital and AI systems, where costs for remediation can be extensive and thus legitimate reason not to create accessible digital and AI systems. With the fast-evolving AI developments, the EU has the opportunity to create disability inclusive AI from the start – preventing repetition of excluding people with disabilities as result of disproportionate costs.

Cookies – no longer an accessibility problem

The proposal for the decrease in the impact of cookies on European citizens is a positive development, with a missed opportunity for persons with disabilities. In the proposal accessibility requirements for cookies are missing, while these often result in unwelcome traps for persons using assistive technologies or specific internet settings increasing accessibility of mobile and web environments.

It would be a perfect opportunity and even a legal requirement to be met in relation to the obligations to the UN CRPD article 4¹² – programs, new and updated regulations must include appropriate measures to implement the rights of persons with disabilities. Harmonization of digital legislation must adhere to article 4 of the UN CRPD and thus improve the position of persons with disabilities living in the EU.

¹² UN CRPD, Article 4: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html>

Proposal: Include meeting WCAG 2.2 or EN 301.549 standards for cookies under the new harmonized cookie requirements in the Digital Fitness Check, for all EU online entities – no exclusion possible.

No better moment than the Digital Fitness Check

Yes, regulations should not result in unproportionate financial burden for organizations – unless the burden ends up with citizens, consumers, and especially minorities being excluded by a lack of accessibility. That is why it is important to act accordingly and not propose a digital fitness check without including accessibility in the process. As you have been able to read in this paper, the WAD has already proven to provide an important role in harmonization for the EAA, this can be done via the Digital Fitness Check.

AI Act and harmonization

As mentioned in the section about digital fitness, the fast development of AI in all its forms – from basic machine learning until generative AI, Super AI and especially agentic AI. Given that Agentic AI can bring huge opportunities for independent participation of persons with disabilities, increasing opportunities for employment, and education, with less human resources in times where employment becomes scarce. Equally, we do have to realize that accessibility can never go at the cost of a person’s privacy – using AI should be possible without trading personal data you wish to keep for yourself, or usable in a way your data is deleted as soon as you close for example a navigation app bringing you to your location without physical assistance of a person. This is a crucial element to protect the privacy and dignity of persons with disabilities and given the legal obligation set by Article 4 in the UN CRPD – as explained in the previous sections¹³ - the AI Act cannot be changed with negative effects to persons with disabilities. With current proposals, this risk is eminent and must be mitigated before the proposals in Digital Omnibus become reality.

This section of this whitepaper focusses on the AI related proposals, in the Digital Fitness Check – with a strong focus on equitable access and opportunities for all EU citizens, including the fundamental rights of persons with disabilities. Fundamental rights can never be sacrificed for innovation and cost reduction for public and private organizations, this goes beyond the UN CRPD, this applies on all Human Rights of all citizens and (temporary) residents in the EU. Where this white paper focusses on disabilities, the fundamental rights are equally applicable to other minorities and vulnerable groups and should be read in this perspective. For better understanding this section includes a short introduction in the connectivity of accessibility and AI, by describing the risks identified with current AI Act without the omnibus. Followed by a section on Fair treatment – how managing these risks improves accessibility for users of these AI Systems. Secondly the impact of the proposed omnibus and harmonization on these risks and restraints of fundamental rights by this proposal. In addition, the appendix of this white paper includes a full overview of assessed AI Risks, AI Act relevance, and connected legislation including the applicable UN CRPD articles.

¹³ “Referencing to the sections: “The responsibility to act, and “Disability Responsible Digitalization and AI” explaining the role of Article 4 of the UN CRPD.

The risks concerning accessibility and inclusion of persons with disabilities under the AI Act

The following risks were assessed based on assessing the connection and responsibilities for organizations to deliver accessible and inclusive AI under the AI Act:

1. **Not accessible AI applications for users with disabilities** – non-compliance with digital accessibility standards and requirements as set by the EAA and WAD. Data on assistive technology and settings using AI applications may never result in identifying disabled users.
2. **Unequal treatment of persons with disabilities based on disadvantages related to disabilities** – AI cannot reduce access to products, services, decision making tools at the costs of dignity and integrity of persons with disabilities (forced disclosure of disability)
3. **Data bias** – data of persons with disabilities is often related to personal traits and behaviors beyond the standard. This makes disability related data more sensitive to trace back to private individuals, and this calls for additional attention for privacy. This includes identifying persons as disabled users by data on use of assistive technologies or specific settings.
4. **Inaccessible digital literacy training within accessibility standards** – in relevance to the Council Directive 2000/78/EC all obligated training for AI by employers must be accessible for employees with disabilities, this includes understandability of information for people with for example learning disabilities.
5. **Complaint process** – access to and accessible/understandable information to support a grievance procedure in case people experience (unintended) discrimination or exclusion by AI systems/decision making.

