



EUROPEAN SOCIAL POLICY NETWORK (ESPN)

# Social protection for people with disabilities

Spain

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# **European Social Policy Network (ESPN)**

## **ESPN Thematic Report on Social protection for people with disabilities**

**Spain**

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## Summary

This report analyses some important cash and in-kind social protection provisions available to adults with disabilities (i.e. people aged 16 or above). There are other important provisions available to them in other areas not covered in this report. In line with Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD), “people with disabilities” should be understood as “*those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*”.

The access to disability-specific cash benefits/pensions for people with disabilities, both contributory and non-contributory, has developed significantly in Spain over the last four decades. The rationale behind this development is threefold. On the one hand, guaranteeing income support to people who are not able to work (non-contributory dimension). On the other hand, guaranteeing benefits for permanent incapacity, in its different dimensions, to people in the contributory social security system who have a functional disability. Finally, facilitating the transition to retirement pensions for employees with a disability.

Despite the progress achieved so far in the social protection of people with disabilities, reforms are needed to improve the current social protection system: making the transitions between employment and disability more flexible, continuing to facilitate access to retirement for people in different situations of disability and, finally, reordering the contributory protection of people with disabilities, taking into account their ability to access the labour market. The implementation of the *Ingreso Mínimo Vital* (minimum living income) in June 2020 has opened a process of reorganisation, not yet complete, of all non-contributory benefits, including those for people with disabilities.

People with disabilities are exempted from co-payments for medication if they receive a non-contributory pension, or if they benefit from the *Asistencia sanitaria y prestación farmacéutica* (health and pharmaceutical care assistance) scheme, whereas other people must comply with the levels of co-payments established in accordance with their income and relation to the labour market.

Home adaptations are being implemented to a greater extent in Spain. Being a competence of the autonomous communities (AC) and local government bodies, there are variations in terms of residency requirements and subsidy amounts. It is a challenge to reduce the disparity in the access requirements and in the intensity of protection without implying uniformity between territories. Assistive technologies are regulated under the social services laws of the AC and there are significant differences between them.

Law 39/2006 on Promotion of Personal Autonomy and Care for Dependent People regulates personal assistance as a service that should allow people with disabilities to promote their independent living and to reinforce their personal autonomy. The access to professional personal assistance remains extremely limited. In December 2021, only 0.6% of people with disabilities and older people had personal assistance granted. The implementation of this personal assistance benefit leaves much room for improvement.

Among the most recent social protection reforms, the reform of the public pension system in December 2021 has improved the social protection of those workers who have to retire early due to a disability.

Recommendations for improvements in the accessibility and adequacy of the social protection system include: harmonise criteria in terms of eligibility conditions of people with disabilities, while taking into account their labour trajectories; make the income criterion more flexible, and even eliminate it, so that any person with disabilities can access health and pharmaceutical care without co-payment; approximate the criteria for access to assistive technologies and home adaptations between regions and local government bodies; increase the provision of personal assistance regulated by the long-term care system; and strengthen data-collection mechanisms according to Article 31 of the UN CRPD.

## 1 Access to disability-specific income support

### 1.1 Disability-specific benefits/pensions available to working-age people

The main disability-specific benefits available to working-age people in Spain<sup>1</sup> are: the *Prestaciones de incapacidad permanente* (permanent incapacity benefits) and *Pensiones extraordinarias por actos de terrorismo* (extraordinary pensions for acts of terrorism), which are disability insurance schemes; and the *Pensión de invalidez no contributiva* (non-contributory invalidity benefit), which is a disability assistance scheme.

#### 1.1.1 *Prestaciones de incapacidad permanente* (Permanent incapacity benefits)

Permanent incapacity benefits are disability insurance schemes providing **contribution-based benefits**. The scheme is based on a person's capacity for work. "Invalidity" corresponds to the situation of a worker who, after having undergone the prescribed treatment, has serious physical or functional disabilities that are presumed to be permanent and that reduce (partly or totally) their ability to work. There are benefits for four degrees of permanent incapacity: *incapacidad permanente parcial para la profesión habitual* (partial permanent incapacity for the usual occupation); *incapacidad permanente total para la profesión habitual* (total permanent incapacity for the usual occupation); *incapacidad permanente absoluta* (absolute permanent incapacity for all types of work); and *gran invalidez* (severe incapacity).<sup>2</sup>

##### a) Eligibility conditions

Disability-related qualifying criteria:

- Partial permanent incapacity for the usual occupation: Disability that causes the worker's ability to perform their usual profession to be reduced by 33% or more, without keeping the worker from performing the basic tasks of the profession.
- Total permanent incapacity for the usual occupation: Disability that keeps the worker from performing all the main tasks in their profession, but leaves them able to take up a different profession.
- Absolute permanent incapacity for all types of work: Disability that prevents the worker from performing any type of work or trade.
- Severe incapacity: Disability that requires the permanent assistance of another person to carry out the most basic activities.

Age: 16-65. Permanent incapacity benefits become old-age pensions when the beneficiary turns 65.<sup>3</sup>

Nationality and/or residency: Eligibility is not linked to residence and/or citizenship.

Waiting period: None (i.e. it is granted from the moment the disability is certified).

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<sup>1</sup> The minimum working age in Spain is 16.

<sup>2</sup> More details in the labour guide 2021 (<https://bit.ly/3rWQLoA>), Social Security website (<https://bit.ly/3GYJJ6X>), or European Commission website (<https://bit.ly/3LMwU36>).

<sup>3</sup> There is one exception: people who reach retirement age and who qualify for a permanent disability benefit but do not meet the requirements for access to a social security retirement pension will be entitled to permanent disability benefits for common contingencies. The amount to be received would be 50% of the regulatory base (50% is the percentage applied to the minimum contribution period for access to the retirement pension).

Contributory history: No minimum period of contributions is required if the disability is caused by an accident (at work or not) or occupational illness. A minimum contributory period is required if the disability is the result of a common illness, as follows.

- Partial permanent incapacity for the usual occupation: 1,800 days of contributions during the 10 years immediately preceding the date on which the permanent disability arises. For workers under 21 on the date when sick leave starts, half of the days between the date on which they reached 16 and the date on which the temporary incapacity began must be accredited.
- Total permanent incapacity for the usual occupation, absolute permanent incapacity for all types of work, and severe incapacity: The required contribution period varies according to the age of the person concerned.
  - Regularly insured people under 31: The qualifying period is one third of the time between the age of 16 and the date of onset of the condition giving rise to incapacity.
  - Regularly insured people over 31: The qualifying period is a quarter of the time between the age of 20 and the event giving rise to incapacity, subject to a minimum of five years. One fifth of the contribution period must fall within the 10 years prior to the causal event.

Level of financial resources: None (i.e. the benefit is not means-tested).

Other: None.

Gaps and/or obstacles: No evidence (reports, papers...) was identified on gaps/obstacles related to this benefit.

## **b) Disability assessment framework**

Type of assessment: Medical-based assessments of disability. The assessment relies on medical assessment procedures.

