

Executive Summary

This policy paper stems from the collaboration between Hermes Center and The Good Lobby Italia and analyses the **mechanisms for lodging complaints and protecting fundamental rights** provided by **Regulation (EU) 2024/1689, known as AI Act**. The paper **aims to** provide an assessment of the state of implementation of AI Act provisions in Italy and offer operational recommendations.

The paper primarily aims to identify current regulatory gaps and critical issues and suggest practical solutions to facilitate an **easier and more effective access to justice** at national level for any natural or legal person having grounds to consider that there has been an infringement of the regulation.

The underlying premise of this work stems from a fundamental misconception: although initially intended to place the individual at the centre, with the aim of protecting fundamental rights in the use of artificial intelligence systems, the final approach chosen for the AI Act diverged from this initial intent.

The final version of the document is mainly based on a risk assessment, that is on a system that classifies different types of AI according to the danger they may pose. This approach ended up favouring the economic and strategic interests of the companies that develop and use AI, rather than really focusing on protecting the rights of the people affected by it.

This has led to what we consider as the most critical issue: people's rights cannot be weighed against corporate interests.

Building upon the consolidated experience derived from the implementation of the **General Data Protection Regulation (GDPR)**, the paper recommends the establishment of a **transparent and standardised national complaints procedure**.

The AI Act does not set out precise rules on the procedures to obtain compensation in case of damage caused by an AI system. Another EU regulation applies in these cases: the Product Liability Directive (EU) 2024/2853 (also called PLD), which was recently updated to also include digital products that use artificial intelligence components, such as software making decisions autonomously.

The paper highlights that, even if the European directive offers a first level of protection, it is essential that each Member State - like Italy - adopts uniform and clear national legislation that specifies precisely: who is liable for damages (producer, distributor, supplier); what evidence the affected person must provide; what procedures to follow to obtain compensation, and which terms and timeframes are provided to assert one's rights. Such a framework, applicable at the national level and coordinated with European legislation, would facilitate citizen protection and increase confidence in the use of artificial intelligence.

In our analysis, we focus on the following elements of the AI Act:

- The relationship between market surveillance (Article 85) and designated "authorities protecting fundamental rights" (Article 77),
- The right to lodge a complaint with a market surveillance authority (Article 85),
- The right to obtain a clear and meaningful explanation of automated decision-making processes (Article 86),
- The reference to Directive (EU) 2019/1937 on the protection of reporting persons, or 'whistleblowers' (Article 87)

A central element of the analysis is the **operational interaction between market surveillance authorities (as per Article 85)** and the **"authorities protecting fundamental rights" designated under Art. 77**. This interaction forms the **cornerstone** of the AI Act's **multi-level accountability framework**. While authorities under Article 85 exercise investigative and corrective powers ex post (including in response to complaints), authorities under Article 77 act as guarantors of fundamental rights, having an unconditional right to access technical documentation in accessible formats and languages. This establishes a 'three-way' institutional control mechanism. It is important to point out that Italy has not yet officially communicated to the European Commission the list of its authorities designated under Article 77 by the deadline of 2 November 2024, and is therefore non-compliant.

With regard to **the obligations of public authorities**, the AI Act establishes an articulated network of national authorities endowed with investigative, corrective and advisory powers. Market surveillance authorities may intervene even for AI systems not classified as 'high risk' if they pose a risk to fundamental rights, being able to request information, impose corrective measures, or order the withdrawal of the system from the market. Infringements may lead to **substantial fines** of up to EUR 35 million or up to 7% of global annual turnover for the most serious infringements, such as the deployment of prohibited AI systems. Member States shall determine appropriate levels of fines, which must be effective, proportionate, and dissuasive, while guaranteeing the right to judicial remedy against such measures.

The AI Act (Article 85), while formally recognising the right to lodge complaints with the market surveillance authorities, fails to specify the detailed features and procedures, referring generally to national systems. This gap places a burden on individual Member States and, due to potential regulatory differences among countries, risks undermining the effectiveness of protections.

In this context, the indications contained in the Italian draft law on AI are still embryonic and vague. The GDPR, on the contrary, although a distinct regulation aimed at protection in the processing of personal data, in case of infringement provides a detailed system for lodging complaints (Article 77 GDPR), direct exercise of rights (Articles 15-22 GDPR) and judicial appeal filing, including the right to compensation of damages (Article 82 GDPR).

The paper then focuses on the **right to obtain clear and meaningful explanations of automated decision-making processes (Article 86 AI Act)**. This right is triggered when a decision taken by a 'deployer' on the basis of the output of a high-risk AI system produces legal effects or significantly affects a

person's health, safety or fundamental rights. The aim is to overcome the opacity of AI systems ('black box') and provide transparency on their algorithmic logic, allowing affected persons to understand and challenge the decision. Concrete examples include harm resulting from biometric technologies or discriminatory decisions due to algorithmic bias in the automated selection of candidates.

Furthermore, the AI Act recalls the **Directive (EU) 2019/1937 on the protection of reporting persons ('whistleblowers') (Article 87)**, which is essential to facilitate the disclosure of infringements and protect whistleblowers, promoting 'bottom-up' control especially for high-risk AI.

Finally, the policy paper offers some **operational recommendations to public decision-makers** to address procedural gaps in the AI Act. In particular, it suggests a **standardised procedure for lodging complaints inspired by the GDPR**, which envisages the submission of reasoned complaints to the competent authority (e.g., Italy's National Cybersecurity Agency (ACN)) with clear requirements regarding the complainant's data, description of the fact, rule violated, and supporting documentation. It is recommended to include an investigation phase by the authority, with the possibility of requesting clarifications and technical expertise, and the right to appeal against decisions. The final objective is to strengthen democratic control over the use of AI technologies with a high social impact, ensuring that their development and use respect human dignity and keep the person at the centre.

It is also recommended that the Italian government include in the list, among other authorities, the Garante per la protezione dei dati personali (Italian Data Protection Authority), AGCOM (Italian Authority for Communications), and AGCM (Italian Authority for Competition and Market), considering their competence on relevant issues.

Further recommendations will follow after the consultation planned in autumn 2025 with several other civil society organisations dealing with the protection of human and civil rights.