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**Feedback to the European Commission**  
**on the ‘Proposal for a legal act of the European Parliament**  
**and the Council laying down requirements for Artificial Intelligence’**

6 August 2021

Trilateral Research is a UK and IE-based ethical technology development and research company. We believe that knowledge advancement and technology development can enhance societal wellbeing. Collaborating across the technology-social divide, our experienced interdisciplinary teams apply rigorous, cutting-edge research when developing and assessing new technologies to ensure they achieve sustainable innovation and measurable impact. We are actively involved in creating practical solutions and technologies for social good and using that expertise to inform regulatory and policy development.

We strongly support secure, trustworthy, and ethical artificial intelligence (AI) for Europe and globally. As a small and medium-sized enterprise (SME) actively engaged in this space, we are very invested in the creation of an EU regulatory framework that is robust, balanced, and clear. Regulation should be a part of the governance framework for AI, as it will help ensure AI systems are safer, more reliable, and better suited for inclusion as part of the fundamental infrastructure of society.

Trilateral Research is aware of the potential harms that can come from unregulated use of AI and the pressures to rapidly make use of this new technology. We have been the recipient of competitive funding from the European Commission to study precisely these issues and this work has included impact assessments and scenario development to explore actual and potential harms related to AI (for examples, see the SHERPA and SIENNA projects). We are also deeply familiar with the philosophy behind this regulation, in particular the Ethics Guidelines for Trustworthy AI from the High-Level Expert Group on AI. We share this principled approach to AI and have already adopted practices in line with many elements of the proposed Regulation. We view an EU regulatory framework for AI as part of necessary AI governance, and we will continue to advance our own research and technology development for safe and ethical AI, pushing the boundaries to constantly improve.

Additionally, Trilateral Research has an established history of doing research for and with Data Protection Authorities and on the General Data Protection Regulation (GDPR). From this we understand that both enforcement strategies, and support and guidance from regulators will be very important to the eventual impact of the Act. It will be particularly important that regulators develop cooperation mechanisms and adequate support for SMEs.

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The following comments and recommendations are based on our interdisciplinary expertise with AI development and use, and our experience implementing regulatory requirements as an SME.

**We support establishing red lines for AI systems that pose unacceptable levels of risk.** We agree that some AI systems and applications are inconsistent with European values and fundamental rights and should be prohibited. We caution the Commission against too narrowly defining those prohibited AI systems, which makes it easier to argue against application of the prohibition. We also recommend that the list of prohibited AI systems be non-exhaustive and a process established for other AI systems to be added in the future as the risks and harms related to AI are better understood.

**We support mandatory requirements that are clear, implementable and support the development of secure, trustworthy, and ethical AI for high-risk AI systems.** We agree that mandatory *ex-ante* and *ex-post* requirements are appropriate to ensure that AI is developed, deployed, and used in safe and responsible ways. Trilateral Research is actively engaged in building AI systems for social good and we have many internal practices in place that are consistent with the fundamental principles of the proposed Regulation, including ethics-by-design and explainable AI initiatives. As a SME that supports regulation of AI, it is extremely important to us that the mandatory requirements are laid out with sufficient clarity and guidance and are practically implementable by those without the resources of a large company. Mandatory requirements should not place unnecessary or onerous burdens on developers, especially SMEs, because these burdens could discourage proactive measures to support compliance.

**We recommend that impact assessment becomes an explicit and mandatory requirement of the risk management system for high-risk AI systems.** Impact assessments could also be encouraged for low and minimal risk AI systems. In some fields and industry sectors, an impact assessment that considers the potential impact on stakeholders is integrated into a broader risk management process. Such assessment should include, at a minimum, thoughtful assessment of bias, discrimination, invasion of privacy, misuse of personal data and damaging trust. Privacy and data protection impact assessments required under the GDPR could serve as a model. Trilateral Research is actively engaged in multiple initiatives to develop a baseline framework for AI impact assessment.

**We welcome regulatory sandboxes and other support measures for SMEs and small-scale providers.** Regulatory sandboxes, for example, allow for a controlled environment for development, testing, and validation of innovative AI systems for a limited time before their placement on the market or putting into service. As the modalities and conditions are set out in implementing acts, we recommend that the selection criteria are strictly, carefully, and transparently defined (avoiding vagueness) to avoid the potential for misuse by participants to gain unfair competitive advantages both in regulatory advice and in being first to the market. The rules for participants should address transparency, accountability, oversight and assessment, allocation of risks, safeguards, and operational restrictions such as limits on the number and location of users, limits on types of uses, and special testing requirements. Human rights

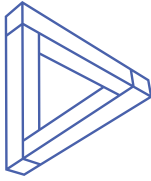
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and ethical impacts could be factored into the assessment process, along with impacts on gender and the environment. Additionally, regulatory sandboxes should include mechanisms for regular review and assessment. The competent authorities should provide information about the AI projects in the sandboxes on their websites, including data protection safeguards, particularly where these projects involve further processing of personal data collected for other purposes.

**We support the creation of an independent, centralised EU body to ensure cooperation, coordination and consistent application of EU law related to AI.** The proposed European Artificial Intelligence Board is a welcome suggestion but is too closely aligned with the Commission to be fully effective, as it would only provide advice and assistance to the Commission. Instead, a centralised body for AI should be independent, supporting across the EU and providing opinions and recommendations to the Commission, Parliament and Council. It should include representation from other relevant EU bodies, including the Fundamental Rights Agency, and draw on the expertise of diverse stakeholder groups on permanent standing committees (e.g., ethics, scientific and technical, human rights). Like the European Data Protection Board, the independent, centralised body should be tasked with developing and promulgating general guidance on legal concepts and regulatory issues associated with AI, including specific guidance for SMEs. As part of the SHERPA project, Trilateral Research explored the feasibility of creating such an agency and developed a Terms of Reference for a European Agency for AI.

**We recommend strengthening and expanding enforcement mechanisms to better protect fundamental rights and whistleblowers.** Stronger measures are needed to protect European values and fundamental rights from harms associated with AI, and to ensure that individuals and citizens can adequately and effectively raise concerns about harmful AI systems and be protected from retaliation if such concerns are voiced. Therefore, we recommend addressing reporting and redress mechanisms and protection of whistleblowers, both of which are absent from the current draft. These mechanisms could complement other complaint and redress tools, including those under GDPR and within national human rights institutions. In creating such mechanisms within the AI regulatory framework, consideration should be given to effective investigatory and enforcement powers and processes for implementing mitigation strategies.

**We support the instrumental role that standards will play in regulatory compliance.** The use of the New Legislative Framework approach, which relies heavily on standardisation for high-risk systems, means that a significant proportion of innovation and industry actors are familiar with the process, thereby reducing uncertainty. However, it is pertinent that any of the European Standard Organisations – CEN, CENELEC or ETSI, responsible for developing harmonised standards for AI – mirror the ongoing activities taking place in the international arena and strive to reduce duplication of work and effort. This would reduce the onerous burden for SMEs, who may have to navigate through all the forthcoming standards to determine which ones are functional. Furthermore, we recommend the use of standards to meet regulatory requirements as opposed to the alternative use of common specifications. It is unlikely



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that common specifications can better reflect the state of the art than a standard developed by experts in an open process. Recognising the many barriers that prevent public interest organisations from participating in standards development, it is imperative that these be addressed by making resources available to support their active participation. Trilateral Research is actively engaged in numerous standardisation activities aimed at developing global standards for AI and adjacent technologies.