

Joint Equinet and ENNHRI Statement on EU Artificial Intelligence Act Trilogue

This joint statement on behalf of [Equinet](#) (the European Network of National Equality Bodies) and [ENNHRI](#) (the European Network of National Human Rights Institutions), represents the collective voices of **independent public equality and fundamental rights authorities** (NEBs and NHRIs) across Europe. We base our joint call on the expertise and experience of over **60 independent national authorities**, established by constitution or law to protect and promote fundamental rights and equality in over **40 European states**. We urge the co-legislators to prioritize equality and fundamental rights as they gauge different compromise options at this decisive point of interinstitutional negotiations.

Since the presentation of the Artificial Intelligence Act (AIA) by the European Commission, Equinet and ENNHRI have consistently called¹ for strong and effective equality and fundamental rights guardrails, which ensure the proper balancing between the AIA's twin objectives of promoting trust and innovation in AI. With this legislative process reaching a conclusion, there are critical equality and fundamental rights considerations to be taken into account. Specifically, in order to ensure that the future agreement on the AIA adequately protects equality and fundamental rights, we urge you to:

- 1. Ensure robust legal protection for high-risk systems:** We strongly urge the co-legislators to follow the original approach by the European Commission for objective high-risk classification of all AI systems that fall into a list of critical use cases. The compromise amendments to Article 6 which introduce an additional qualifier for high-risk classification would greatly endanger legal certainty and foreseeability; and leave the responsibility for identifying AI systems that pose a critical risk to equality and fundamental rights entirely in the hands of tech developers ("providers") without the required equality and fundamental rights knowledge and experience. It would also incentivize AI developers to downplay the risks posed by their AI systems in order to reduce regulatory scrutiny. Crucially and in line with the opinion of the European Parliament Legal Service, this amendment is contrary to

¹ See for example Equinet's [recommendations](#) for the trilogues to strengthen the enforcement of non-discrimination in the context of AI and ENNHRI's [Common Position](#) on the EU Artificial Intelligence Act.

the stated purpose of the AIA in terms of improving the functioning of the internal market and promoting the uptake of human-centric and trustworthy artificial intelligence.

- 2. Ensure effective cooperation between enforcement mechanisms under the AIA with existing national independent equality and fundamental rights enforcement bodies.** The cross-sectoral impact of AI systems and the fact that one of the stated objectives of the AIA is to strengthen fundamental rights enforcement necessitate that both national supervisory authorities and the European AI Office work closely with Equality Bodies and National Human Rights Institutions (NHRIs) as the dedicated independent public non-discrimination and fundamental rights authorities. Cooperation between these actors will help to ensure that the AIA enforcement structures benefit from the specialised expertise and extensive experience of Equality Bodies and NHRIs, including with handling complaints and litigating cases. Effective cooperation also requires resources for existing fundamental rights enforcement mechanisms such as Equality Bodies and NHRIs, for ensuring meaningful cooperation in the implementation of the EU AIA. Furthermore, there should be alignment between the two AIA enforcement frameworks (national supervisory authorities and the AI Office) in relation to collaboration obligations with national fundamental rights and equality authorities. These national institutions should have access to the technical documentation collected by the AI Office, similarly to how this is done for high-risk systems, which are not high-impact foundation models and foundation models, under Article 64. The AI Office should notify and cooperate with Equality Bodies and NHRIs whenever risks to fundamental rights are identified, similarly to how these obligations are created for national supervisory authorities in Article 65.
- 3. Guarantee rights of individual and collective redress.** Individuals and organizations representing individual and collective interests of those affected by AI systems, such as civil society, trade unions, Equality Bodies and NHRIs should be provided with the right to lodge a complaint to the national supervisory authorities and the AI Office. These procedural safeguards are essential to ensuring coherence with remedies to individuals or groups under EU fundamental rights and equality law such as the ability of Equality Bodies, NHRIs, and other public interest entities to bring cases to judicial or/and administrative bodies, with AIA supervisory authorities clearly falling under the latter category. The empowerment of Equality Bodies and NHRIs to submit complaints to both national supervisory authorities and the AI Office will help avoid inconsistent or conflicting findings on complaints and strengthen

the effectiveness of protection of those affected by AI systems by drawing on the dedicated equality and fundamental rights expertise of these independent public authorities. Due to the difficulties for victims of AI-enabled fundamental rights violations to know that they are subject to such violations and claim their rights, it is critical that Equality Bodies, NHRIs and other relevant public interest organizations are explicitly given the power to submit complaints to supervisory authorities and the AI Office in their own name and without any identifiable victims. For Equality Bodies, in particular, such an approach would thereby align remedies in the AIA with the proposed Directives on standards for Equality Bodies and with Article 80 of the GDPR. The limitation of collective redress to the consumer protection legal framework risks to significantly diminish protection against AI-enabled fundamental rights violations by failing to recognize the distinct nature of fundamental rights and equality and that their protection cannot be addressed solely through the prism of consumer needs.

- 4. Ensure robust equality and fundamental rights safeguards in the governance framework for foundation models and high-impact foundation models.** We welcome the proposed heightened regulatory scrutiny over Foundation Models and High-impact Foundation models. Given the proven systemic harm of these systems on equality and fundamental rights, a proportionate and evidence-based approach to their regulation requires European-level centralized and harmonized enforcement. While we commend the introduction of ex-ante vetting and risk mitigation measures for Foundation Models that have high impact, we believe that this tiered approach will have negative effects for fundamental rights protection and urge that obligations for independent vetting and the adoption of mitigation measures are extended to all foundation models and generative AI.

