



**Chambers
Ireland**
Advancing business together



Public Consultation on National Implementation of EU Harmonised Rules on Artificial Intelligence (AI Act)

Submission by Chambers Ireland

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Key Points

- Where possible within the limits of the AI Act, the State should seek to be proportionate, non-interventionist and non-industry specific in its regulation of AI.
- The Government should create tailored awareness campaigns about the opportunities as well as lay out the legal obligations associated with the use of AI tools for businesses, particularly in relation to SMEs.
- An AI regulatory sandbox should be created without delay to create special conditions for SMEs to test out certain ideas in an innovation-friendly environment.
- A national AI Lead should be appointed to support Irish businesses in the adoption of emerging AI technologies.
- Skills, along with talent attraction and retention should remain a core pillar of the national AI Strategy. A voucher model should be made available for funding future-proofed skills development courses targeted at SMEs in relation to AI and National Training Fund resources should be directed towards such initiatives.
- The SME “think-small-first” test must be applied to all relevant legislation, to help increase the level of engagement with AI tools by SMEs.
- Compliance costs should be kept low, having clear and easily applicable rules, and ensuring low complexity for businesses.
- Ireland, together with the EU Commission, should keep AI legislation and developments in other jurisdictions under constant review to ensure the EU remains competitive.
- A proactive, adequately-resourced and well-skilled national competent authority will be key to implementation.

- Create co-funding initiatives where the State and companies jointly fund AI projects, sharing both risks and rewards.

About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are the 37 affiliated Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Key observations

General

While many of the discussions that surround the AI industry focus on a fear of automation as a threat to certain industries, our perspective is grounded in the reality that AI offers a vast array of opportunities for both the State and businesses which if navigated appropriately will ultimately strengthen our competitiveness. In our view, the State ought to build on the National AI Strategy to create an environment that: engages and develops indigenous businesses; retains and attracts Foreign Direct Investment in AI; and positions Ireland as a global leader in AI innovation and development.

Core to Government messaging should be an emphasis on the numerous opportunities for businesses. AI tools will increasingly be used to automate tasks that people already do, aiding productivity and helping them focus on the important elements of their work. In addition, there should also be an emphasis on making it as easy as possible for businesses to comply with their requirements.¹ We are of the view that the State should avail of the options under EU law to:

- (a) ensure that Ireland is equipped to become the leading EU Member State that facilitates the responsible use of AI;
- (b) ensure that businesses of all sizes can take advantage of the productivity gains associated with AI;
- (c) employ a regulatory regime that adheres to our obligations under EU Law while not being overly burdensome on businesses;
- (d) engage and further develop existing businesses;
- (e) retain and attract Foreign Direct Investment; and
- (f) encourage innovation and investment.

¹ This point is consistent with our position on AI and liability in our submission concerning the AI Liability Directive: <https://chambers.ie/wp-content/uploads/2023/03/Consultation-on-the-AI-Liability-Directive.pdf>

How can Ireland's implementation of the AI Act drive support and accelerate progress from each of these perspectives while meeting our regulatory obligations?

Responsible use of AI and compliance

While we favour a non-interventionist approach to AI regulation, we equally accept that people must be responsible for their use of AI. Our position regarding liability is that any regulatory framework regarding AI should not absolve actors of their responsibilities to apply these tools appropriately. Though it will never be possible to cover all areas of application, we hope that the AI Act will create greater planning reliability for companies' AI strategies while also promoting ethical and responsible use of AI.

Equally, while liability and access to remedy are necessary requirements, this should not come at the expense of stifling innovation or discouraging investment. Companies must be empowered to comply with the requirements which apply to them under the legislation. Those operating in the EU have been increasingly subject to more and more regulation, not only with legislation like the AI Act but also reporting legislation like the Corporate Sustainability Reporting Directive. While their cumulative effect on businesses has been acknowledged via the European Commission's commitment to reducing burdens associated with reporting requirements by 25%, the requirements they place on businesses translate into a considerable workload which negatively affects their capacities, in terms of their administrative and financial resources. The overall effect of overregulation will discourage companies from setting up in the EU and establishing in another jurisdiction that favours innovation.

Balance is therefore key; overregulation will only disempower businesses to use AI efficiently while the associated liability regime ought to have an emphasis on use and environment; not just the AI system itself when assigning liability in scenarios where misuse has occurred.

