

Ref.: EFE/AI-ACT/2026-01 Brussels / The Hague, 28 July 2026

To: European Artificial Intelligence Office, DG CONNECT, European Commission

Cc: European Artificial Intelligence Board · European Union Agency for Fundamental Rights

FORMAL SUBMISSION

Closing the Article 27 Enforcement Gap for High-Risk Employment AI Systems Under Regulation (EU) 2024/1689 (the AI Act)

1. Submitting Party and Purpose of This Submission

1. EqualFaith Europe is a civil-society initiative working to close the gap between the fundamental rights EU law promises and the practical capacity of affected communities to invoke them. We have previously submitted formal complaints and policy briefings on enforcement gaps in the Digital Services Act, including under Articles 34–35 and 40(12).
2. This submission identifies a specific, correctable gap in Regulation (EU) 2024/1689 (“the AI Act”): Article 27 does not require a Fundamental Rights Impact Assessment (“FRIA”) from private-sector deployers of high-risk employment AI systems, the one category of high-risk AI most reliably documented to discriminate against religious minorities. We request that the AI Office and the AI Board treat this as a priority item for the next available legislative or interpretive vehicle, ahead of the 2 December 2027 application date for Annex III obligations.

2. The Request

We ask the AI Office and the AI Board to support, and where within their competence to initiate, the following two corrections:

- a. Amend Article 27(1) to add Annex III, point 4 (employment, workers’ management and access to self-employment) to the categories of high-risk deployment that trigger a mandatory Fundamental Rights Impact Assessment, placing it on the same footing as points 5(b) and (c). (b) Introduce a right to compensation for material and non-material damage arising from an infringement of the AI Act, modelled on Article 82 GDPR, whether as a new Article 85a or as an amendment to Article 85.

Both corrections are narrow, textually precise, and require no reopening of the Act’s overall structure. Section 6 below sets out proposed drafting.

3. Legal Basis of the Gap

Article 6(2) AI Act, read with Annex III, classifies as high-risk any AI system intended for recruitment or selection — including targeted job advertising, CV filtering, candidate ranking — and any system used to decide promotion, termination, task-allocation, or performance evaluation [2]. This classification is unconditional: it applies irrespective of the size of the deploying organisation and irrespective of whether the system is procured or built in-house.

Article 27(1), however, confines the FRIA obligation to “deployers that are bodies governed by public law, or are private entities providing public services, and deployers of high-risk AI systems referred to in points 5(b) and (c) of Annex III” [1] — that is, credit-scoring and insurance-pricing systems. Annex III, point 4 is not named. “Private entities providing public services” is defined by Recital 96 by reference to tasks in the public interest — education, healthcare, social services, housing, the administration of justice [7] — a definition that, on any ordinary reading, excludes a private employer’s recruitment function.

This is not a matter of interpretive dispute. Independent legal and compliance sources confirm the plain text: one specialist source states without qualification that the FRIA “is not triggered for a private-sector HR deployer” because point 4 is absent from Article 27 [8], and a 2026 academic assessment of the Act’s rights-protective architecture lists employment management systems among the high-risk uses that fall outside the FRIA requirement entirely, concluding that this “limits the mechanism’s capacity to address unfair decision-making” [9].

The consequence is a self-contradiction within the Regulation’s own risk architecture: the Act labels employment AI high-risk, imposes the full documentary and human-oversight burden that label carries, and then withholds the one obligation designed specifically to surface discriminatory impact before deployment. A bank must assess, in advance, whether its AI may unfairly price a customer’s insurance. A private employer bears no equivalent obligation to assess, in advance, whether its AI may unfairly price a candidate out of a livelihood.

4. This Gap Cannot Be Justified on the Grounds Ordinarily Raised

4.1 “Existing anti-discrimination law already covers this.” It does not, in practice. Directive 2000/78/EC and national equal-treatment law require an individual to identify a discriminatory decision and prove it in litigation. Commentary on the AI Act’s own complaint mechanism describes the resulting “black box” paradox directly: the complainant carries the burden of proof while the provider’s trade secrets remain shielded under Article 78, an asymmetry serious enough that specialists argue individual claimants need to rely on qualified entities and collective redress

mechanisms simply to have a chance [9]. A FRIA is what prevents that asymmetry from arising in the first place, by forcing the deployer to document affected groups and risks before a single candidate is rejected. Removing the FRIA does not leave individuals equally protected through litigation; it removes the only evidence they would need to litigate at all.

4.2 “Private employers should not face public-body-level scrutiny.” This argument proves too much: it is already rejected by the Act’s own text. Article 27(1) applies the FRIA to private insurers and private lenders — commercial actors with no public mandate whatsoever — precisely because of the severity of the decisions their systems make. A hiring decision is at least as consequential to a person’s fundamental rights as a credit or insurance decision, and the empirical record set out in Section 5 shows it is at least as exposed to discriminatory proxies. There is no principled basis in the Act’s own logic for protecting applicants for a loan and not applicants for a job.

4.3 “This adds compliance burden the Digital Omnibus was designed to relieve.” The Digital Omnibus deferred the timing of Annex III obligations to 2 December 2027; it did not revisit, and was not intended to revisit, the scope of Article 27 [16][17]. The correction proposed here is a single clause, not a new compliance regime, and industry guidance already treats a FRIA-equivalent assessment as best practice for HR-AI deployers regardless of legal obligation [9] — meaning the market has already priced in the cost this submission asks the law to require. The burden argument, in other words, has already been conceded by the compliance community; only the legal obligation is missing.