Responsible authorities: The application is processed by a disability assessment team (EVI – *Equipo de Valoración de Incapacidades*), which issues an initial decision taking into account the summarised medical report prepared by the medical staff of the provincial headquarters of the National Institute of Social Security (INSS) and the professional history report. On this basis, the provincial INSS directors issue an express decision on the level of disability, the amount of the benefit and the date from which a reassessment of incapacity may be performed. The evaluation procedure is the same for the whole country, with the particularity that in Catalonia the duties of the EVI are carried out by the Catalan Institute of Disability Evaluation (*Instituto Catalán de Evaluación de Incapacidades*) and the Disability Evaluation Commission (*Comisión de Evaluación de Incapacidades*).

Method: Personal interview with review of medical records and questions regarding pathology and health status. There may also be a physical examination or a psychological questionnaire, depending on the nature of the condition.

Supporting evidence: The summarised medical report prepared by the medical staff of the provincial INSS headquarters and the professional history report.

Assessor: The EVI is composed of one president, one medical inspector, one medical doctor, one labour and social security inspector and one civil servant in charge of the corresponding formalities with the INSS.

Decision-maker: The provincial directors of the INSS.

Critical analysis: Not documented.



### c) Benefit entitlements

Levels of the benefit are as follows.

- Partial permanent incapacity for the usual occupation: The worker receives financial compensation consisting of a lump sum equal to 24 times the monthly basis used for calculating sickness benefits.<sup>4</sup>
- Total permanent incapacity for the usual occupation: Monthly amount equal to 55% of calculation basis. Increased by 20 percentage points if over 55 and out of work (benefit of 75%). The minimum amount of the pension is established annually in the General State Budget Law. In 2022 the minimum amounts per year for those aged 60-64 are: €9,452.80 for single-person households, and €11,688.60 or €8,934.80 for married beneficiaries, according to whether or not the spouse is dependent. The minimum amounts for those under 60 are: €7,448 for single-person households and for married beneficiaries when the spouse is dependent; and €7,383.60 for married beneficiaries when the spouse is not dependent. In 2022, the maximum amount per year is €39,468.52.
- Absolute permanent incapacity for all types of work: Monthly amount equal to 100% of calculation basis. In 2022 the minimum amounts per year are €10,103.80 for single-person households, €12,467 for married beneficiaries when the spouse is dependent and €9,590 when the spouse is not dependent. In 2022, the maximum amount per year is €39,468.52.
- Severe incapacity: Monthly amount payable for absolute and total permanent incapacity plus a supplement (45% of the minimum contribution base for the year plus 30% of the worker's contribution base). In 2022, the minimum amounts per year are €15,156.40 for single-person households, €18,701.20 for married beneficiaries when the spouse is dependent and €14,385 when the spouse is not dependent. In 2022 the maximum amount per year is €39,468.52. This limit does not include the supplement.

Duration of the benefit: Partial permanent incapacity for the usual occupation is a lump sum. The rest are lifelong monthly pensions, although they are subject to revisions by the EVI at any time up to the minimum retirement age. The disability status may be reviewed if the condition becomes worse or improves, or was misdiagnosed, or in the case of starting employment. The entitlement to invalidity benefits may be cancelled following the reassessment of incapacity, the acknowledgement of the old-age pension or the death of the beneficiary.

Interactions with other income or other income-related benefits: incapacity benefits cannot be combined with other benefits under the general scheme of social security except for a widow(er)'s benefit (up to the maximum amount). The receipt of other social benefits compatible with the invalidity benefit does not affect the amount of invalidity benefit received as long as it does not exceed the maximum amount. No cumulation possible with lump-sum payments in respect of lesions, mutilations and deformities, except where the latter are entirely unconnected with the factors giving rise to disability. Cumulation possible with unemployment benefit after losing a compatible job (i.e. a job for which the beneficiary was not declared incapable, in the case of total permanent incapacity for the usual occupation). Benefits are compatible with earnings from work, provided the activity is consistent with the beneficiary's physical condition and does not imply a change in their capacity to work for revision purposes.

Challenges: No evidence (reports, papers...) was identified on adequacy challenges related to this benefit.

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<sup>4</sup> For example, a worker aged 45 entitled to partial incapacity benefits, with a regulatory base of €2,000, will receive compensation of €48,000 (24 monthly payments x €2,000).

### 1.1.2 *Pensión de invalidez no contributiva* (Non-contributory invalidity benefit)

Non-contributory invalidity benefit is a disability assistance scheme that provides tax-financed benefits. It is compatible with income from work, ensuring a financial benefit, free medical-pharmaceutical assistance and complementary social services, even if no or insufficient contributions have been made to qualify for a contributory pension.<sup>5</sup>

#### a) Eligibility conditions

Disability-related qualifying criteria: Disability of at least 65%.

Age: Over 18 and under 65.

Nationality and/or residency: Legal residence in Spain for at least five years (two of which immediately prior to the date of benefit application).<sup>6</sup>

Waiting period: None (i.e. it is granted from the moment the disability is certified).

Contributory history: None (i.e. no minimum contributory record is required).

Level of financial resources: Someone is considered as lacking sufficient means or income when their total annual income is less than the total annual threshold of the benefit (€5,899.60 per year in 2022). The resource cumulation limit is increased depending on the number of people living together in the same economic unit, and is equivalent to the total amount of the annual benefit plus 70% of that amount multiplied by the number of people living together, minus one (two people – €10,029.32 per year in 2022; three people – €14,159.04 per year; etc) When the people living together in the same economic unit with the applicant are their first-degree descendants or ancestors, the resource cumulation limit will be two and a half times the amount that results from performing the above-mentioned calculation (two people – €25,073.30 per year in 2022; three people – €35,397.60 per year; etc.).

Other: None.

Gaps and/or obstacles: No evidence (reports, papers...) was identified on gaps/obstacles related to this benefit.

#### b) Disability assessment framework

Type of assessment: A combination of medically based assessment of disability and functional capacity assessment. There is a scale (Royal Decree 1971/1999<sup>7</sup>) that takes into account two aspects: a medical assessment of the person's limitations, and an assessment of complementary social factors such as family environment, work, educational and cultural situation, that hinder their social inclusion (Royal Decree 1971/1999, Article 4).<sup>8</sup> A disability certificate is issued certifying the legal status of a person with a disability.<sup>9</sup>

Responsible authorities: The management and recognition of the right to receive the benefit is carried out by the competent technical bodies of the autonomous communities (AC) that have the functions of the IMSERSO (*Instituto de Mayores y Servicios Sociales*) transferred to them.

Method: In-person physical, psychological and sensory evaluation of the beneficiary.

Supporting evidence: In addition to the in-person assessment, the competent technical bodies may obtain relevant medical, psychological or social reports from professionals

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<sup>5</sup> More details at IMSERSO website (<https://bit.ly/3LJxxuf>) and in the labour guide 2021 (<https://bit.ly/3rWQLoA>).

<sup>6</sup> These conditions apply to EU and non-EU nationals as well as to people with refugee status.

<sup>7</sup> Royal Decree 1971/1999 of 23 December 1999, annex 1, on the procedure for the recognition, declaration and qualification of the degree of disability (consolidated text): <https://bit.ly/34PzpBe>.

<sup>8</sup> More details at: <https://bit.ly/3Bu5Hh6>

<sup>9</sup> More details at IMSERSO website: <https://bit.ly/36oVtTL>

from other bodies in order to formulate their opinions (Royal Decree 1971/1999, Article 9).

