



Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas  
Irish Human Rights and Equality Commission

# Submission to the Public Consultation on National Implementation of EU Harmonised Rules on Artificial Intelligence (AI Act)

Irish Human Rights and Equality Commission  
July 2024

Published by the Irish Human Rights and Equality Commission.

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

# Contents

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Introduction ..... 2

Observations on the implementation of the AI Act in Ireland ..... 3

Role, powers and resourcing of the Article 77 body / bodies ..... 5

Cooperation and coordination with other Article 77 bodies ..... 8

Human rights and equality expertise of market surveillance authority / authorities and notifying authority /  
authorities ..... 9

Cooperation and coordination between the Article 77 body / bodies and the market surveillance authority /  
authorities ..... 10

## Introduction

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The Irish Human Rights and Equality Commission is Ireland's independent National Human Rights Institution and National Equality Body.<sup>1</sup> We protect and promote human rights and equality in Ireland. We are the Independent Monitoring Mechanism for Ireland under the United Nations Convention on the Rights of Persons with Disabilities;<sup>2</sup> the independent National Rapporteur on the Trafficking of Human Beings;<sup>3</sup> and will be assigned the role of the Co-ordinating National Preventive Mechanism under the Optional Protocol to the Convention against Torture,<sup>4</sup> pending ratification. Alongside the Northern Ireland Human Rights and Equality bodies, we have a mandate to provide oversight and report on rights and equality issues falling within the scope of the Article 2 commitment of the Windsor Framework.<sup>5</sup> We also have legal powers under the *Gender Pay Gap Information Act 2021*.

Under our Act, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality; and to make recommendations to the Government in relation to the measures that we consider should be taken to strengthen, protect and uphold human rights and equality in the State.<sup>6</sup> We welcome the opportunity as part of this consultation<sup>7</sup> to provide the Department of Enterprise, Trade

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<sup>1</sup> Established under the *Irish Human Rights and Equality Commission Act 2014*.

<sup>2</sup> Section 103 of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* amends section 10(2) of the *Irish Human Rights and Equality Commission Act 2014* to provide that one of our functions is to promote and monitor the implementation in the State of the UNCRPD.

<sup>3</sup> IHREC, [Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings](#) (2020).

<sup>4</sup> To be provided under the *Inspection of Places of Detention Bill*, when enacted.

<sup>5</sup> In the wake of the UK's withdrawal from the EU, the Commission, along with the Northern Ireland Human Rights Commission ('NIHRC') and the Equality Commission for Northern Ireland ('ECNI') comprise the Article 2(1) Working Group of the Dedicated Mechanism. This group is mandated to provide oversight of, and report on, rights and equality issues falling within the scope of the Article 2 [Windsor Framework] commitment that have an island of Ireland dimension.

<sup>6</sup> Section 10(2) of the *Irish Human Rights and Equality Commission Act 2014*.

<sup>7</sup> <https://www.gov.ie/en/consultation/bbca1-public-consultation-on-national-implementation-of-eu-harmonised-rules-on-artificial-intelligence-ai-act/>

and Employment with our observations on the national implementation of the EU Artificial Intelligence Act ('AI Act')<sup>8</sup>.

## Observations on the implementation of the AI Act in Ireland

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"The EU's AI act is the first ever law on artificial intelligence, a regulatory framework that aims to make sure AI systems are safe, and that they respect the law and the EU's fundamental rights and values."<sup>9</sup>

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While AI and the AI Act have profound implications for fundamental rights, equality and non-discrimination,<sup>10</sup> in this submission we focus our observations on the national governance structure for the AI Act; in particular, Article 77 of the AI Act concerning bodies charged with responsibility for monitoring fundamental rights. We note the pressing need to address the requirements in Article 77 (2), that no later than three months after the entry into force of this Act,<sup>11</sup> each Member State must identify the relevant public authorities or bodies and make a list of them available to the public. As Ireland's National Human Rights Institution and National Equality Body, IHREC is, by definition, an Article 77 body, and should appropriately be designated as such. However, if we were to be designated as an Article 77 body we would emphasise the imperative for adequate financial, technical, and staff resources to fully and effectively undertake this function.