5. The Empirical and Doctrinal Record Leaves No Room for Doubt

A harmonised field experiment spanning Germany, the Netherlands, Norway, Spain and the United Kingdom found consistent, statistically robust penalties against job applicants signalled as Muslim through CV and cover-letter details, holding qualifications constant [10]. German correspondence testing found that applicants with Turkish names, and further those photographed wearing a headscarf, received markedly fewer callbacks than identical applicants without those signals [11][20]. A 2025 socio-legal study moved this evidence from human recruiters to deployed software, finding that real AI hiring systems — CV parsers, assessment tools, video-interview scoring — reproduce the same discrimination against headscarf-wearing and minority-name candidates, and pointing to the established case of a major recruiting AI that independently learned to penalise applications correlated with being a woman [12]. These are not isolated findings; they are convergent, cross-national, and now confirmed in deployed systems, not merely predicted in theory.

The Court of Justice’s case law on workplace religious symbols — *Achbita v G4S* and *Bouagnaoui v Micropole* [13][14] — was built to test a visible policy applied by an identifiable decision-maker. It has no mechanism for testing a ranking algorithm that never states a policy and never identifies a decision-maker, yet produces the same exclusionary outcome through statistical proxies for religion and ethnicity. The FRIA is the only point in the Act’s architecture capable of forcing that hidden reasoning into view before the harm occurs. Without it in the employment context, the Act’s substantive non-discrimination commitments have no operative mechanism in the sector where the evidence of risk is strongest.

6. Proposed Drafting

6.1 Amendment to Article 27(1)

Current text: “...deployers that are bodies governed by public law, or are private entities providing public services, and deployers of high-risk AI systems referred to in points 5(b) and (c) of Annex III, shall perform an assessment...”

Proposed text: “...deployers that are bodies governed by public law, or are private entities providing public services, and deployers of high-risk AI systems referred to in point 4 and points 5(b) and (c) of Annex III, shall perform an assessment...”

6.2 New Article 85a — Right to Compensation

Proposed new provision: “Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the provider or deployer responsible for that damage, in accordance with the conditions set out in national law and the general principles of Union law governing effective judicial protection.”

7. Procedural Timing

Formal adoption of the Digital Omnibus, endorsed by the European Parliament on 16 June 2026 and by the Council on 29 June 2026, defers Annex III high-risk obligations, including employment, to 2 December 2027 [16][17]. This creates an eighteen-month window in which the scope correction proposed here can still be secured before enforcement expectations, employer compliance programmes, and market practice settle around the current, narrower text. We respectfully urge that this window not be allowed to close by default.

8. Conclusion and Request for Engagement

The AI Act was drafted as a fundamental-rights-centred instrument. On its own terms, a gap that excludes the one sector with the clearest cross-national evidence of algorithmic religious discrimination from the Act’s sole preventive safeguard is not a defensible design choice — it is an omission the evidence above does not leave room to justify. We ask the AI Office to confirm receipt of this submission, to indicate whether it intends to address the Article 27 scope question in forthcoming guidance or a future legislative vehicle, and to advise on the appropriate channel for EqualFaith Europe to contribute further evidence, including original comparative research across our twenty-seven-country research base.

We remain available for a meeting with the responsible unit at the AI Office or the AI Board at the earliest convenience.

Respectfully submitted,

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References

- [1] Regulation (EU) 2024/1689 (AI Act), Article 27 (Fundamental rights impact assessment for high-risk AI systems).
- [2] Regulation (EU) 2024/1689, Article 6(2) and Annex III (classification of high-risk AI systems).
- [3] Regulation (EU) 2024/1689, Article 85 (Right to lodge a complaint with a market surveillance authority).
- [4] Regulation (EU) 2024/1689, Article 86 (Right to explanation of individual decision-making).
- [5] Regulation (EU) 2016/679 (GDPR), Article 82 (Right to compensation and liability).
- [7] Center for Democracy & Technology, 'EU AI Act Brief – Pt. 4, AI at Work' (Mar. 2026), on Recital 96 and the public-service carve-in.
- [8] Sprinkling Act, 'AI Act for HR: Recruitment, screening, performance evaluation' (2026).
- [9] 'Regulating AI Agents,' arXiv:2603.23471 (2026); 'The EU AI Act in Development Practice: A Pro-justice Approach,' arXiv:2504.20075 (2025).
- [10] Di Stasio et al., 'Muslim by default or religious discrimination? Results from a cross-national field experiment on hiring discrimination,' *Journal of Ethnic and Migration Studies*.
- [11] Weichselbaumer, 'Discrimination Against Female Migrants Wearing Headscarves,' *IZA Journal of Labor Economics* (2018).
- [12] Sheard, 'Algorithm-facilitated discrimination: a socio-legal study of the use by employers of artificial intelligence hiring systems,' *Journal of Law and Society* (2025).
- [13] CJEU, Case C-157/15, *Achbita v G4S Secure Solutions*.
- [14] CJEU, Case C-188/15, *Bouagnaoui and ADDH v Micropole SA*.
- [16] Jones Walker LLP, 'Yes, August 2 Still Matters: The EU Approved a High-Risk AI Delay' (Jul. 2026).
- [17] Gibson Dunn, 'EU AI Act Omnibus Agreement — Postponed High-Risk Deadlines and Other Key Changes' (May 2026).
- [20] Antidiskriminierungsstelle des Bundes, 'Wearing a headscarf in the workplace.'