AI for SMEs

The use cases for AI are ever-expanding and facilitating widened use of AI for companies of all sizes will be critical to increasing efficiencies. For example, in the context of trade documentation, AI algorithms can analyse vast amounts of trade data, identify patterns, or predict market trends. For businesses of all sizes – not just larger companies – this will help them to optimise their supply chains and identify new trade opportunities. AI-driven technologies and data analytics will aid them in utilising trade-related data and enable businesses to make better strategic decisions which will help them stay competitive.

For SMEs especially, there will be a plethora of efficiencies to take advantage of which they previously would not be able to make use of due to capacity constraints. However, empowering businesses – SMEs in particular - to use AI is critical and this is tied acutely to our point elsewhere in our submission regarding skills.

Relatedly, while AI holds much promise to advance competitiveness and efficiencies, mitigating the unintended misuse of AI should be a priority. In this context, it is well-established² that the misuse of AI and automated decision-making systems in employment, the provision of goods and services in both the public and private sectors pose risks regarding equality and non-discrimination especially. The Department should create tailored awareness campaigns about the legal obligations associated with the use of AI tools for businesses - particularly in relation to SMEs – so that such misuse is prevented. An example of a risk area for businesses which should be given focus is recruitment; particularly regarding unlawful bias.³

² <https://rm.coe.int/discrimination-artificial-intelligence-and-algorithmic-decision-making/1680925d73>; see recruitment as an example: <https://www.nature.com/articles/s41599-023-02079-x>

³ Regarding recruitment, one way of ensuring responsible use is to require the user of an AI tool to demonstrate the efforts they took to compensate for unlawful bias, and the consequent mitigating efforts they took upon establishing that discrimination had occurred.

Data protection, privacy and cybersecurity

Cybersecurity remains a risk for every Irish business. This is relevant not only for businesses who are developing AI tools, but those who will use them as well. Hence consistent with our position in 2020,⁴ resourcing will be key to ensuring that the data they use in the course of their operations is adequately protected. We firmly believe that state bodies should be responsible for cybersecurity and data protection should be strengthened through appropriate investment, particularly as those risks are ever-increasing not just in Ireland⁵, but across the globe as well.⁶

As increasing numbers of AI tools and services are developed, a mammoth effort by the State to ensure effective and secure digital structures for these companies and entrepreneurs to work within. The companies based here who contribute substantial Corporate Tax receipts to the State need their AI tech to be secure. Failure to account for this fact also runs the risk of harming our attractiveness for FDI. Furthermore, many of these firms are headquartered here and report to the Irish Data Protection Commissioner (DPC) regarding their data privacy and GDPR obligations. Considering the substantial amount of data housed within the State, it is vital that the data we are entrusted with remains secure. Irish security threats and vulnerabilities risk becoming security threats for other countries which could hurt Ireland's standing as a safe base for such countries. Ultimately, the long-term presence of those data-intensive companies depends on the capacity of our public sector to respond to cyberattack threats.

A body, such as the CSO, should become the state body which holds all non-personalised public data, providing data services to all departments and state bodies, ensuring that local departmental

⁴ <https://chambers.ie/press-releases/new-european-digital-strategies-will-boost-competitiveness-says-chambers-ireland/>; <https://chambers.ie/wp-content/uploads/2024/01/Manifesto-for-Europe-2024.pdf> page 17;

⁵ A Grant Thornton report showing that over half of Irish businesses faced cyber attacks last year: <https://www.grantthornton.ie/news-centre/over-half-of-irish-businesses-report-experiencing-cyber-attack-in-past-year/>

⁶ According to a 2023 report, 66% of organisations globally suffered ransomware attacks in the last year, with attackers encrypting data in over three-quarters (76%) of attacks: <https://assets.sophos.com/X24WTUEQ/at/c949g7693gsnjh9rb9gr8/sophos-state-of-ransomware-2023-wp.pdf>

data structure idiosyncrasies do not inadvertently create data silos. Consistent with our point regarding responsible use, where AI tools, products or services used by state bodies then a risk assessment, a bias mitigation plan, and independent verification should all be undertaken.

