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

**Response from the American Chamber of Commerce Ireland
(AmCham) to the Department of Enterprise, Trade, and
Employment's Public Consultation.**

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The American Chamber of Commerce Ireland The Voice of US-Ireland Business

The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and investment.

Question 1- What considerations should the Department have regard to when devising the configuration of national competent authorities for implementation?

The introduction of the AI Act will have a considerable impact across industry and wider society, AmCham therefore appreciates Government's consultative approach to the implementation of the Act. Ireland has a significant presence of companies that are leading innovation in AI, indeed many of these companies have their EMEA HQs or significant operations here. According to AmCham's latest leadership survey, 44% of members that are carrying out research projects are doing so in the area of AI, and 44% of all members expect developments in AI to enhance their investment in Ireland in the next 5 years. Ireland therefore has significant potential to be a centre of excellence for AI within the EU and should capitalise on this opportunity and showcase its commitment to regulating the sector in a thoughtful and balanced manner that mitigates potential risks, while supporting responsible AI innovation. As the transatlantic gateway between the US and the EU, and given the presence of 970 US MNCs in Ireland, there is vast industry expertise available to ensure Ireland takes a proactive and informed approach to implementation of the AI Act in a manner that fosters responsible innovation and continues to attract investment and accelerate economic growth.

AmCham notes that there are advantages and tradeoffs to each of the potential compositions of the national competent authorities. A centralised approach could mean more limited sectoral expertise and may take considerable time and resources to establish. A decentralised approach, whilst having a greater amount of sectoral expertise, requires stronger efforts at coordination, transparency, and legal clarity. One solution to this may be to examine the potential of utilising a hybrid hub-and-spoke approach. In such a scenario there would be one market surveillance authority, with this authority consulting with sector specific bodies to enhance its sectoral expertise. The same approach would apply to the national notifying authority.

Regardless of the configuration of the national competent authorities for implementation of the Act, AmCham would stress the importance of ensuring any future regulators are empowered to build a workforce with the necessary technical skills and appropriate resources. Article 70 of the Act stipulates that member states "*shall ensure that their national competent authorities are provided with adequate technical, financial and human resources, and with infrastructure to fulfil their tasks effectively under this Regulation.*"¹ It is therefore of the utmost importance that expertise is prioritised in the establishment of the national competent authorities. Resourcing in terms of funding is key and Government must invest and earmark appropriate funds, with transparency on

¹ <https://www.euaiact.com/article/70>.

the allocation of funding. The relevant resources must be provided to ensure highly skilled personnel are attracted to work for these authorities, and that they are provided with the necessary tools and ongoing training to fulfil their role to a high standard and in line with market developments. Steps must be taken to ensure that the requirement for personnel with an “*in-depth understanding of AI technologies, data and data computing, personal data protection, cybersecurity, fundamental rights, health and safety risks and knowledge of existing standards and legal requirements*”² is adhered to. This will require a concerted effort from Government, in collaboration with industry and academia, to examine how best to ensure that Ireland has the capacity and the skills base to fulfil its regulatory functions in AI and beyond.

Indeed, with digitalisation and use of AI across all sectors, it is of intrinsic importance that all of our regulatory bodies are digitally ‘savvy’. This will be crucial if a sectoral approach to the competent authorities is adopted and is important even if this is not the case. Resourcing of regulators across the board with skills and training to cater for both current and future digital innovation will further enhance Ireland by providing the capability for its regulatory framework to be both reactive and proactive. It is essential that the regulatory environment does not hinder responsible innovation, but rather enables it in a manner that is ethical and focused on consumer empowerment and protection. To make this a reality, there must be a focus on ensuring all regulatory bodies (including those who may not traditionally have been digital focused) have the necessary skills at a sufficient level to adequately engage with new digital innovations within their area of remit.

Regulators need to have the capacity and appropriate statutory regime to facilitate a comprehensive approach to AI regulation which strikes a balance between fundamental rights and the promotion of innovation and economic growth. Regulators must have an in-depth understanding of the relationship between various policy objectives and should adopt an approach that champions balance in the interests of society at large. The regulatory footing on the national competent authorities must promote responsible innovation in accordance with the EU Data Strategy, adhering to the balance test required under the EU Charter of Fundamental Rights and Freedoms.

The Act notes that “*National competent authorities shall take appropriate measures to ensure an adequate level of cybersecurity.*”³ As such, the national competent authorities should align with the work of the National Cyber Security Centre (NCSC), and Government should enhance efforts to ensure that Ireland has resilient cybersecurity

² Ibid.