Fair treatment

Crucial in fair treatment of persons with disabilities is the ability to trace back any decisions made by an AI system. Many AI systems do not provide clear information about how decisions are made, and especially those decisions with high impact on people's independence, access to crucial services like financial services, health care, and equal services.

Fair treatment is about – equitable access to products and services for persons with disabilities, knowing your physical or mental state did not impact the decision made unless this is reasonably explainable. How does this relate to the risks discussed above:

- An AI application can never decide based on information about assistive technology used by the requestor – the information about assistive technology, accessibility settings, etc. should be protected by Chinese Walls and cannot

influence the decision making of an AI application/system – equally this information must be invisible for human decision makers too.

- An AI application cannot require a trade off for private information concerning a disability for using accessibility settings. Another example, the persons with a disability should not be forced to disclose a disability in an application process where AI systems assess the person. In case of doubt, the system must bring a human in the loop to assess the person's behavior as related to disability – without influencing the systems decision – again Chinese Walls between observation and decision making. In this case the disability related behavior cannot influence the final decision – the disadvantage created by disability cannot outweigh qualifications of a candidate.
- Training data of AI applications must be representative and proven to be so, if this is not the case for persons with disabilities the AI system cannot be used fairly – This can only be achieved if training data is carefully reported, assessed for representation and reports on these assessment are available, and in case of complaints can be provided to the complainant.
- All information above, must be available in case of a complaint for unfair treatment – especially in cases where high personally impacting decisions are made and privacy sensitive information is used in decision making. The separation between equal treatment and knowledge about accessibility requirements assuring accessibility must be traceable proving information about the process when requested.

With the above in mind, it is important to ensure that high risk systems are monitored properly. Leaving the decision whether an AI system is high-risk or not with the vendor brings risks of unfair treatment for customers with disabilities and other minorities because above minimum requirements are not met. Due to the nature of the 'black box' technology of many AI systems, action must be taken in time to ensure transparency. When the AI systems are not properly mapped from the start, including the Fundamental Rights Assessment, transparency becomes a program and equal treatment impossible to prove – both a burden to the complainant as well as the provider of the AI system.

Yes, this brings an economic burden for the developers of the AI systems, not mapping these brings an impossible consumer position in relation to legal obligations for High-Risk AI under Section 2 (Article 8 until Article 15) and Article 95 about codes of conduct of the AI Act. So, protecting consumer rights and fundamental rights mapping of (potential) high risk systems and reporting these with the proposed AI monitoring authorities is crucial for protection of vulnerable consumer groups – minorities at risk of unfair treatment.

The impact of the proposed actions in the AI Act Omnibus on fundamental (disability) rights.

The impact of the proposed Omnibus seems to underestimate the impact for minority groups such as people with disabilities. Especially by the proposals related to high-risk AI systems and shifting from responsibility to report, to a self assessment if reporting is required.

Concerns in relation to self-evaluation of high-risk AI systems

When organizations are left to assess independently if an AI system is high risk, without sufficient expertise about minorities – and thus limited knowledge about the importance of the fundamental rights assessment. The risk of discrimination remains and given the extent of decision-making systems moving to AI a new form of discrimination can result in a backlash on impacted minority groups such as persons with disabilities. It is important to prevent this from happening in advance, with specific attention to rights under Article 12¹⁴ of the UN CRPD:

- Equal recognition before the law
- Effective measures to control financial affairs, and equal access to financial services.

This also applies on all other decision making systems where personal data and peoples medical situation/information can impact decision making and this is a protected characteristic under the UN CRPD.