Furthermore, we caution against the exclusion of fundamental rights expertise from the current risk and impact assessment model. Specifically, we propose the inclusion of a clear requirement for equality and fundamental rights expertise by independent vetted testers and an explicit reference to national authorities supervising the implementation of Union non-discrimination and fundamental rights legislation among the national authorities with which the AI Office cooperates and supports with regard to the AIA implementation. To ensure meaningful transparency, accountability, and rights of public participation, we further recommend that the independent vetting mechanism, which should be extended to all foundation models and generative AI, includes an obligation to seek inputs from a range of fundamental rights stakeholders, including affected persons and civil society. We underline the importance of alignment between the enforcement framework for foundation

models and high-impact foundation models through the AI Office and national enforcement through the national market surveillance system against high-risk AI systems. This will help to ensure that effective rights to redress and complaints mechanisms are available under both frameworks.

- 5. Ensure adequate fundamental rights impact assessments (FRIAs).** We call for the adoption of the European Parliament proposal on fundamental rights impact assessments (FRIAs) for deployers of AI systems to prevent and protect against negative impact on equality and fundamental rights in a systemic, transparent and consistent manner. As the history of product safety-related litigation amply illustrates, products whose safety risks have been identified at the development stage have nevertheless greatly damaged human health when they were used. Similarly, risks to fundamental rights depend on how an AI-enabled product or service is deployed and therefore deployers should have an obligation to conduct FRIAs. As noted in [EDPS' recent own-initiative Opinion on the Artificial Intelligence Act \(AI Act\)](#), “the assessment of the risk by the AI provider might not correspond to the risk-scenario at the moment of deployment of the AI system, and therefore such risk assessment might not be accurate.” We furthermore caution against compromises on scope and content of FRIAs that limit this obligation only to the public sector and diminish the comprehensiveness of information to assist deployers' compliance. In the context of AI, taking into account the opacity and complexity of the technology, FRIAs should be clear and prescriptive.

The obligation to periodically conduct FRIAs throughout the lifecycle of the AI system should cover both the public and private sector to capture the main sources of AI discrimination and prevent weakening of enforcement. ENNHRI and Equinet caution against the exclusion of the private sector of FRIA obligations by referring to obligations under the proposed Corporate Sustainability Due Diligence Directive (CSDDD). Compared to the European Parliament proposal for FRIAs, the CSDDD contains more limited obligations to collect information for the purpose of impact assessments. Moreover, excluding the private sector by referring to the CSDDD will create a two-track system of impact assessments on AI systems (one for public bodies under the AIA, a different one for private duty holders under the Directive) resulting in different levels of protection.

This tiered approach to FRIAs would jeopardize legal certainty and place disproportionately lighter obligations on the private sector AI deployers, while the private sector, equally with

the public sector, is a major source of AI-enabled discrimination and other fundamental rights breaches. Following the European Parliament's text, the requirement on feedback by Equality Bodies, national human rights institutions, and civil society during these impact assessments should be kept in order to ensure improved accuracy and reliability of the assessed impact and alignment with existing non-discrimination and fundamental rights oversight mechanisms.

6. **Ban biometric and surveillance practices risking discrimination.** We are concerned by the exemptions to bans on the use of biometrics to (in)discriminatively categorize persons into groups, “read” their emotions and subject them to live surveillance in public places. These are not proportionate and [not backed by compelling evidence](#) as regards the effectiveness of these uses for supporting public order and national security. The proposed exceptions to these bans in compromises between the co-legislators do not meet the requirements for necessity and proportionality according to Article 52.1 of the Fundamental Rights Charter. All uses of AI systems that pose unacceptable risks to individuals and their fundamental rights should be prohibited. Equality Bodies and national human rights institutions, for example in the [Netherlands](#) and [France](#), have brought evidence on the negative impact of facial recognition technology on equality. Furthermore, the EU Fundamental Rights Agency has provided evidence on the negative impact of biometric identification on fundamental rights in [2019](#) and [2020](#).
7. **Place a clear and effective ban on predictive policing.** We recommend a standalone prohibition for predictive policing for criminal and administrative offences. A prohibition as part of the social scoring ban, that would entail a third prong to current Article 5(1)c, would not capture the harms of predictive policing, which do not stem from an intervention based on a solely automated prediction. Even if the prediction is verified by a human, due to automation bias, discriminatory outcomes can occur because these systems embed structural biases, leading to the disproportionate, over-policing of certain groups of people. A standalone prohibition is required to address that predictive policing undermines the right to an effective remedy and to a fair trial, the presumption of innocence, and the right to non-discrimination.

EQUINET and ENNHRI call on the European Parliament and EU Member States to find common ground without compromising the distinct added value of the AIA in ensuring that AI systems developed and deployed across the EU protect and promote fundamental rights and equality. We are keen to offer the expertise and experience of our members to support the co-legislators to ensure that the AIA becomes an effective legal instrument to reinforce and further strengthen EU equality and fundamental rights legislation.

Background information

National Human Rights Institutions (NHRIs) and National Equality Bodies (NEBs) already play a prominent role in national and international frameworks for human rights oversight, accountability and governance in relation to Artificial Intelligence (AI) systems, for example, through legal work on complaints, raising awareness, providing guidance to businesses developing AI systems, or engaging with governments to map and review the uses of AI systems by public authorities. Crucially, NHRIs and National Equality Bodies play a central role in the monitoring and implementation of international and regional human rights legal instruments. They are actively involved in contributing to ensuring oversight and accountability in the context of the EU legal framework, as reflected in the role of Equality Bodies and National Human Rights Institutions in the implementation of European Union Charter of Fundamental Rights and non-discrimination law, as well as their involvement in a range of fundamental rights and equality critical areas of EU law and policy such as rule of law monitoring mechanism, hate speech, employment and social rights (work-life balance, pay transparency and freedom of movement of EU workers) and the protection of whistleblowers.