



S H E R P A

Shaping the ethical dimensions of smart information  
systems– a European perspective (SHERPA)

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*Feedback to the  
European Commission on its*

**Proposal for a legal act of the European Parliament and the  
Council laying down requirements for Artificial Intelligence**

**Based on research from the SHERPA project**

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SHERPA (Shaping the ethical dimensions of smart information systems (SIS) – a European perspective) is a project that focuses on ethical and human rights aspects of smart information systems (artificial intelligence and big data analytics).

Regulatory governance systems are a key part of the SHERPA Final Recommendations,<sup>1</sup> which include a call for creating an EU regulatory framework<sup>2</sup> and establishing an EU Agency for AI.<sup>3</sup> SHERPA believes a robust, mandatory legal framework at the EU level is needed to ensure that ethical issues and human rights concerns related to AI are adequately addressed. There are many specific elements of the SHERPA recommendations that appear in the proposed text of the Regulation, like red lines for some AI applications, mandatory requirements for high-risk AI systems, and the creation of a centralised body. However, the draft text does not do enough to protect fundamental rights, often lacks conceptual clarity, and leaves many questions unanswered

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## **Risk-based approach**

The proposed Regulation adopts a four-tiered risk-based approach, where AI systems are subject to different rules depending on the level of risk. While one purpose of the regulatory framework is to guarantee safety and fundamental rights of EU citizens, the risk-based approach adopted by the Commission may not be sufficient. There is no reference to the EU Agency for Fundamental Rights, nor are there provisions on complaint and redress mechanisms available to those whose rights are violated by AI systems. Furthermore, the proposed regulation has a somewhat binary approach, failing to adequately take into account impacts across the spectrum of risk. Most mandatory requirements apply only to high-risk systems; by comparison, low-risk AI systems are only subject to transparency requirements and minimal-risk AI systems have no requirements.

## **Definition of AI**

SHERPA recommended that AI be clearly defined in each use context with regard to relevant issues. While it is a challenge to precisely define AI, definitions used in the proposed Regulation are often overly broad and too open to interpretation. Additionally, despite attempts to be “technology neutral and as future proof as possible”, the proposed definition of AI is linked to ‘software’, leaving out potential future developments of AI. The proposal takes into account the difficulty of defining AI by moving the definition into an appendix which is subject to review and revision. While this is reasonable in light of the problematic nature of the term AI, it does add to uncertainty about the future scope of the Regulation.

## **Red lines**

Under the proposal’s risk-based approach, AI systems that pose the highest level of risk to fundamental rights and safety are prohibited. The short list of banned AI systems – only four categories – includes social scoring and AI that subliminally manipulates human behaviour in a harmful way. While SHERPA welcomes the explicit inclusion of red lines in the regulatory framework, the short list is incomplete and has many loopholes. For example, use of remote,

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<sup>1</sup> <https://www.project-sherpa.eu/recommendations/>

<sup>2</sup> <https://www.project-sherpa.eu/regulatory-framework/>

<sup>3</sup> <https://www.project-sherpa.eu/european-agency-for-ai/>



real-time biometric identification in public spaces, including facial recognition, by law enforcement is technically banned, but can still be used for specific purposes subject to prior authorisation. Additionally, the draft Regulation does not apply to military applications, and therefore lethal autonomous weapons systems (LAWS) and military drones are not addressed.

### **Mandatory requirements for high-risk systems**

High-risk AI systems, classified by the function performed by and specific purpose of the AI, are subject to strict regulatory requirements. These include conformity assessments, appropriate human oversight, transparency and traceability obligations, and registration on a new European High-Risk AI Database. High-risk AI systems will also be subject to post-market monitoring. SHERPA strongly welcomes a list of mandatory requirements including both *ex-ante* (before on market) and *ex-post* (after on market) enforcement mechanisms. However, more work is needed to ensure that the requirements have a high enough degree of detail and specificity so that developers, providers and users understand and can meet their legal obligations. Specific requirements like logging for traceability and remote access to data may be good in principle, but they may be practically implementable. The SHERPA recommendations on impact assessments<sup>4</sup> and Ethics Officers<sup>5</sup> could also be incorporated as part of the mandatory requirements to strengthen the impact of the Regulation.

### **EU Agency for AI**

The proposed Regulation calls for establishing a European Artificial Intelligence Board (the Board) to facilitate implementation of the regulatory framework. SHERPA also called for the creation of a new centralised independent EU Agency for AI to help ensure cooperation, coordination and consistent application of EU law. The two proposals are aligned in some ways but differ in others. Both proposals envisage a mandate for the new body focused on making recommendations and issuing guidance to the EU and Member States. The proposals, however, differ in terms of structure. The proposed Board would have limited representation from Member States, the Commission, and the European Data Protection Supervisor. This is different from the SHERPA recommendation, which proposed a more independent structure that includes permanent representation from diverse stakeholder groups on standing committees including a scientific and technical committee and an advisory committee.

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<sup>4</sup> <https://www.project-sherpa.eu/ai-impact-assessment/>

<sup>5</sup> <https://www.project-sherpa.eu/ai-ethics-officer/>