We acknowledge that Article 77 itself does not precisely identify the responsibilities of Article 77 bodies, and how they will coordinate and cooperate with other Article 77 bodies and with

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<sup>8</sup> [Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending regulations \(EC\) No 300/2008, \(EU\) No 167/2013, \(EU\) No 168/2013, \(EU\) 2018/858, \(EU\) 2018/1139 and \(EU\) 2019/2144 and Directives 2014/90/EU, \(EU\) 2016/797 and \(EU\) 2020/1828 \(Artificial Intelligence Act\).](#)

<sup>9</sup> See <https://www.consilium.europa.eu/en/policies/artificial-intelligence/>

<sup>10</sup> The AI Act pays particular attention to fundamental rights, non-discrimination, the impact of AI systems on structurally vulnerable groups and the risk that historical patterns of discrimination are perpetuated by the use of certain AI systems.

<sup>11</sup> On 13 June 2024, the presidents of the European Parliament and the Council of the European Union signed the AI Act, which is expected to be published in the EU's Official Journal in July 2024 and enter into force 20 days after its publication.

market surveillance authorities. Due to AI's impact on fundamental rights, equality and non-discrimination, it is important that priority be given to addressing how the national governance / regulation of AI will operate in practice. The regulatory framework, including the investigatory and enforcement powers of market surveillance authorities, should be legally robust. It is critical that the mechanisms for cooperation and coordination between the bodies be developed, and guidance and good practice on implementation of the AI Act be drawn from and shared with other EU Member States. As a member of the European Network of National Human Rights Institutions ('ENNHRI') and a member of the European Network of Equality Bodies ('Equinet'), we have drawn from the expertise of ENNHRI,<sup>12</sup> Equinet,<sup>13</sup> and other National Human Rights Institutions / National Equality Bodies who are also considering the implementation of the AI Act within their own States.

In implementing the AI Act, there is a need for alignment with other EU regulations, including the transposition of the Corporate Sustainability Due Diligence Directive, and alignment with national policy frameworks, including the National Artificial Intelligence Strategy for Ireland and the successor to the National Plan on Business and Human Rights.

While the AI Act applies to a wide variety of actors and bodies, the role of public sector bodies is of particular importance. The requirement to assess the impact on fundamental rights when using high-risk systems includes any use of high-risk AI in the public sector.<sup>14</sup> This overlaps with the obligations of the Public Sector Human Rights and Equality Duty for public bodies to assess the equality and human rights issues relevant to their purpose and functions.<sup>15</sup> It is critical to ensure adequate oversight of the deployment of AI in public

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<sup>12</sup> See ENNHRI's work on AI: <https://ennhri.org/our-work/topics/artificial-intelligence/>

<sup>13</sup> See Equinet's work on AI: <https://equineteurope.org/what-are-equality-bodies/artificial-intelligence-and-equality/>

<sup>14</sup> Article 27 of the AI Act.

<sup>15</sup> Section 42 of the *Irish Human Rights and Equality Commission Act 2014* imposes a legal obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity, and protect the human rights of those to whom they provide services and staff when carrying out their daily work. The Public Sector Duty requires public bodies to undertake an assessment of the equality and human rights issues pertaining to their purpose and functions; to devise an action plan to address the issues raised in the assessment; and to report annually on progress and achievements with regard to identified actions. Further information and guidance on the Duty can be found at: <https://www.ihrec.ie/our-work/public-sector-duty/>

services to ensure accountability and transparency, and provide reassurance to the public that AI is being used in a proportionate manner.

Effective implementation of the AI Act requires taking into account the risks of collective discrimination, social injustice, and other societal risks, such as threats to the rule of law and democracy. Due attention should be paid to the collective and societal impact of AI systems when implementing the AI Act and when shaping the supervisory landscape.