Specific obligations in relation to high-risk AI systems such as named in recital 72: High-risk AI systems should be designed in a manner to enable deployers to understand how the AI system works, evaluate its functionality, and comprehend its strengths and limitations.” Can be excluded when an operator does not count the system to be high-risk based on self-evaluation. When the system becomes high-risk because users of minorities can be negatively impacted by the decision made, this can be overlooked by developers without specific knowledge about discrimination and exclusion of minorities.

Realizing that knowledge about discrimination and exclusion of minorities is a specialism, designers of AI systems with a potential high-risk qualification system should work with experts and report on the outcomes of the assessment by these experts. Where in case of uncertainty/unclear outcomes monitoring authorities must be informed and provided with the opportunity to request further information assessing if

¹⁴ Article 12 of the UN CRPD: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>

the application is high-risk. – Instead of acting after the AI system is completed, the assessment is made in an earlier state. This reduces costs if the AI system is not a high-risk system - as proposed in the Omnibus – and creates the required guardrails protecting the fundamental rights of all EU residents.

Accessibility by design – crucial for protection of fundamental disability rights

Another concern, in recital 80 accessibility by design, is especially listed as important for high-risk AI systems. When systems are unjustified, not considered high-risk and accessibility is failing, this is almost impossible to remediate. And can result in disproportionate costs to fix when re-assessed, this is exclusion by design and in breach with the UN CRPD obligation under Article 4 and 9. Secondary, the obligation under article 71 of the AI Act, registration of high-risk AI systems includes a description of accessibility legislative compliance, this can be avoided by not registering the high-risk system in the mandatory database.

Proposed early assessment – concerning high-risk AI systems – of the application if this is a high-risk system, can remediate this risk for both developers and impacted disadvantaged groups in case the technology does not deliver accordingly.

Evidence of discrimination by algorithms

There are multiple research papers, and even legal cases, in favor of complainants' experience of discrimination by algorithms not to leave this high-risk or not decision to public and private organizations. In the Netherlands the Toeslagenaffaire (ethnicity) by the government is a well-known example. Various cases and papers show that assessments are not excluded to public or private organizations¹⁵ – an independent authority is required securing fundamental rights of European residents.

For cases about algorithms discriminating against people with disabilities there are employment examples excluding people because their behavior is labeled as not engaging, distracted, while these directly relate to neurodivergent behaviors or people with sensory disabilities acting different. Based on ineffective training data – training based on generic assumptions that lack of eye contact resembles to not being engaged is incorrect when the person has low vision or is unable to maintain eye contact as result of autism. This will surely result in biased outcomes without a human in the loop,

¹⁵ Example report: Bias in algorithms - Artificial intelligence and discrimination:
<https://fra.europa.eu/en/publication/2022/bias-algorithm>

because a system says no and you are excluded from a job opportunity based on a differentiation beyond your influence.

Transparency and complaint processes

Providing accessible and understandable information on AI systems has a direct connection to Article 4.h¹⁶ of the UN CRPD “To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;” Next to the obligations in Article 21 of the UN CRPD on accessible and understandable information. For this adequate mapping of high risk systems, and other decision-making systems is crucial up living the responsibility in Recital 48, 52 and follow the classification rules listed in Section 2; Article 6 (no negative effect on fundamental rights and outcome of decision making), 7 (harm, health, safety), 9.9 (risk management system measuring impact on minorities), 10 (appropriate use of data), 11 (technical information) and finally 12 (record keeping) of the AI Act.

For transparency to be effective, complainants must have the rights to receive accessible information in line with the WAD and in an understandable format – laymen’s terms instead of not-understandable technical language. – protecting citizens, (temporary) residents, and customers rights for equal treatment and opportunity within the fundamental rights protection obligations the EU upholds.

Responsible AI is a now or too late opportunity.

The AI Act already includes important harmonization connections with WAD, EAA, and the UN CRPD, let us make sure the EU does not miss this boat and create new digital AI driven systems excluding persons with disabilities by design. The opportunity for responsible AI development is not a regulatory barrier - instead responsible AI is the opportunity to create a society where fundamental rights are protected. The EU is not alone in here; it will be in line with Canada’s CAN-ASC-6.2:2025- Accessible and Equitable Artificial Intelligence System.¹⁷ Where this Canadian example is a standard, improving the proposed Omnibus with accessibility requirements by default – provides the opportunity to protect the fundamental rights of persons with disabilities in the EU with the AI Act and beyond.