Assessor: At least a doctor, a psychologist and a social worker, according to interdisciplinary criteria (Royal Decree 1971/1999, Article 8).

Decision-maker: Competent technical bodies dependent on the AC.

Critical analysis: Not documented.

### **c) Benefit entitlements**

Level of the benefit: The amount received is the same amount set as the income threshold: €5,899.60 per year in 2022 (€421.40 per month in 14 payments) and is increased depending on the number of people living together in the same economic unit – see above, paragraph a), on level of financial resources. If the beneficiary's annual income or revenues exceed the yearly amount of the non-contributory benefit by 35% (€2,064.86 in 2022), the non-contributory benefit is reduced by an amount equivalent to the income or revenues that exceed such threshold. Nevertheless, the benefit amount must not be less than 25% of the basic amount (€1,474.90 per year in 2022). For the non-contributory invalidity benefit, if the disability degree is 75% or more, and assistance from other people to perform the most essential functions of life is needed, the benefit amount is supplemented by 50% of the basic amount (€5,899.60 plus €2,949.80 per year in 2022). Recipients of this benefit who live in rented accommodation can receive an annual supplement of €525 if they do not own their own home and are not related to or co-habiting with their landlord. If several non-contributory invalidity benefit recipients live in the same dwelling, only one of them will receive the benefit.

Duration of the benefit: No specific limits. For a review of the degree of disability, a minimum of two years must have elapsed unless there is a proven error in the diagnosis or substantial changes in the disability. Beneficiaries are obliged to report within 30 days any changes in their situation that might affect the benefit entitlement or amount.

Interactions with other income or other income-related benefits: These pensions are incompatible with a non-contributory retirement pension, with social assistance pensions (FAS) and LISMI disability subsidies (both are gradually being phased out<sup>10</sup>), and with the child benefit for families with sons and daughters with disabilities<sup>11</sup> (see Section 2.3 on guaranteed minimum income schemes and other social assistance benefits). They are compatible with earned income up to a limit of €12,847.84 per year in 2022 and for a maximum period of four years. If the annual sum of the benefit amount and earned income exceeds this amount, the pension is reduced so as not to exceed the limit. This reduction does not affect the supplementary allowance for people with a disability of 75% or more.

Challenges: No evidence (reports, papers...) was identified on adequacy challenges related to this benefit.

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<sup>10</sup> FAS and LISMI disability subsidies were abolished by Law 26/1990 of 20 December 1990, when non-contributory benefits were established. Beneficiaries who received them before that date can continue to receive them unless they opt for the non-contributory invalidity benefit. The annual amount of these benefits (€2,098.04 per year) is lower than that of a non-contributory invalidity benefit, so there are very few FAS and non-contributory invalidity benefit recipients left.

<sup>11</sup> The child benefit for families with sons and daughters with disabilities older than 18 is a non-means-tested cash transfer. The amount is similar to that provided by non-contributory invalidity benefit (in 2022, €5,012.40 a year if the disability is 65-75%, and €7,519.20 if it is over 75%).

### 1.1.3 *Pensiones extraordinarias por actos de terrorismo* (Extraordinary pensions for acts of terrorism)

*Pensiones extraordinarias por actos de terrorismo* (extraordinary pensions for acts of terrorism) are paid to people with disabilities resulting from acts of terrorism.<sup>12</sup> These people receive a permanent incapacity benefit assimilated to an at-work accident, with special characteristics such as: a higher amount of benefit (200% of the corresponding percentage of the calculation basis<sup>13</sup> according to the type of permanent incapacity – total, absolute or severe), a higher minimum amount (three times the IPREM<sup>14</sup> – €24,318.84 per year in 2022), and no maximum amounts.<sup>15</sup>

#### a) Eligibility conditions

Disability-related qualifying criteria are as follows.

- Partial permanent incapacity for the usual occupation: Disability that causes the worker's ability to perform their usual profession to be reduced by 33% or more, without keeping the worker from performing the basic tasks of the profession.
- Total permanent incapacity for the usual occupation: Disability that keeps the worker from performing all main tasks in their profession, but leaves them able to take up a different profession.
- Absolute permanent incapacity for all types of work: Disability that prevents the worker from performing any type of work or trade.
- Severe incapacity: Disability that requires the permanent assistance of another person to carry out the most basic activities.

Age: 16-65.

Nationality and/or residency: None (i.e. there are no nationality or residency requirements for accessing this benefit).

Waiting period: None (i.e. it is granted from the moment the disability is certified).

Contributory history: None (i.e. no minimum contributory record is required).

Level of financial resources: None (i.e. the benefit is not means-tested).

Other: Be the victim of an act of terrorism for which they are not responsible.

Gaps and/or obstacles: No evidence (reports, papers...) was identified on gaps/obstacles related to this benefit.

#### b) Disability assessment framework

Similar to permanent incapacity benefits (see Section 1.1.1).

#### c) Benefit entitlements

Levels of the benefit are as follows.

- Total permanent incapacity for the usual occupation: 200% of monthly amount of 55% of calculation basis. Increased by 20% if over 55 and out of work (benefit

<sup>12</sup> Survivors' pensions (widow's, widower's, orphan's) are also provided for the relatives of those who die as a result of terrorist acts.

<sup>13</sup> The calculation basis is different for people registered with Social Security (the result of multiplying the last monthly contribution base by 12 is to be divided by 14) compared with people who are not registered when the attack occurs (the base would be the minimum wage in force at the time, increased by one sixth); in 2022 the minimum wage is €1,000 per month).

<sup>14</sup> Public income indicator of multiple effects (IPREM – *Indicador Público de Renta de Efectos Múltiples*): the amount is €579.02 per month in 14 payments.

<sup>15</sup> More details on the Social Security website (<https://bit.ly/3sOkeAh>) and in the labour guide 2021, p. 638 (<https://bit.ly/3rWQLoA>).

of 75%). In 2022 the minimum amount per year is €24,318.84. No maximum amounts.

- Absolute permanent incapacity for all types of work: 200% of monthly amount of 100% of calculation basis. In 2022 the minimum amount per year is €24,318.84. No maximum amounts.
- Severe incapacity: 200% of monthly amount payable for absolute and total permanent incapacity, plus a supplement. In 2022 the minimum amount per year is €24,318.84. No maximum amounts.

Duration of the benefit: Similar to permanent incapacity benefits (see Section 1.1.1).

Interactions with other income or other income-related benefits: The same as for permanent incapacity benefits (see Section 1.1.1).

Challenges: No evidence (reports, papers...) was identified on adequacy challenges related to this benefit.

## 1.2 Disability-specific old-age pension schemes

There are no specific old-age pension schemes for people with disabilities. When people with disabilities reach retirement age they receive a statutory old-age pension (see Section 2.1).

## 1.3 Income support aimed at covering disability-related healthcare and housing expenses

### 1.3.1 Healthcare

The General Law on the Rights of People with Disabilities and their Social Inclusion (Royal Legislative Decree 1/2013, of 29 November 2013)<sup>16</sup> states that the government must develop the necessary measures to preserve and restore the health of people with disabilities, by granting them access to services and health-related benefits on an equal basis with other citizens.