³ Ibid.

systems in place. National competent authorities should further align the Department of Environment, Climate and Communications, the Garda National Cyber Crime Bureau, the relevant educational and research institutions, and other relevant bodies accordingly. Significant investments in enhancing cybersecurity infrastructure in Ireland will support the growth of both AI opportunities and the wider digital ecosystem. Development in all digital areas needs to be underpinned with resilient cybersecurity. In this regard, AmCham welcomes the Department's recent consultation on its Cybersecurity Industrial Strategy. Again, a focus on skills will be key going forward and as such should be given a renewed focus.

Regulators should seek to establish trust and to protect the public. The national competent authorities therefore need to be well structured and rigorous in their work to ensure that current and evolving areas of concern and risk are appropriately identified and addressed. It is key that clear and streamlined procedures are established in order to enhance certainty for industry and minimise delays. Core principles such as the maintenance of confidentiality, non-duplication of requests, measures of last resort, and requests to be proportionate, should be adhered to. Best practice can further be ensured by establishing a review process in terms of how Ireland implements the Act.

Progress in AI is happening at a rapid rate and requires frameworks with the ability to adapt accordingly to mirror the fast-changing landscape and the development of best practices in terms of technology and international standards. It will be crucial that Ireland aligns itself with international standards and best practice and is outward looking in its approach to AI. International cooperation will be key, and Ireland should leverage its strong relationships with international partners, such as the US and the UK. For example, Ireland should further promote collaboration and acknowledgement between UK and US Safety Institutes and the EU's AI Office. This will be important for a number of reasons, in particular, so that a patchwork of regulations is avoided and to ensure that there is mutual agreement and understanding regarding risks and risk assessments going forward.

Question 2- Are there potential synergies between the implementation of AI Act and the implementation of other EU Regulations applying to Digital markets, services, and infrastructure?

As noted above, a balance between regulation and innovation is key. There is a considerable amount of EU Regulation in place and coming down the line that applies to AI and related technologies. There are also already many sectoral regulations that apply to AI (e.g. product liability, consumer protection, privacy etc.) As a result, companies are already implementing a risk-based approach to their work with AI. Given the considerable

amount of EU Regulation that has been introduced (for instance DSA/NIS2/Data Act), there is a need to let existing and new regulation bed down, determine how it should apply to relevant AI use cases, and to take stock. In this regard AmCham would welcome a phase of reflection in terms of the digital regulatory landscape.

AmCham would particularly highlight the interplay between the AI Act and GDPR. Clarity is needed regarding the procedures that will be put in place to ensure consistency and alignment between AI regulators and data protection regulators in terms of the processing of data for the development and deployment of AI. Indeed, the relationship between AI and data protection is recognised in the AI Act.

Government must also consider the AI Liability Directive in the context of the AI Act, given that the expansion of operators potentially liable may have a disincentivising impact on innovation in Ireland. As such, this should be taken into account in the transposition of the Directive. As referred to above, the DSA must also be considered, with Coimisiún na Meán acting as the designated lead competent authority for Ireland here. The Competition and Consumer Protection Commission (CCPC) also acts as a designated competent authority under the DSA, with responsibility for online marketplaces. The CCPC will be a key part of any overall regulatory Memorandum of Understanding and should have a prominent role in working with the national competent authorities.

The Digital Operational Resilience Act (DORA) will also be important in terms of cybersecurity, and national competent authorities should work closely with the Central Bank of Ireland in this context.

There is, in particular, a need for regulatory coherence and AmCham would highlight the importance of consistency across all regulators. There has been a sizeable increase in the volume of EU regulation over the last 5 years, and this has led to an increased administrative, compliance and financial burden for business in the EU and Ireland. Clarity is needed from the regulatory bodies in terms of their guidance, how they will work together, how they will engage with industry, and how they will communicate their work publicly.

To the greatest extent possible processes should be streamlined and legal overlaps should be avoided. This can be achieved in several ways. For example, Government should promote enhanced cooperation between the authorities enforcing EU AI and digital legislation. The establishment of a group between the relevant authorities to facilitate this cooperation in order to minimise regulatory complexity would be beneficial. Government should further consider completing a comprehensive assessment on the various different pieces of digital legislation in order to produce a clear idea of any legal

overlaps or potential conflict areas. Indeed, calls should be made for greater clarity from the European Commission with regard to possible overlaps in current and future legislation.