AI and Intellectual Property

As with any sector, businesses require reassurance that their intellectual property is protected. Especially in the context of AI, the State must foster a reputation as a jurisdiction for businesses where they can be assured that the unique aspects of their product are protected in-full.⁷ Adequate IP protection will ensure that companies can reap the benefits of their investments in AI research and development. A focus on IP protection should therefore form part of any informational campaign to ensure that innovators, businesses, and legal professionals are well-informed and compliant. This will help prevent any unauthorised use and replication of AI technologies, and foster a competitive market in Ireland that drives continuous improvement and breakthroughs.

Skills for AI

In the context of AI attracting and retaining the talent with the appropriate skillset will be critical if we are to seize the opportunities that AI offers. Granted, this has already been recognised in the Government's National AI Strategy,⁸ which aims to expand access to courses that educate the public about AI along with providing AI upskilling and reskilling opportunities. However if we are to realise the objective of achieving a 75% use rate of businesses using AI by 2030, then accelerating this particular strand of the AI Strategy and ensuring it remains a core piece of the Strategy will be pivotal. To that end, training schemes ought to be made available for those who are currently in work, while in-work training schemes and tailored transition educational options

⁷ For these reasons Chambers Ireland were disappointed to see the postponement of the Unified Patent Court Referendum <https://chambers.ie/press-releases/chambers-ireland-responds-to-the-postponement-of-the-unified-patent-court-referendum/>

⁸ <https://enterprise.gov.ie/en/publications/publication-files/progress-report-national-ai-strategy-ai-here-for-good.pdf>

need to be developed. In addition, National Training Fund resources should be directed towards people who are currently working in tech and other related industries so that they can upskill and retrain. For SMEs, more AI-related in-job training for employees in SMEs should also be supported by the National Training Fund. A voucher model could be made available via the NTF for funding future-proofed skills development courses targeted at SMEs in relation to AI.

The Chamber Network has consistently emphasised the fact that recruitment and retention of staff is a perennial problem for businesses across Ireland. This problem is not sector-specific and the problem exists across numerous sectors and affects businesses of all sizes.⁹ In 2023, the Chambers Ireland SME Skills Gap survey¹⁰ found that almost 90% of respondents are facing significant challenges recruiting essential employees with sufficient skills and qualifications.

This ties in with our point that talent generation and retention is likely to be extremely challenging for professionals such as Computer Security Incident Response Teams. Given our role as a hub for international software-as-a-service companies, our state bodies are competing with private sector firms for the same small pool of talent. Moreover, anyone mission motivated for a role with the State is likely to see their skills rapidly atrophy in the absence of the form of persistent threats that are experienced by those active on the ground.

What considerations should the Department have regard to when devising the configuration of national competent authorities for implementation?

A proactive, well-skilled and adequately-resourced competent authority will be key to implementation. The Department should allocate an appropriate budget for recruiting qualified

⁹ <https://chambers.ie/press-releases/smes-struggle-to-find-talent-with-skills-gaps-across-many-operational-areas/>

¹⁰ https://chambers.ie/wp-content/uploads/2023/08/Chambers-Ireland-SME-Skills-Deficit-Survey-Results_PDF.pdf

personnel to ensure the efficacy of a national competent authority. Our position is consistent with our concerns highlighted elsewhere regarding skills; proper funding is critical for attracting top talent with the expertise and skills necessary to implement policies and regulations effectively. Adequate investment in human resources will enhance the authority's capability to uphold standards, maintain compliance, and respond adeptly to challenges. The national competent authority should also have a focus on proactively engaging with businesses and provide regulatory certainty where necessary.

Are there potential synergies between the implementation of AI Act and the implementation of other EU Regulations applying to Digital markets, services, and infrastructure?

Greater clarity is required regarding the relationship between the AI Act and the Digital Services Act. While both legislative instruments in principle cover separate areas of technology regulation, efforts should be made to clarify any confusion for businesses, particularly in the field of generative AI which accounts for a disproportionate number of the AI systems in use globally.

Unfortunately both platform regulation and the use of AI systems are becoming increasingly intertwined and therefore complex¹¹. To that end, detailed guidance should be issued by the European Commission clarifying exactly what their obligations are in relation to risk under both legislative instruments. This is especially relevant regarding the implications for the liability regime in cases where original users' content is significantly modified by an integrated AI tool, which is a specific matter that the Digital Services Act does not account for.