#### 1.3.1.1 *Asistencia sanitaria y prestación farmacéutica* (Health and pharmaceutical care assistance)

##### a) Brief description

*Asistencia sanitaria y prestación farmacéutica* (ASPF – health and pharmaceutical care assistance) is actually not based on a cash transfer to beneficiaries, but on the granting (free of charge) of health and pharmaceutical care to people with disabilities not covered by other social security schemes (either as insured people or as beneficiaries). Although the Spanish National Healthcare Service (SNS – *Sistema Nacional de Salud*) is supposed to operate under a universalistic philosophy (with an eligibility logic based on residency in the territory), the strong inertia deriving from its origins as a social insurance programme, reinforced by the temporary return to an insurance logic in recent times,<sup>17</sup> explains the persistence of a programme aimed at granting access to healthcare services for people with disabilities not covered by other social security schemes. Like the other schemes included in the LISMI Law,<sup>18</sup> the ASPF is managed by the AC, except in the cases of the

<sup>16</sup> <https://tinyurl.com/y9rcqagz>

<sup>17</sup> The 16/2012 Royal Decree of urgent measures to guarantee the sustainability of the SNS meant a radical change in the philosophical foundation of the SNS by reverting its universalistic ethos and reintroducing an insurance logic in the definition of entitlements to healthcare services. It did so by re-establishing the categories of “insured people” (workers, pensioners, unemployed people receiving benefits, and job-seekers), and “beneficiaries” (spouses and siblings under 26 of insured people) to grant access to healthcare services within the SNS. The 7/2018 Royal Decree reverted the SNS to a universalistic logic based on residency in the country.

<sup>18</sup> Law 13/1982, of 7 April 1982, on the social integration of people with disabilities (LISMI).

autonomous cities of Ceuta and Melilla, where the IMSERSO is responsible for handling the applications.

### **b) Main gaps/obstacles**

The fulfilment of the requirements (recognised degree of disability superior to 33%, and not having access to health or pharmaceutical care through any other scheme) has to be accredited annually, and the beneficiaries must report any change in the circumstances granting access to these benefits. The benefits are granted on an individual basis, and do not extend to other members of the family. This programme is increasingly residual, as the declining number of beneficiaries clearly shows.<sup>19</sup>

### **c) Main adequacy challenges**

The path-dependencies established by the social insurance origins of the SNS remain particularly strong in the area of pharmaceutical care, in the form of different levels of co-payments for different social groups depending mostly on their income and relation to the labour market (working, unemployed, retired, etc.). People with disabilities are exempted from co-payments for medication if they receive a non-contributory pension, or if they benefit from the ASPF, whereas other people must comply with the levels of co-payments established in accordance with their income and relation to the labour market.<sup>20</sup>

## **1.3.2 Housing: home adaptations**

Prior to the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2006, Spain was developing housing adaptation programmes for people with disabilities. The Spanish strategy on disability 2012-2020<sup>21</sup> included among its objectives that of universal accessibility, integrating policies for the elimination of barriers and the functional adaptation of housing.

Social assistance programmes for adapting the homes of people with disabilities are the exclusive competence of the AC and local government. The social services laws of the regional governments and municipal regulations (ordinances) regulate the access of people with disabilities to social benefits for housing adaptation. More specifically, all AC have a "catalogue of social services", or package of social benefits, which includes the social benefit for housing adaptations. Details on this benefit and the conditions of access are available from public bodies (OADIS, 2020) and non-profit organisations (ONCE Foundation).<sup>22</sup>

Although the social benefit is regulated within the system of regional and municipal social services, its implementation also depends on the regulation of regional housing plans. Housing adaptation projects have to be certified by the territorial bodies responsible for housing.

In many AC, these regulations form part of the strategic plans for promoting the equality and integration of people with disabilities, which sometimes include this benefit in

<sup>19</sup> The ASPF has experienced a constant decline in the number of beneficiaries, from 8,269 in December 2014, to 4,854 on December 2021 (<https://tinyurl.com/y9qpacvf>).

<sup>20</sup> 60% co-payment for those working with income above €100,000 per year; 50% for those earning €18,000-100,000; and 40% for those earning less than €18,000 per year. Unemployed workers who have lost their benefits, as well as those on income-support programmes, do not have co-payments. Pensioners pay 10% of the cost of medication with a cap of €8 per month if their income is below €18,000 per year; €18 if their income is €18,000-100,000 per year; and €60 per month if they earn more than €100,000 per year (<https://tinyurl.com/y7tflz5n>).

<sup>21</sup> <https://bit.ly/3LMQbBz>. The draft disability strategy 2021-2030 also includes the goal of universal accessibility: <https://bit.ly/3LPESIT>.

<sup>22</sup> Office for Attention to Disability (OADIS): <https://bit.ly/35e2k1y>. Portal for people with disabilities of the Fundación ONCE: <https://bit.ly/3BB1YOV>.

conjunction with devices and assistive technology. Such is the case, for example, in the AC of Aragon, Castile and Leon, and Navarre.<sup>23</sup>

We describe below the common denominator of these programmes by providing a general overview of regional and municipal regulations. Under different denominations, all the AC without exception, along with the large cities, regulate a longstanding social demand.

### a) Brief description

The objectives of social assistance for housing adaptations are twofold: the elimination of barriers inside the home, and the functional adaptation of the home to the personal needs of people with disabilities. These objectives take the form of social benefits such as: adaptation of the bathroom and kitchen; adaptation of doors, corridors and walls; installation of accessibility elements inside the home (e.g. stair-lift); installation of home automation, environmental control systems and digital home technology; installation of magnetic induction and signalling systems; and, in general, improved accessibility and the elimination of barriers inside the home.

Overall, there are common denominators in the requirements for access to this benefit: officially certified disability higher than 33%, with a low income and a report by the social services and housing departments;<sup>24</sup> residence for a minimum of one year; household income no higher than 2.5 times the IPREM; and age of access between 18 and 65. The benefits are, in general, compatible with other public subsidies without exceeding the total cost of the work of adapting the home.

### b) Gaps/obstacles

Among the main gaps, the following should be highlighted:

- income limits are rigid and exclude people with disabilities who need to adapt housing and only receive counselling, but not monetary aid; and
- grants or benefits are limited by the budget available to each local government body, which generates wide differences between territories.

### c) Main challenges

Among the challenges of the future, it is necessary to point out the need to approximate the requirements for access to assistance for housing adaptations between the different territories.

On the other hand, co-ordination between social services and the regional and local housing system is uneven and has ample room for improvement.

## 2 Access to some key general social protection cash benefits

### 2.1 Old-age benefits

Statutory pension schemes are administered by Social Security. The social security system provides a double level of protection: contributory and non-contributory pensions.<sup>25</sup>

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<sup>23</sup> Castile and Leon: Catalogue of Social Services: "Apoyo para la accesibilidad y la comunicación": Prestación económica para productos de apoyo y la eliminación de barreras en el domicilio" ("Support for accessibility and communication": social benefit for devices and assistive technology and the elimination of barriers at home); Plan Estratégico de Igualdad de Oportunidades para personas con discapacidad 2016-2020 (Equal Opportunities Strategic Plan for People with Disabilities 2016-2020) (<https://bit.ly/33CcWHa>). Navarre: Navarre Disability Plan 2019-2025 (<https://bit.ly/3vacefF>). Aragon: I Comprehensive Action Plan for People with Disabilities in Aragón 2021-2024 (<https://bit.ly/3sTQNgd>).