¹⁶ Article 4.h of the UN CRPD: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html>

¹⁷ Canada’s AI accessibility standard: <https://accessible.canada.ca/creating-accessibility-standards/asc-62-accessible-equitable-artificial-intelligence-systems>

Conclusion and recommendations

Concluding this whitepaper, including accessibility requirements in the Digital Fitness Check and protecting fundamental disability rights in the proposed Digital Omnibus calls for serious reconsideration of specific proposals. This conclusion includes a summary of proposals from this white paper ensuring full enjoyment of fundamental rights by persons with disabilities in the EU digital and AI age to come:

- Include accessibility requirements – harmonization using the obligations in the WAD: Directive 2016/2102 – in all digital legislation for the EU as proposed in the Digital Fitness Check, including the AI Act, Digital Services Act, etc.¹⁸
 - Meeting WCAG 2.2 or EN 301.549 standards for cookies under the new harmonized cookie requirements in the Digital Rulebook
- Maintain the requirements for high-risk AI systems as currently in the AI Act – with extension of the early assessment if a system is high-risk, reducing the economic impact for public and private organizations to prevent unnecessary administrative burden.
 - Include the obligation for an assessment and report of non-discrimination conformance for high-risk AI assessments.
 - The obligation to inform monitoring authorities in early development stage in case the high-risk assessment is uncertain/unclear, providing the monitoring authority the opportunity to request additional information for a full assessment.
- Assure that transparency and accountability of decision-making AI systems include the enjoyment of fundamental rights of persons with disabilities – providing accessible¹⁹ and understandable information to complainants when requested.
- Installation of a Chief Accessibility Officer - protecting the digital and AI Rights of persons with disabilities for full enjoyment of fundamental rights – not exclusive to digital rights, this role should extend beyond the digital and AI rights of persons with disabilities living in the EU.

With these actions the new Digital Rulebook and Omnibus can end (ab)use of disproportional burden to exclude persons with disabilities from the digital and AI age, and secure full enjoyment of fundamental rights in the digitalization of public and private digital society.

¹⁸ Not only to public services as in current proposal, but current proposal is also a violation of the obligations under UN CRPD Article 4.

¹⁹ In line with the obligations of WAD and UN CRPD Article 9.

Appendix

Disclaimer

With this paper, it is the goal to address the risks of reducing regulatory guardrails for AI in Europe as proposed in Digital Omnibus. This paper traces back to in-company research on the impact of the AI Act in relation to accessibility legislation in one of Europe's Banks. The identified risks were shared on multiple public stages addressing AI and disability related risks since November 2024. The redone assessment of the AI Act and its relation to accessibility legislation is performed outside the bank in the period December 2025 and January 2026.

As author of this white paper, I took the effort to quote and reference all sources used to write this white paper. In case you find any references, which are not correct, please contact me in person via my website: www.cvworks.nl using the contact button.

Backtracking the identified risks

The AI Act includes multiple references to EU regulation concerning accessibility and disability, such as the WAD and the EAA. These laws are the direct result of the EU ratifying the UN CRPD. With this ratification, the EU is obligated to protect the Rights of Persons with Disabilities and cannot obtain laws negatively impacting these laws. Including the proposed Omnibus.

Assessing the AI Act, the following recitals and articles directly impact persons with disabilities and lists the related legislation assessed in this paper.

Risk	AI Act relevance	Other legislation connected
Not accessible AI applications for users with disabilities	Recital 72: information about use of AI systems and high-risk AI systems must be accessible and understandable. Recital 80: accessibility legislation WAD and EAA must be respected by design, especially in high-risk AI systems. Applying Universal Design from the start should increase full and equal access for all users with and without disabilities. Recital 142: investment in development of AI systems to increase participation of persons with disabilities, including accessibility.	UN CRPD:4, 5, 9, 12, 21, 27: EU Obligations explicitly rely on promotion full enjoyment of human rights, eliminate discrimination, dignity, fair treatment, and equal opportunity. EAA 2019/882: Equal access to products and