## **Role, powers and resourcing of the Article 77 body / bodies**

As Ireland's National Human Rights Institution and National Equality Body, we note that Article 77 of the AI Act provides for cooperation with existing national authorities or bodies that monitor fundamental rights, including the right to non-discrimination. We note also the relevance of Articles 70, 73, 79 and 82 to the role and powers of bodies under Article 77. These articles in the AI Act define new cooperation mechanisms and powers for public bodies entrusted with monitoring fundamental rights and non-discrimination to enable them to effectively exercise their mandate in relation to AI-induced risks to fundamental rights, equality and non-discrimination.

From our understanding of the AI Act, Articles 73, 77, 79 and 82 of the Act provide that Article 77 bodies:

- › may request access to any documentation, in an accessible language and format, related to the use of high-risk AI systems held under the AI Act, when necessary for the effective exercise of their mandate [Article 77 (1)];
- › may request that market surveillance authorities organise technical testing of the high-risk AI systems, with the close involvement of the Article 77(1) bodies [Article 77 (3)];
- › be informed by market surveillance authorities and cooperate with them in case of suspicion that an AI system poses a risk to fundamental rights, with particular attention to risks to structurally vulnerable groups [Article 79 (2) in conjunction with Article 5];

› be notified by market surveillance authorities of incidents and malfunctions of high-risk AI systems reported to them, by providers of high-risk AI systems, that breach the fundamental rights obligation under European Union or national legislation [Article 73 (7)].

› be consulted when the market surveillance authorities find that a high-risk AI system, although compliant with the AI Act, nevertheless presents a risk to the health or safety of persons, to fundamental rights, or other aspects of public interest protection [Article 82(1)].

As Ireland's National Human Rights Institution and National Equality Body, we are of the view that IHREC would appropriately be considered as an Article 77 body. In order to give effect to our mandate, our staff includes a critical mass of subject-matter experts with respect to human rights, non-discrimination, and equality. This includes staff with legal expertise. As such, it is a significant resource in the design of a supervisory framework which is compliant with the AI Act.<sup>16</sup> However, we do not currently have in-house expertise with respect to the particular emerging challenges at the intersection of rapidly evolving AI-enabled technology and fundamental rights.

If we were to be designated as an Article 77 body, it is essential that we are appropriately resourced to build our capacity if we are to successfully fulfil this wider remit. It cannot be underestimated the capacity and effort (in terms of resources, time and expertise) required to effectively undertake the tasks including requesting and accessing any documentation under the AI Act or being involved in a testing of a high-risk AI system. There could also be a substantial number of serious incidents referred to an Article 77 body by the market surveillance authorities.

In the AI Act, we note the importance placed on resources for the responsible supervisory bodies. Article 70(3) provides that Member States should assess and, if necessary, update

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<sup>16</sup> Equinet and ENNHRI, [Joint Equinet and ENNHRI Statement on EU Artificial Intelligence Act Trilogue](#) (2023) pp. 2–3; ENNHRI, [ENNHRI Common Position on EU Artificial Intelligence Act](#) (2023) pp. 5–6; Equinet, [Ensuring European AI that Protects and Promotes Equality for All: Equinet's recommendations for the trilogues to strengthen the enforcement of non-discrimination in the context of AI](#) (2023) p. 3; Equinet, [Regulating for European AI that Protects and Advances Equality: Position paper laying down recommendations and core components for future EU legislation on Artificial Intelligence](#) (2022) pp. 8–9.



resource and competence requirements under this Article on an annual basis. Article 112 provides that the European Commission's review of the Act, every four years after the Act enters into force, should include consideration of the financial, technical and human resources provided to national competent authorities in order to assess whether they are able to effectively perform the tasks assigned to them under this Act.