¹¹ Acknowledged in the preamble of the AI Act: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401689

How can Ireland’s implementation of the AI Act bolster Ireland’s position as a leading Digital Economy, increasing investment and accelerating innovation in AI? What would excellence in AI regulation look like?

As the European Union is the only jurisdiction that regulates Artificial Intelligence to the extent it has, the State must seek to become the most attractive place for AI technology among all Member States. ‘Excellence in AI’ should therefore be focused on communicating the vast opportunities for businesses, supporting research, clarifying the legal environment for companies, and skills for AI.

Critical to encouraging companies to use AI not just as a core part of their service offering, but in their daily operations will be to ensure they can navigate the associated regulation. To that end, proactive engagement with businesses will be crucial. We have recommended steps which can be taken to create regulatory certainty, open up AI to smaller businesses, foster research and development, and facilitate collaboration.

AI and Foreign Direct Investment

As the AI market is expected to grow by over 28% annually, it represents a great opportunity for investment to attract companies to set up in Ireland. Failing to create regulatory certainty and ensure a facilitative regulatory environment will mean we fail to capitalise on the opportunity, meaning this investment will go elsewhere.¹² This is not only relevant for countries not subject to EU regulation under the AI Act; we will also risk falling behind countries within the EU such as Estonia,¹³ who are exemplars in attracting, retaining and encouraging AI companies to set up there¹⁴. Estonia boasts the most AI startups per million people, and a coherent strategy has been implemented focusing on (a) providing direct support to research in AI; (b) increasing the relevant

¹² <https://www.statista.com/outlook/tmo/artificial-intelligence/worldwide> \$184 billion by the end of 2024.

¹³ https://ai-watch.ec.europa.eu/countries/estonia/estonia-ai-strategy-report_en

¹⁴ <https://sifted.eu/articles/which-european-countries-have-the-most-ai-startups>

skills and competencies to do so; and (c) developing a legal environment to facilitate the uptake of AI. This provides a template comprising of three main pillars of what the State can do as a small country to attract FDI in relation to all strands of AI.

Regulatory Sandbox

One of our core asks is to rapidly introduce a regulatory sandbox to foster innovation in AI. While we acknowledge this is a requirement under the Act, in our view a sandbox ought to be introduced without delay to foster growth in AI technologies. This would involve bringing together innovators and regulators that will help support the transition from initial idea to marketable product in the AI space. Importantly, it will also ensure that when EU legislation starts to be introduced, a clear national picture of the regulatory environment will be available to businesses. This is particularly relevant to our point regarding liability and responsible use of AI.

AI Innovation Hubs and Research Centres

The Department should expand the research and innovation ecosystem referenced in the National AI Strategy. The research and innovation ecosystem is aimed at fostering connections between industry, research, and academia to ensure that businesses and entrepreneurs developing AI have access to the necessary support systems to utilise AI. This can be done by developing AI innovation hubs and research centres that bring together researchers, startups, and established companies to collaborate on cutting-edge projects.

As the third biggest AI market after the USA and China,¹⁵ the UK is using collaboration effectively to expand its AI market even further. Collaborative initiatives include so-called ‘Catapult

¹⁵ <https://www.trade.gov/market-intelligence/united-kingdom-artificial-intelligence-market-2023>

Centres'¹⁶ that comprise of a network of world-leading facilities and expertise which are set up by the UK government. These aim to transform the UK's capability for innovation in specific areas and ultimately help drive future economic growth. Businesses are connected with scientists, and engineers to work on late-stage research and development, with the objective of transforming high-potential ideas into new products and services. This is an example of the kind of collaboration which should be facilitated to further R&D in AI in Ireland and has the potential to provide an effective transition of novel research to commercial use.

AI Lead

In order to ensure a just transition, smaller businesses especially require supports and guidance on what they can do to adopt new technologies to enhance their operations. To support them, a national AI Lead should be appointed to support Irish businesses in the adoption of emerging AI technologies. Adopting developing and emerging technologies, particularly in the field of AI, offers many potential benefits and opportunities for Irish businesses of all sizes. Related to our point elsewhere in our submission, it is traditionally bigger enterprises that have the resources to capitalise on these opportunities first and an AI lead could help open up adopting AI technologies to those businesses. This is an issue which will likely increase over the coming years due to more regulation being rolled out from an EU level.

¹⁶ <https://catapult.org.uk/about-us/why-the-catapult-network/>