	<p>Recital 165: increasing trustworthy with accessible and inclusive high-risk AI development. High risk must, and other AI systems should be designed in a way, accessibility for persons with disabilities is provided.</p> <p>Article 8.2: compliance with all harmonized digital requirements includes EAA and WAD requirements for digital accessibility.</p> <p>Article 16.l: all high-risk AI systems must comply with WAD and EAA</p> <p>Article 50. 1-5: all transparency obligations under article 50 – people must be aware they are interacting with an AI system, all output provided by AI systems (including gen purpose AI systems) must be marked to be recognized as AI generated, persons must be informed they interact with emotion recognition or biometric categorization AI system, deepfakes must be disclosed – must be performed in an accessible manner respecting regulatory requirements.</p> <p>Article 71.6: high-risk AI systems must be registered, including the compliance with digital accessibility requirements under WAD and EAA.</p> <p>Article 95.2.e: assessing and preventing negative impacts of AI systems on persons with disabilities and other minorities should be included in the voluntary code of conduct. Including compliance with accessibility requirements in WAD and EAA.</p>	<p>services, including financial services and communication services.</p> <p>WAD 2016/2102: Accessibility of public services, and all digital accessibility requirements which also apply on AI and are listed in the EAA.</p> <p>Employment Council Directive 2000/78/EC: Prevention of discrimination in all relations for employment.</p>
<p>Unequal treatment of persons with disabilities based on disadvantages related to disabilities</p>	<p>Recital 29: AI systems cannot exploit vulnerabilities of persons with disabilities. These AI systems cannot influence decision making or freedom of choice, because people are not aware they are interacting with AI.</p> <p>Recital 32: use of real time AI systems, remote biometric, in public space can negatively impact persons with disabilities, and can result in biased</p>	<p>UN CRPD:4, 5, 9, 12, 21, 27: EU Obligations explicitly rely on promotion full enjoyment of human rights, eliminate discrimination, dignity, fair treatment, and equal opportunity.</p>

	<p>outcomes and feel intrusive to individuals.</p> <p>Recital 57: fundamental undermining of human rights when AI does not include anti-discrimination measures, these types of monitoring and evaluation AI systems should be considered high-risk.</p> <p>Recital 58: enjoying essential private or public services, weighed by AI systems for decision making can impact fundamental rights when anti-discrimination is not included.</p> <p>Recital 80: prevent discrimination and promote equality of persons with disabilities. Applying Universal Design should result in full and equal access for all users.</p> <p>Recital 132: interactive AI systems designed to interact with individuals must include measures to protect persons with disabilities to identify the system as such, equally prevent deception and accessible notifications must be provided. The person must also be informed about biometric assessment using the system in an understandable and accessible manner.</p> <p>Recital 142: promote research and development of disability inclusive AI to increase social rights of persons with disabilities, tackling socio/economic inequalities respecting appropriate requirements to be met.</p> <p>Recital 165: AI systems should be designed in a way that accessibility for persons with disabilities is provided.</p> <p>Article 5.1.e: placing AI systems on the market exploding disability (characteristics) is prohibited, with the objective of distorting behavior causing significant harm.</p> <p>Section 2 high risk:</p> <p>Article 6: no negative effect on fundamental rights and outcome of decision making,</p> <p>Article 7: harm, health, safety,</p>	<p>EAA 2019/882: Equal access to products and services, including financial services and communication services.</p> <p>Employment Council Directive 2000/78/EC: Prevention of discrimination in all relations for employment.</p>
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	<p>Article 9.9: risk management system measuring impact on minorities, Article 10: appropriate use of data, Article 11: technical information. Article 12: record keeping. Article 50. 1-5: all transparency obligations under article 50 – people must be aware they are interacting with an AI system, all output provided by AI systems (including gen purpose AI systems) must be marked to be recognized as AI generated, persons must be informed they interact with emotion recognition or biometric categorization AI system, deepfakes must be disclosed – must be performed in an accessible manner respecting regulatory requirements. Article 60.4.g-k: appropriate measures for testing high risk AI systems with respect to persons with disabilities protecting their rights appropriately. Article 95.2.e: assessing and preventing negative impacts of AI systems on persons with disabilities and other minorities should be included in the voluntary code of conduct.</p>	
<p>Data bias</p>	<p>Recital 32: use of real time AI systems, remote biometric, in public space can negatively impact persons with disabilities, and can result in biased outcomes and feel intrusive to individuals. Recital 80: prevent discrimination and promote equality of persons with disabilities. Recital 165: codes of conduct should increase equality and trustworthiness of AI systems, voluntary requirements on transparency, intended purpose, and involvement of relevant stakeholders. Article 10.2.f, g, h: for high-risk AI: investigates biases likely to impact fundamental rights and influence decision making outcomes. And take appropriate measures to detect these.</p>	<p>UN CRPD:4, 5, 9, 12, 17, 21, 27: EU Obligations explicitly rely in promotion full enjoyment of human rights, eliminate discrimination, dignity, integrity, fair treatment, and equal opportunity.</p> <p>Employment Council Directive 2000/78/EC Prevention of discrimination in all relations for employment – data bias and decision making based on</p>