Due to the nature of the obligations and powers of Article 77 bodies under this Act, we would require adequate financial, technical, and staff resources to fully and effectively undertake this additional function, without impacting our ability to carry out our existing statutory functions.<sup>17</sup> The implementation of the AI Act is also relevant to our wider functions including awareness raising regarding human rights and equality; making recommendations to the State in the area of law and policy relating to human rights and equality; provision of legal assistance; appearing as *amicus curiae*; assisting public bodies in accordance with section 42 of the IHREC Act; commissioning and funding research; and consultation with national, EU and international bodies.<sup>18</sup>

We have seen our mandate grow significantly since we were established in 2014;<sup>19</sup> however, our budget allocation has not been increased to provide for the development and staffing of these expanding functions, in a way that would give meaningful effect to new mandates. The recently approved EU Directives on Standards for Equality Bodies<sup>20</sup> have introduced a legal requirement on Member States to provide multi-mandate bodies with adequate human,

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<sup>17</sup> Equinet and ENNHRI, [Joint Equinet and ENNHRI Statement on EU Artificial Intelligence Act Trilogue](#) (2023) p. 2.

<sup>18</sup> Section 10 of the *Irish Human Rights and Equality Commission Act 2014*.

<sup>19</sup> As noted in the introduction, as well as our broad mandate to protect and promote human rights and equality, we are the Independent Monitoring Mechanism for Ireland under the UNCRPD; the independent National Rapporteur on the Trafficking of Human Beings; we will be assigned the role of the co-ordinating National Preventive Mechanism under the OPCAT, pending ratification; we have a role in working to uphold equality and rights protections on the island of Ireland post Brexit; and we have legal powers under the *Gender Pay Gap Information Act 2021*.

<sup>20</sup> On 19 June 2024, the EU Directives on Standards for Equality Bodies entered into force. Member States will have two years to adapt their national legislation to the provisions of the Directives, which lay down standards for equality bodies to ensure that people enjoy a common minimum level of protection against discrimination. The Directives cover the mandate, independence, resources, tasks and powers of equality bodies to (1) engage in the prevention of discrimination and awareness raising activities and (2) deal with cases of discrimination/assist victims. See Council of the European Union, [Strengthening the role of equality bodies across the EU: Council adopts two directives](#) (2024)

technical and financial resources to perform their tasks and competencies effectively.<sup>21</sup> Such budgetary allocation should be stable and include multi-annual planning, to facilitate the covering of costs that can be difficult to anticipate.<sup>22</sup>

The EU Directives on Standards for Equality Bodies also require the State and public bodies to consult with equality bodies in a timely manner on legislative and policy proposals affecting their mandate, independence, and functioning and ensure equality bodies can follow up their recommendations to the State and public bodies.<sup>23</sup> This is particularly relevant for any reports and recommendations we may provide around the human rights and equality impacts of the implementation of the AI Act, and the implementation of policies and legislation involving AI.

## Cooperation and coordination with other Article 77 bodies

The AI Act lacks clarity on the circumstances and arrangements where a Member State identifies a number of bodies as having a potential role in respect of domestic governance. There is potential for gaps in accountability and transparency if there are multiple bodies acting as Article 77 bodies without any clear structure specifying their respective roles, tasks,

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<sup>21</sup> Article 4 and Recitals 20 and 21 of the [Directive \(EU\) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU](#); and Article 4 and Recitals 21 and 22 of the [Council Directive \(EU\) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC](#).

<sup>22</sup> Recital 21 of the [Directive \(EU\) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU](#); and Recital 22 of the [Council Directive \(EU\) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC](#).

<sup>23</sup> Article 15 of the [Directive \(EU\) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU](#); and Article 15 of the [Council Directive \(EU\) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC](#).

and responsibilities. Clarity will need to be provided on how Article 77 bodies cooperate and coordinate with each other in relation to the powers they have under the Act. For example, could multiple Article 77 bodies separately request and access any documentation under the Act, or will there be a coordination mechanism in place? This will need to be considered in light of the existing mandates and obligations of potential Article 77 bodies.

Due to the requirement of having knowledge of monitoring fundamental rights, equality and non-discrimination, we would be of the view that the list of Article 77 bodies in Ireland would be short and limited to those bodies that have existing expertise and experience of these areas. Noting the short timeframe to publicly identify the Article 77 bodies, priority should be given to early engagement with and between Article 77 bodies to establish how Article 77 bodies will cooperate and coordinate with each other.