<sup>24</sup> AC of Andalusia: <https://bit.ly/3sUZBm6>

<sup>25</sup> Legal Framework: Legislative Royal Decree 18/2015 of 30 October 2015, approving the revised text of the General Social Security Act (<https://bit.ly/3vmKK6M>). More details in the labour guide 2021 (<https://bit.ly/3rWQLoA>).



*Pensiones contributiva de jubilación* (contributory retirement pensions) (Sections 2.1.1 and 2.1.2) are financed by social contributions and distributed through the pay-as-you-go system. The beneficiary of a permanent disability pension becomes a recipient of a retirement pension when they reach the statutory retirement age, without any change in the conditions of the benefit (See Section 1.1.1.).

### **2.1.1 *Pensión contributiva de jubilación. Jubilación total o parcial* (Contributory retirement pension. Full or partial retirement)**

Contributory retirement pensions for people with disabilities are managed in the same way as for other people, except for some requirements mentioned below.

#### **a) Eligibility conditions**

Contributory history: The minimum period required for full retirement is not different (a period of 15 years, of which at least two must have been during the 15 immediately preceding the date of retirement); but for partial retirement, the minimum contribution period required for people with disabilities of 33% or more is reduced to 25 years (33 years for other workers).

#### **b) Additional amount/compensation included and adequacy issues**

When the beneficiaries of a contributory permanent disability pension go on to receive a contributory retirement pension, the conditions of the benefit are maintained.

#### **c) Gaps/obstacles**

There is no evidence on this issue.

### **2.1.2 *Pensión contributiva de jubilación. Jubilación anticipada* (Contributory retirement pension. Early retirement)**

#### **a) Eligibility conditions**

Age: Workers with 45% disability can retire from age 56. Those with at least 65% disability can retire from age 52 under certain conditions,<sup>26</sup> unlike other workers who can bring forward their retirement age by two to four years depending on their contributory history and voluntary unemployment.

Contributory history: The minimum period required for full retirement is not different as between people with and without disabilities (a period of 15 years, of which at least two must have been during the 15 immediately preceding the date of retirement), but during this period the degree of disability must be accredited.

#### **b) Additional amount/compensation included and adequacy issues**

The amount of the early retirement benefit may not exceed the amount resulting from reducing the maximum pension ceiling by 0.5% for each quarter of early retirement. In the case of workers with disabilities, this co-efficient of 0.5% does not apply. There is no evidence available on adequacy issues.

#### **c) Gaps/obstacles**

There is no evidence on this issue.

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<sup>26</sup> Disability of 65% or more: the retirement age is reduced by a period equal to 0.25 of the time worked, or 0.5 if the help of another person is needed to carry out the essential acts of daily life. Disability of 45% or more: disabilities determined by regulation for which there is proven evidence of a significant reduction in life expectancy (RD 1851/2009, of 4 December 2009, Article 2).



### **2.1.3 *Pensión no contributiva por jubilación (Non-contributory old-age pension)***

#### **a) Eligibility conditions**

There are no differences in eligibility conditions as between people with and without disabilities (See Section 1.1.2).<sup>27</sup>

#### **b) Additional amount/compensation included and adequacy issues**

The non-contributory retirement pension has the same eligibility conditions and amounts as the non-contributory disability pension (See Section 1.1.2). There is no evidence on adequacy issues in terms of meeting the extra costs related to disability.

#### **c) Gaps/obstacles**

There is no evidence on this issue.

## **2.2 Unemployment benefits**

There is a compulsory social insurance scheme for employees, financed by contributions from employers, employees and the state. The scheme comprises a contributory level (insurance level) with earnings-related benefits, and a welfare level (assistance level) with flat-rate allowances.<sup>28</sup>

### **2.2.1 *Prestación por desempleo de nivel contributivo (Contributory unemployment benefit)***

The *Prestación por desempleo de nivel contributivo* (contributory unemployment benefit) has no eligibility conditions, additional amounts or different obstacles for people with disabilities. There is no evidence on gaps/obstacles or on any adequacy issue.

### **2.2.2 *Prestaciones por desempleo a nivel asistencial. Subsidio de desempleo (Unemployment assistance benefits. Unemployment allowance)***

One of the modalities of the *Subsidio de desempleo* (unemployment allowance) is aimed at workers who are declared as fully or partially capable, because of an improvement in their condition leading to revised disability status (severe, absolute permanent, or total permanent), and who therefore stop receiving the invalidity benefit.

#### **a) Eligibility conditions**

Contributory history: Unlike other modalities where a minimum contribution of three months to six years is required, no prior contribution period is required in this modality.

#### **b) Additional amount/compensation included and adequacy issues**

The amount received does not differ from that of other forms of unemployment assistance: 80% of the current IPREM. No additional amount is envisaged. The unemployed assistance benefit has different durations depending on the duration of previous work. In the case of unemployed people who stop receiving an invalidity benefit, the benefit can be received for six months, extendable for a further two periods, up to a maximum of 18 months. There is no evidence on adequacy issues.

#### **c) Gaps/obstacles**

There is no evidence on this issue.

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<sup>27</sup> More details at IMSERSO website (<https://bit.ly/3LJxxuf>) and in the labour guide 2021 (<https://bit.ly/3rWQLoA>).

<sup>28</sup> Legal framework: Legislative Royal Decree 18/2015 of 30 October 2015, approving the revised text of the General Social Security Act (<https://bit.ly/3vmKK6M>). More details at SEPE website (<https://bit.ly/3Iu9TjI>) and in the labour guide 2021 (<https://bit.ly/3rWQLoA>).

### **2.2.3 Prestaciones de desempleo a nivel asistencial. Renta Activa de Inserción (Unemployment assistance benefits. Active integration income)**

The *Renta Activa de Inserción* (RAI – active integration income) is a means-tested benefit linked to an activation programme. One of its modalities is aimed at unemployed people with a disability over 33% who have exhausted unemployment benefits (contributory or non-contributory) without access to another unemployment benefit.<sup>29</sup>

#### **a) Eligibility conditions**

Age: In the case of unemployed people with a disability over 33%, the lower age limit of 45 does not apply (in other unemployment modalities, unemployed people must be aged 45-65).

Other: In the rest of modalities, applicants must have been registered as a job-seeker for at least 12 months, but this condition does not apply to unemployed people with a disability over 33%.

#### **b) Additional amount/compensation included and adequacy issues**

There are no differences for people with disabilities: the monthly amount is 80% of the current monthly IPREM and no additional amount is envisaged. Nor is there any difference in the maximum duration of the income received: 11 months, with a maximum of three periods of receipt in the programme. There is no evidence on adequacy issues.

#### **c) Gaps/obstacles**

There is no evidence on this issue.

## **2.3 Guaranteed minimum income schemes and other social assistance benefits**

### **2.3.1 Ingreso Mínimo Vital (Minimum living income)**

The *Ingreso Mínimo Vital* (IMV – minimum living income) is a social security non-contributory cash benefit that is designed to guarantee a minimum income level to those individuals and households who lack enough economic resources to cover their basic needs (economic vulnerability).<sup>30</sup>

#### **a) Eligibility conditions**

Level of financial resources: The income threshold is higher if the recipient or any member of the household has a disability of 65% or more. The monthly average gross income in the previous fiscal year must be less (by at least €10) than the monthly amount guaranteed by the IMV for each household size and composition. There are no differences in the asset threshold.