	<p>Finally, the identification of data gaps/bias and how to address these.</p> <p>Article 50. 1-5: all transparency obligations under article 50 – people must be aware they are interacting with an AI system, all output provided by AI systems (including gen purpose AI systems) must be marked to be recognized as AI generated, persons must be informed they interact with emotion recognition or biometric categorization AI system, deepfakes must be disclosed – must be performed in an accessible manner respecting regulatory requirements.</p> <p>Article 95.2.e: assessing and preventing negative impacts of AI systems on persons with disabilities and other minorities should be included in the voluntary code of conduct.</p>	<p>general behavior measuring without considering disability characteristics must be considered.</p> <p>GDPR²⁰ Recital 35: data that can identify a person – for persons with disabilities this often includes data related to support, characteristics, which are important providing accessibility but cannot be used in decision making. Recital 54: only exception is public health – for allowing collecting data on disability.</p>
<p>Inaccessible digital literacy training within accessibility standards</p>	<p>Recital 72: information about use of AI systems and high-risk AI systems must be accessible and understandable.</p> <p>Recital 91: relation to and fundamental rights connect to assure AI literacy levels up to par, people overseeing and deploying must have adequate knowledge about how to fulfill these tasks – with special attention to high-risk.</p> <p>Article 95.2.e: assessing and preventing negative impacts of AI systems on persons with disabilities and other minorities should be included in the voluntary code of conduct. As well as accessibility measures taken, to support AI literacy training.</p>	<p>UN CRPD: 4, 5, 9, 12, 21, 24, 27: EU Obligations explicitly rely in promotion full enjoyment of human rights, eliminate discrimination, dignity, integrity, fair treatment, and equal opportunity – overseers and deploying persons must be made aware of disability rights, PwD’s working in these roles must be able to follow these trainings too.</p>

²⁰ Eur-Lex GDPR regulation: <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>

		<p>Employment Council Directive 2000/78/EC: Prevention of discrimination in all relations for employment.</p>
<p>Complaint process</p>	<p>Recital 29: AI systems cannot exploit vulnerabilities of persons with disabilities. These AI systems cannot influence decision making or freedom of choice, because people are not aware they are interacting with AI.</p> <p>Section 2 high risk:</p> <p>Article 6: no negative effect on fundamental rights and outcome of decision making,</p> <p>Article 7: harm, health, safety,</p> <p>Article 9.9: risk management system measuring impact on minorities,</p> <p>Article 10: appropriate use of data,</p> <p>Article 11: technical information and finally</p> <p>Article 12: record keeping.</p> <p>Article 95.2.e: assessing and preventing negative impacts of AI systems on persons with disabilities and other minorities should be included in the voluntary code of conduct. Including accessibility measures taken, for the purpose of transparency in case a complaint arises.</p>	<p>UN CRPD: 4, 5, 12, 17, 21: For equal access to legal rights and assuring this can be executed: general obligations (4), equity and non-discrimination (5) equal recognition before the law (12), protection of integrity (17) and accessible and understandable communication (21) must apply to ensure enjoyment of fundamental rights by persons with disabilities.</p> <p>EAA 2019/882: Equal access to products and services, including financial services and communication services.</p> <p>WAD 2016/2102: Accessibility of public services, and all digital accessibility requirements which also apply on AI and are listed in the EAA.</p>