### **Human rights and equality expertise of market surveillance authority / authorities and notifying authority / authorities**

Article 70(3) stipulates that the market surveillance authority / authorities and notifying authority / authorities must have sufficient staff permanently available. Such staff must have a thorough understanding of AI technologies, data and data processing, personal data protection, cyber security, **fundamental rights**, health and safety risks, and knowledge of existing standards and legal requirements. Knowledge of fundamental rights and existing standards includes knowledge of Irish equality and non-discrimination legislation. We note the importance of providing robust safeguards to ensure that the staff of the market surveillance authority / authorities and notifying authority / authorities have a thorough understanding of fundamental rights, equality and non-discrimination.

The Act provides that market surveillance authorities should consult with Article 77 bodies when an AI system poses a risk to fundamental rights or inform Article 77 bodies when there is a serious incident with a high-risk AI system.<sup>24</sup> It cannot be assumed that users and providers of AI, and market surveillance authority / authorities are capable of recognising these risks to fundamental rights. There is an immediate need for capacity building within market

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<sup>24</sup> Articles 73(7), 79(2) and 82(1) of the AI Act.

surveillance authority / authorities and notifying authority / authorities to ensure that staff within these authorities / bodies recognise risks to fundamental rights, equality and non-discrimination with the use of AI. Education and awareness about fundamental rights, equality and non-discrimination will be key to effective supervision. It is critical that over the implementation timeframe for the Act, human rights and equality expertise and experience be embedded into the market surveillance authority / authorities and notifying authority / authorities.

### **Cooperation and coordination between the Article 77 body / bodies and the market surveillance authority / authorities**

The articles in the AI Act provide for new cooperation and coordination mechanisms for bodies charged with monitoring fundamental rights and market surveillance authorities. To give meaningful effect to Articles 73, 77, 79 and 82, priority should be given to establishing a mechanism / network to share expertise and experience between bodies monitoring fundamental rights and market surveillance authorities. We note the relevance of Article 14 of the EU Directives on Standards for Equality Bodies, which sets out an obligation for Member States to set up “cooperation mechanisms” between Equality Bodies and “public and private entities”.<sup>25</sup> Equality Bodies should have effective coordination channels with the market surveillance authorities, other relevant public regulators, such as data protection authorities and product safety authorities, and private entities such as tech development companies and private deployers of AI systems.

Cooperation with a National Human Rights Institution and National Equality Body enables cost-effective transfer of knowledge, which ensures that fundamental rights, equality and

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<sup>25</sup> [Directive \(EU\) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU](#); and [Council Directive \(EU\) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC](#).

non-discrimination considerations are integrated into all activities of market surveillance authorities, and other supervisory bodies and actors.<sup>26</sup> While the State has 12 months from the date of entry into force of this regulation to designate one or more market surveillance authorities, we emphasise the importance of identifying these authorities at an early stage to ensure that mechanisms can be established to share knowledge on implementing the AI Act and expertise on risks to fundamental rights, equality and non-discrimination with the use of AI. Any mechanism / network for cooperation and coordination should clarify the respective roles, tasks, and responsibilities between market surveillance authorities and the Article 77 bodies to ensure there is a clear governance, supervisory and enforcement structure in place.

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<sup>26</sup> Equinet and ENNHRI, [Joint Equinet and ENNHRI Statement on EU Artificial Intelligence Act Trilogue](#) (2023) pp. 2–3; ENNHRI, [ENNHRI Common Position on EU Artificial Intelligence Act](#) (2023) pp. 5–6; Equinet, [Ensuring European AI that Protects and Promotes Equality for All: Equinet’s recommendations for the trilogues to strengthen the enforcement of non-discrimination in the context of AI](#) (2023) p. 3; Equinet, [Regulating for European AI that Protects and Advances Equality: Position paper laying down recommendations and core components for future EU legislation on Artificial Intelligence](#) (2022) pp. 8–9.

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