Other: People with a degree of disability equal to or greater than 65% are exempt from the obligation to be registered as job-seekers.

#### **b) Additional amount/compensation included and adequacy issues**

This monthly amount is set, for a single person, as the annual amount of a non-contributory pension (including two bonus payments) divided by 12 (€5,899.60 in 2022; monthly amount €491.63) (basic amount). This amount is increased according

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<sup>29</sup> Legal framework: Royal Decree 1369/2006 of 24 November 2006, regulating the RAI programme for the unemployed with special economic needs and difficulty in finding employment (<https://bit.ly/35edwvF>). More details at SEPE (<https://bit.ly/3K1TGIQ>).

<sup>30</sup> Legal framework: Act 19/2021 of 21 December 2021, on minimum living income (<https://bit.ly/3Hp3nJu>). More details at Social Security (<https://bit.ly/3hmcv2N>).

to a scale size for each household size and composition: each additional member of the household increases the amount by 30% of the basic amount (up to a maximum of 2.2 times the basic amount, €12,979.12). If the recipient or any member of the household has a disability of 65% or more, the amount increases by 22% of the basic amount (as well as single-parent households, gender-based violence victims and some households with highly dependent members). There is no evidence on adequacy issues in terms of meeting the extra costs related to disability.

### c) Gaps/obstacles

There is no evidence on this issue.

## 2.3.2 *Rentas Mínimas de las Comunidades Autónomas* (Regional minimum income schemes)

The *Rentas Mínimas de las Comunidades Autónomas* (RMI – regional minimum income schemes) are a set of programmes of means-tested cash transfers (to guarantee basic monetary resources) linked to social integration and/or labour market activation measures for the working-age population, and targeted at poverty and social exclusion. Currently most of the regions provide such a benefit (except Castile-La Mancha), ranging from fully fledged entitlement-based minimum income schemes to rather limited semi-discretionary programmes. There is no basic national regulation.

In many of them, specific conditions or amounts are established for households whose members include people with disabilities. These specificities are very heterogeneous.<sup>31</sup>

### a) Eligibility conditions

**Age:** Most RMI schemes require beneficiaries to be aged over 23 or 25 (some regions have lowered the age requirement to 18), but in most regions this limit is ignored if they or any member of the household has a disability (Andalusia, Asturias, Balearic Islands, Canary Islands, Catalonia, Galicia, Madrid, Murcia, Basque Country, Ceuta and Melilla).

**Nationality and/or residency:** Most regional programmes require beneficiaries to be either a national or a foreign resident holding a residence permit, or a registered resident for a period of time prior to the application. In the case of Navarre, the condition is lowered from two years to one year in the case of households in which people with disabilities reside.

**Level of financial resources:** Means-testing is based on household income. Any income is taken into consideration in assessing the household's financial resources. The criteria for counting disability benefits as income vary. It is worth noting that in Aragon an amount equivalent to 50% of the minimum wage is deducted in households where people with disabilities live, and in Asturias the income from work participation of people with 65% or more disability is not taken into account.

**Other:** RMI schemes make access conditional on the length of time the household has existed. The minimum time required varies between regions, but in several of them (Balearic Islands, Canary Islands, Castile-Leon and Ceuta) this condition is eased when there are people with disabilities in the household.

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<sup>31</sup> More details at Ministerio de Derechos Sociales y Agenda 2030- MDSA2030, (2021) Informe de Rentas Mínimas de Inserción. Año 2020. Dirección General de Diversidad Familiar y Servicios Sociales. Available at <https://bit.ly/3HmursU>.

## **b) Additional amount/compensation included and adequacy issues**

In three regions, the disability of a household member is taken into account in calculating the amount guaranteed by the benefit:<sup>32</sup> in Andalusia, the amount is increased by 10% of the IPREM (disability over 33%); in Asturias the basic amount is increased by 5%; and in Extremadura the amount to be received is increased by 8% of the IPREM for each member of the household with a disability. There is no evidence on adequacy issues in terms of meeting the extra costs related to disability.

## **c) Gaps/obstacles**

There is no evidence on this issue.

# **3 Provision of assistive technology and personal assistance**

Law 39/2006 on Promotion of Personal Autonomy and Care for Dependent People<sup>33</sup> and Law 51/2003 on Equal Opportunities, Non-discrimination, and Universal Accessibility for People with Disabilities<sup>34</sup> may be identified as the basic legal framework setting the stage to facilitate people with disabilities to live independently in their own homes and in the community in Spain. Both assisted technology and personal assistance constitute important schemes to allow people with disabilities to fully exercise their legal capacity to choose where they want to live, at home or in a residential context. As pointed out in a report by the Academic Network of European Disability Experts on living independently and in the community, there are no structured policies promoting independent living in Spain that follow the UN CRPD, and there are very significant differences among AC in developing initiatives to facilitate independent living, with only some groups of people with disabilities and some disability associations actively promoting independent living (Verdugo and Jenaro, 2019).

## **3.1 Assistive technology**

Just as previously mentioned in Section 1.3.2 on home adaptations, assistive technologies are regulated by the social services laws of the AC and there are significant differences between them. The regional strategies for the integration of people with disabilities and the social services catalogues include the aforementioned measures to adapt homes, and a variety of other initiatives regarding the dimensions of transport, communications, and the living environment of people with disabilities.

### **a) How it is provided**

Assistive technology in the domains of transport, communications and the general living environment is designed to guarantee the personal autonomy of people with disabilities, and to facilitate their access and participation on an equal basis with others. Resources granted under these schemes are devoted to: facilitating the development of daily activities; acquiring products designed to compensate for or avoid deficits or functional limitations in daily activities; improving communication with others; and understanding and controlling people's living and surrounding environments. This includes electronic alert systems as communication services for the promotion of personal autonomy, and for attention and care in emergency situations.

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<sup>32</sup> The mechanisms to establish the level of benefits are relatively similar across regions: all regional programmes guarantee a certain level of household income, complementing other available resources. The guaranteed amount is calculated based on a basic amount for one-person households (ranging from €300 to €693.73 depending on the region) and additional supplements depending on the size and special needs of the household.

<sup>33</sup> Law 39/2006 of 14 December 2006: Ley de promoción de la autonomía personal y atención a personas en situación de dependencia (LAPAD).

<sup>34</sup> Law 51/2003 of 2 December 2003: Ley de igualdad de oportunidades, no discriminación y accesibilidad universal de las personas con discapacidad.

Variation exists between AC in relation to the eligibility requirements for assistive technology support, but in general terms they include a certified disability of at least 33%, being under 65 (those who are 65 or over tend to be included under schemes for older people), living in the region for a certain period of time (between one and five years), and fulfilling a means-tested income limit measured in relation to the IPREM.

The level of co-payment for the equipment and adaptations that must be funded by beneficiaries of these schemes is determined by each AC; the latter generally publish yearly information on technical aids or adaptations, and on the maximum amounts payable per type of product. The subsidies in Aragón region<sup>35</sup> are about the average for Spain as a whole: the amount for acquiring and/or adapting a vehicle is €2,200, acquiring hearing aids around €1,000 (each), acquiring a crane around €700, and buying a laptop to improve communication €300.