The opportunity exists alongside the introduction of the AI Act for Government to provide all regulatory bodies with core statutory duties focused on competitiveness, growth, and innovation. Government should provide guidance to regulatory bodies, to support companies in ensuring compliance in advance of any enforcement actions following the provision of clear standards and guidance from the regulators to industry.

Question 3- 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?

It is key that the AI Act is introduced in a way that maintains Ireland’s pro-innovation outlook. There is a need for a regulatory framework that allows for responsible R&D and one that is responsive, risk based, and technology neutral. The regulatory regime needs to be proportionate and coincide with the actual risk and use case, for example there should be a different approach adopted to General Purpose AI than that towards High-Risk AI.

Government should pay particular attention to aspects of the Act which encourage innovation. For example, the Act notes that “*Member States shall ensure that their competent authorities establish at least one AI regulatory sandbox at national level.*”⁴ The establishment of sandboxes will be crucial in placing Ireland as a European leader in AI into the future, and Ireland should adopt an ambitious approach in terms of the amount and scale of sandboxes established. They should not discriminate against size or sector if they deliver on the aims as envisaged in the Act. AmCham further suggests that efforts are made to ensure that regulatory sandboxes are established prior to the 2-year deadline. Continuous engagement with key stakeholders will be key if Ireland’s sandboxes are to advance innovation at a competitive rate. Further, financially incentivising the creation of sandboxes through grants or tax incentives would be beneficial in supporting and furthering innovation in Ireland.

Ireland needs to have the appropriate digital infrastructure in place if it is to reach its potential in AI. This will require investment in data, cloud infrastructure, and compute capacity. As such, Government should implement measures to facilitate the conversion of research and ideas into feasible services and products. In order to achieve this,

⁴ Ibid.

Government must work closely with industry and academia to establish areas for collaboration.

The National Training Fund could be utilised to facilitate the development of the necessary technical expertise to support AI developments into the future, as part of its mandate is the funding of research to cater for the likely future skills needs of the economy.

As noted above, collaboration with international partners will be crucial to the success of Ireland's AI future. Ireland and Europe should look to reach international agreements on trade and investment policies that enable cooperation and information sharing on AI with trusted partners. This can be achieved through mechanisms such as the Trade and Technology Council (TTC), which has a dedicated AI subgroup, taking account of the opportunities which exist for the EU, the US and the transatlantic relationship.

Question 4- How can Ireland's implementation of the AI Act drive support and accelerate progress from each of these perspectives while meeting our regulatory obligations?

There are several different ways that the implementation of the AI Act can drive, support and accelerate progress in Ireland's position as a leader in AI. For example, it is important that AI is 'democratised' so that all of Ireland's society and economy experience the benefits that it can offer. The democratisation of AI will require a focus on digital skills development for people of all ages and from all backgrounds/career paths. AmCham suggests the provision of multi-annual funding to accelerate the delivery of the National Digital Strategy, with ringfenced funding in place. Significant opportunity exists in this context to make a substantial impact, with a focus on AI but also on cybersecurity, digital literacy, and immersive technology. A focus on skills development serves to enhance the opportunities that exist for Ireland in terms of AI innovation, in creating new jobs, and in attracting further investment to Ireland in this area.

AmCham further suggests that Government launch a widespread communications campaign, in order to ensure that the general public are informed of the realities of the benefits of AI, to build trust in its utilisation, to educate and promote foundational AI literacy, and to counter any misinformation that has accompanied its recent rise in public consciousness. It will be beneficial for individuals and businesses, particularly SMEs, to have a greater understanding of what the AI Act will mean for them in reality, how it offers protection and opportunities, and how Ireland will strive to be a European leader in AI. Industry is happy to engage and collaborate with Government on a public awareness

campaign. AmCham recommends an open approach to keeping all stakeholders informed, as continuous engagement will help to drive support for Ireland's AI aims.

It is important that Ireland plays its part in influencing the AI Office and AI Board at EU level. In particular, greater clarity is needed for industry regarding how the EU's AI Board will operate, and the extent and format of industry engagement with it. Addressing this communications challenge at EU level would be beneficial.

Additionally, given the fact that many global leaders in AI have significant operations here, it is important that Ireland works closely with other EU Member States and international partners (the US and UK in particular) to ensure a smooth harmonisation on the implementation of the AI Act, as this will drive support and accelerate progress for Ireland's AI strategy.

Finally, it is key that there are concrete roadmaps with clearly defined deliverables in place across the numerous regulatory and governmental bodies that will play a role in the success of Ireland's AI future. This will be important in ensuring that roles are sharply defined, that Ireland is able to measure progress, and that industry is able to continue to engage on this topic in a meaningful way.