## b) Gaps/obstacles identified

According to civil society organisations for people with disabilities, the resources devoted to assistive technologies are clearly insufficient and differ substantially between AC (CERMI, 2021).

There are usually financial limits on the different technical aids people with disabilities may apply for in different AC, and they must assume a share of the cost of these assistive technologies, thus introducing access barriers for certain groups.

## 3.2 Personal assistance

The scheme that historically regulated personal assistance in Spain was the third person assistance subsidy (*Subsidio por ayuda de tercera persona*), which was cancelled in January 1991.<sup>36</sup> This scheme covered people with disabilities deemed to experience anatomical or functional losses that required assistance from another person to fulfil basic daily tasks.

Law 39/2006 on Promotion of Personal Autonomy and Care for Dependent People regulates personal assistance as a service that should allow people with disabilities to promote their independent living and to reinforce their personal autonomy. This is done through two main schemes, one based on personal assistance within the family through non-professional care-providers (*Prestación económica para cuidados en el entorno familiar y apoyo a cuidadores no profesionales*), and a professional personal assistance scheme proper (*Prestación de asistencia personal*).

### a) How is it provided

There are two main schemes (see above).

Whereas non-professional care-providers are mostly family members who support a relative in fulfilling their daily activities in their own home, professional personal assistants are workers who perform a service that enables people with disabilities to lead an independent life while facilitating their self-determination, personal autonomy, and decision-making. This service is clearly centred on the person, allowing people with disabilities to live an autonomous and active life while living at home (not in residential care), and it can range from occasional support up to support of 24 hours per day.

In addition to the general requirements established by the Law 39/2006 (being in a situation of dependence in any of the three established degrees, and residence on Spanish territory for five years, of which two must immediately precede the application), AC establish certain conditions such as the requirement for the interested party to be able to determine the necessary services, control capacity and instructions

<sup>35</sup> <https://tinyurl.com/ybtjuy4o>

<sup>36</sup> Only 385 beneficiaries continued to receive €818.30 per year (in 14 payments) in December 2021 ([tinyurl.com/y9gpacvf](https://tinyurl.com/y9gpacvf)). This amount has not been updated since the year this scheme was phased out.

to the professional personal assistant, directly or through a representative (Andalusia, Balearic Islands, Castille-La Mancha, Catalonia, Extremadura or La Rioja) (Jimeno Jimenez, 2021). Other regions require the submission of a project of independent living (Valencia, Navarre and Basque Country).

## **b) Gaps/obstacles identified**

There are important differences in the procedure for recognising and assigning these benefits across AC, as well as regarding the documentation required, thus contributing to significant territorial inequalities.

In general terms, access to professional personal assistance remains extremely limited despite the fact that the numbers have been somehow increasing in recent years. As of 31 December 2020, only 0.6% of people with disabilities and older people had personal assistance granted, with seven AC having no personal assistance users, and the vast majority having only a small number.<sup>37</sup> In contrast, around 450,000 (33%) people received care in the family, and around 235,000 (18.5%) homecare, during 2020 (AEDGSS, 2021).

The relative dominance of non-professional family-provided personal care, and the relative lack of awareness about the existence of the concept of professional personal assistance, have probably contributed to delaying the development of this scheme, since there is no widespread demand for personal assistance. At the policy level, there are also many difficulties that have caused the personal assistance service not to be consolidated yet (ENIL & FEVI, 2019).

At the economic and financial level, there are also difficulties that cause the low incidence of applications and access to the personal assistance service. The maximum amount established by central government since 2012 for the highest level of personal assistance support is €715.07 per month for degree III (the highest) dependency, €426.12 for degree II, and €300 for degree I. The governments of each AC may decide to increase those levels of benefits, and in fact some have done so (Catalonia, Galicia, and the Valencian community). In the case of Valencian community, for example, it can reach €2,350 per month if the user requires personal assistance for more than 120 hours per month, equalling the average cost of a place in a residential institution (ENIL & FEVI, 2019).

At the same time, the cost to public administrations of non-professional care-providers is considerably lower, at €387.64 for a degree III beneficiary, €268.79 for degree II, and €153 for degree I, thus making this scheme considerably more appealing for regional authorities constrained by budget limitations, as well as for families, who must face the remaining costs out of their own financial resources.<sup>38</sup>

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<sup>37</sup> Although the Basque Country appears to be an exception, with around 7% of beneficiaries receiving professional personal assistance (the next highest is Castille and León with only around 1%), it is important to note that these mostly refer to support to older people to continue living in their homes, and does not match with the concept of personal assistance as defined by the Independent Living Movement. This therefore distorts the real picture of personal assistance provision in Spain, which remains extremely limited (ENIL & FEVI, 2019; AEDGSS, 2021).

<sup>38</sup> The personal assistance benefit does not cover the costs associated with the worker's labour rights, whereas this scheme requires the beneficiary to pay the worker social security insurance. Not to mention the incompatibility between the person's need to cover 365 days a year, 24 hours a day, and the workers' rights to rest (ENIL & FEVI, 2019).

## 4 National debates, reforms and recommendations

### 4.1 National debates

Debates surrounding the social protection of people with disabilities were prominent between 1982 (LISMI Law) and 2013.<sup>39</sup> After the financial and economic crisis of 2008 and until very recently, the debates focused on the field of equal rights,<sup>40</sup> the removal of barriers, access to mainstream employment and anti-discrimination, rather than on access to social protection. Over the past decade, disability NGOs have considered social protection from a cross-cutting demand perspective.<sup>41</sup> In other words, the aim has been to achieve improvements in the social protection of people with disabilities in conjunction with those of other social groups in situations of discrimination.

The debates on social policies for people with disabilities currently combine three objectives: the defence of equal rights and universal access; de-institutionalisation and extending personal assistant provision; and improving social protection in early retirement pensions due to disability.

- The advocacy for equal rights and universal access is at the heart of a large part of the demands of people with disabilities. The annual reports of the Office for Attention to Disability (OADIS) between 2017 and 2020 show that the majority of queries made by people with disabilities focused on areas such as physical barriers, access to transport and telecommunications, and the administration of justice. As regards relations with public administrations, only a minority of queries were related to social protection (OADIS, 2020). The same picture emerges from other sources of information, such as annual reports by the Ombudsman: in its 2020 report, the assessment of citizen complaints referred primarily to the management of deadlines in cases of permanent incapacity, but these were only a small part of all citizen complaints.
- The personal assistant benefit for dependent people has undergone a very slow expansion since the implementation of the Dependency Law from 1 January 2007, as pointed out in Section 3. As of 31 December 2021, this type of social benefit only accounted for 0.5% of the total amount of dependency benefits.<sup>42</sup> Disability NGOs have long advocated models of independent living and community care. The expansion of this benefit is on the social agenda of the disability sector.

Finally, with regard to the improvement and adequacy of the social protection of people with disabilities, the most recent and relevant debates have focused on two areas, as follows.

- Making the assessment and accreditation of disability and dependency situations more flexible and integrated; the regulation of this integration has not yet been finalised and is in the study phase.
- Improvements in the Toledo Pact (2021) in terms of early retirement in the case of disability, and the compatibility between the perception of permanent incapacity

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<sup>39</sup> Law 51/2003, of 2 December 2003, on equal opportunities, non-discrimination and universal access for people with disabilities (LIONDAU), Legislative Decree 1/2013, of 29 November 2013, approving the consolidated text of the general law on the rights of people with disabilities and their social inclusion (LGDPD). Title VII of this law recognises the right to social protection.

<sup>40</sup> The latest law in this regard is Law 8/2021, of 2 June 2021, reforming civil and procedural legislation to support people with disabilities in the exercise of their legal capacity.

<sup>41</sup> This section has benefited from the ideas of the President of the Spanish Committee of Representatives of People with Disabilities (CERMI), collected in an interview held on 2 February 2022.

<sup>42</sup> SISAAD, IMSERSO, 31 December 2021: <https://bit.ly/3v3uGGT>.



pensions and paid employment. This recommendation has led to a recent reform of the public pension system, which we analyse in Section 4.2 below.

## 4.2 Recent reforms and reforms currently in the pipeline

Among the reforms on social protection, it is worth highlighting the approval by the Toledo Pact of a recommendation referring to people with disabilities, developed in December 2021,<sup>43</sup> which regulates early retirement due to disability as follows:

- the minimum age for access to the retirement pension may be lowered for people with 65% or more disability, or for those with 45% or more disability that entails a significant reduction in life expectancy; and
- the application of the corresponding co-efficients for lowering the retirement age shall in no case result in the person concerned being able to access the retirement pension before age 52.

## 4.3 Good practice and recommendations on how to tackle gaps and obstacles

### 4.3.1 Good practice

Good practice in access to social protection includes: the integration of the problems of people with disabilities into the Toledo Pact; the existence of guidance centres such as the OADIS; and the reports of the national and regional Ombudsmen, which catalogue the complaints and problems of access to social protection by people with disabilities. They represent good practice because through them the criterion of disability is consolidated as an explicit fundamental variable of social protection. In addition, this criterion extends to the regional level. All regional annual reports of the Ombudsman devote a specific section to the social protection of people with disabilities.

### 4.3.2 Recommendations on access to adequate social protection benefits and services

- a) The benefits in respect of three degrees of incapacity (total permanent, absolute permanent and severe) entail the automatic termination of the work contract that was being carried out before receiving the benefit. In the case of partial permanent incapacity, the worker has the right to be relocated to a job suitable to their capacity. However, with regard to total permanent incapacity, the termination of the contract is a decision of the company, which is not obliged to move the employee to another job, even if there is a vacancy with suitable characteristics. It would be advisable to make the termination of the contract conditional on the impossibility of adapting the job or relocating the employee, and that a report by the legal representative of the worker is necessary in this respect. In this way, the termination of the employment relationship would be the last of the possible options, thus favouring the maintenance of employment.

When the EVI approving permanent incapacity benefits (total, absolute and severe) considers that the worker may recover within two years, the company is obliged to reserve the worker's position during this period. Once this period has elapsed, the contract may be terminated. It would be advisable to make the two-year period more flexible and for the EVI to determine it according to the worker's specific incapacity, so as not to harm people affected by a pathology whose recovery process is slow and prolonged (Mercader, 2011).

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<sup>43</sup> Law 21/2021, of 28 December 2021, on guaranteeing the purchasing power of pensions, and other measures to reinforce the financial and social sustainability of the public pensions system.



In relation to total permanent incapacity for the usual occupation, the monthly amount is equal to 55% of the calculation basis and is increased by 20% if the beneficiary is over 55 and out of work (benefit of 75%). However, the 55% rate may be insufficient for beneficiaries under 55 who have not found another job. It would be advisable for the amount to be increased progressively up to a maximum of 75% by applying corrective co-efficients related to: age (the older the person is, the higher the benefit); the type of disability (bearing in mind that sensory, visual or hearing disabilities have higher employment rates than intellectual or mental disabilities); and the professional qualifications of the worker.

- b) Income protection for people with disabilities shows significant gaps and discontinuities. The retirement pensions available to workers with disabilities who have not received disability benefits focus on facilitating access to retirement (by lowering contribution history requirements or facilitating early retirement), but do not compensate for the weak work (and contribution) histories of people with disabilities and the additional costs of living with a disability.

This lack of continuity or coherence is even greater when one takes into account the scant consideration given to the situations of people with disabilities in non-contributory benefits for the active population (i.e. populations that often maintain a very weak link with the labour market) (Hernández & Millán, 2015; Rodríguez, 2017). In addition, contributory unemployment benefits ignore the special circumstances of workers with disabilities.

The access to income protection for people with disabilities seems to be based on a strict separation between the people with disabilities and the working population. This would leave dealing with poverty situations to the non-contributory system, where different benefits with similar protective adequacy overlap. By adding a disability supplement to the IMV, this benefit is added to the RAI and non-contributory disability pensions, as well as family benefits for a dependent child with a disability aged over 18. The eligibility conditions, the definition of the target population (level of disability or co-habitation unit), the compatibility and income eligibility or amounts are different (often subtly) and managed by different public agencies. This complexity generates different protective opportunities for similar situations, which makes it difficult for people with disabilities in situations of poverty to access entitlements.

For all these reasons, it would be advisable to review the set of measures, seeking to harmonise criteria in terms of eligibility conditions as well as taking into account the labour trajectories of people with disabilities, and the specific costs and needs they face.

- c) The path-dependencies established by the social insurance origins of the Spanish SNS explain the persistence of a programme aimed at granting access to healthcare services for people with disabilities not covered by other social security schemes. This is most notable in the different levels of co-payments for pharmaceutical care for different social groups depending mostly on their income and relation to the labour market (working, unemployed, retired, etc.). People with disabilities are exempted from co-payments for medication if they receive a non-contributory pension, or if they benefit from the ASPF, whereas other people must comply with the levels of co-payments established in accordance with their income and relation to the labour market. It would be a positive step to make the income criterion more flexible, and even eliminate it, so that any people with disabilities can access health and pharmaceutical care without co-payment.

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- d) There are usually financial limits in respect of the different technical aids people with disabilities may apply for, and the latter must often assume a share of the cost of these assistive technologies. The level of co-payment for the equipment and adaptations that must be funded by beneficiaries is determined by each AC, which generally publishes yearly information on technical aids or adaptations, giving the requirements and maximum amounts payable per type of product. The same happens in the case of housing adaptations, where there are financial limits in all AC. It would therefore be necessary to approximate the criteria for access to these benefits and reduce the differences between regions and local government bodies.
  - e) Personal assistance for people with disabilities in Spain is regulated through two main schemes, one based on personal assistance within the family from non-professional care-providers, and the other as a professional personal assistance scheme. Financial considerations for both public authorities and beneficiaries, together with the relative lack of knowledge about the professional personal assistance scheme, keep this programme at a very low level of development: personal assistance through family or non-professional care-providers therefore prevails, thereby limiting the potential for autonomous and active lives for people with disabilities. The personal assistant programme has developed very little in the 15 years since the long-term care system was approved in Spain. Disability NGOs and social services professionals demand its development.
  - f) Spain should strengthen data-collection mechanisms, ensuring that comprehensive, reliable and disaggregated data on disability and people with disabilities are collected, in line with Article 31 of the UN CRPD provisions.

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