Allied for Startups Position Paper on the Artificial Intelligence White Paper

Artificial Intelligence startups have the potential to solve some of the world’s biggest challenges, ranging from combating climate change to more efficient allocation of scarce resources for the circular economy. Artificial Intelligence can also lead to profound improvements in people’s everyday lives. This can range from advanced early recognition of life-threatening diseases to a prevented car-accident. In all these fields, startups are at the forefront of innovation, pioneering new products and services. Entrepreneurs are constantly designing, testing and refining AI algorithms that would have been considered unfeasible a few years ago.

Startup entrepreneurs are passionate and ambitious about the potential of AI, but they are not naive or blind. As with any technology, the new opportunities it brings are coupled with new policy challenges, many of which are unforeseen. At the outset of the ensuing policy discussion it will be important to ensure a constructive dialogue that is not bipolar, either labelling AI as the solution to all problems or the advent of killer robots. Instead, it is constructive to start a discussion with the startup-entrepreneurs and AI experts, focused on what the practitioners are currently working on and are looking to do.

Forthcoming Artificial Intelligence legislation should therefore be centered around the idea of providing a clear and straightforward framework for startup entrepreneurs to operate with. A harmonised European approach can pave the way for easier deployment and scale-up of AI across Europe.

Formulating AI principles on a European level can be an advantageous first step for creating future-proof legislation. Unlike overly prescriptive legislation, or legislation that is technologically specific, it can leave a broad scope for startup entrepreneurs to innovate in.

For startup entrepreneurs, AI principles need to be boiled down to concrete and actionable advice. By default, startups are building new products and services in new ways. In some cases an entrepreneur may not have a clear cut AI service in mind yet, but still needs to be able to experiment and pilot. Oftentimes startups will not have a bigger player in the market doing something similar they can learn from. Due to their nature a standard modus operandi will often not apply. They need to figure out how their unique business becomes compliant from scratch. Startup entrepreneurs also have less resources and time to do this. A principle based approach can only support innovation from startup entrepreneurs if it takes this into account. In other words, AI legislation works best when it is made operational for startups, providing concrete use-cases.
A principle based approach to AI legislation that encourages startups can be facilitated with the following startup reality-check:

- **Explainability for startup entrepreneurs:** AI is a technically complex domain which will require translating values to a rapidly changing innovative field. As much as entrepreneurs have a responsibility to explain their work and vision to policy makers, policy makers also need to design laws that can be understood and navigated by smaller players, the startups.
  - Design AI rules that a small AI startup team can comprehend. Provide a roadmap for any startup to create due diligence for its product/service.
  - Focusing the definition of AI so that it is narrow enough to avoid spillover into other sectors but flexible enough to accommodate new technological developments. A broad framing of AI would not just risk unintended side-effects, it would also make it harder to make specific and targeted rules.
  - Consider whether a startup developing AI in a low-risk or high-risk field poses the same concerns as larger, more established players, or whether the challenges are different and therefore merit a proportional response.
  - Develop a definition that distinguishes between different use-cases and sectors where AI is applied.
    - A risk-based approach can support the creation of a classification into lower and higher-risk applications. It will be important to state clearly where high-risk ends. If necessary, consider a more granular classification than just low or high risk.
    - A classification based on numerous criteria will be unnecessarily challenging for startups if there is an overly broad definition of high-risk AI applications. As with high-risk AI applications, it should be clearly defined and listed what low-risk AI applications are.
    - Regardless of whether entrepreneurs are designing a low or a high risk AI application, they should have clear-cut and understandable rules from policy makers to guide them. The discrepancy between rules for low and high-risk AI applications should be as small as possible, in order to minimise the intervention in the market and not dis-incentivise entrepreneurs from innovating in high-risk areas.

- **Implementability for startup entrepreneurs:** Any legislation, even in a field categorised as high-risk, should be constructed through the lens of a startup entrepreneur building a company in that sector. The ambition of a good law should be implementability by everyone. The costs of compliance for legislation overall, considering the entire picture of legislation including GDPR and others, should not
become an ever-growing hurdle to starting up. Ultimately this would leave the sector to the big incumbent players who can navigate complex legislation.

➢ Design legislation that is operational around concrete use-cases of startups trying to innovate in AI, both for low-risk or high-risk applications.
➢ Picture the entire load of regulation for an entrepreneur building a startup in a given space when considering whether additional ex-ante rules or conformity checks are feasible. The more frontloaded legislation becomes, the harder it becomes for entrepreneurs to challenge big incumbents.

■ Consider fields where innovative AI startups are a crucial part of the solution to bigger societal issues, like digital health/healthcare or circular economy/decarbonising the economy. A long conformity assessment could pose a higher risk at the end of the day if it prevents critical innovative solutions from being deployed.

● The Startup Ecosystem Perspective: New AI rules should be designed with the collection of startup ecosystems in mind, and not by looking at a single large company. Build on the fact that Europe has its own competitive advantages in AI, for instance in research or with ambitious, nascent startup ecosystems.

➢ Ensure the proper enforcement of relevant existing legislation, including the Free-Flow of Non-Personal Data Regulation, the Public Sector Information Directive or the Copyright Directive (regarding Text & Data Mining), through the perspective of supporting AI startups in Europe.
➢ Conduct an AI refit of existing legislation impacting the development and deployment of AI in Europe, also with a view to determine whether additional legislation is needed.
➢ Create data spaces that aggregate anonymised, public and private data in a number of areas, with a view to support startups training AI algorithms.
➢ Consider whether, in the process of setting up digital innovation hubs and promoting innovation, regulatory sandboxes on an EU level can provide startups with the flexible opportunities befitting their potential.

● A Startup Innovation Principle: AI applications have varying levels of risk, depending on numerous variables. A proportionate approach, not applying the same blueprint to every startup, can be a first step to ensuring that regulation does not unnecessarily stand in the way of innovation. A distinction between high and low risk sectors or use-cases should still keep in mind that there are ambitious startups operating in all fields.

➢ Consider if there is a specific use-case or sector that needs a regulatory intervention and whether there is evidence supporting the case for a systemic intervention.
Ensure that the distinction between low and high risk will not create a legal chasm where it will only be worth operating in low-risk areas. The larger the difference between the two, the larger the artificial intervention in the market. Ultimately, if a broad suite of sectors is considered high level it will crowd out innovation from the bottom, so only large companies can survive.

➢ Minimise bottlenecks for startup ecosystems where there is a clear problem and a clear solution. On data access, determine where exactly the problem of the entire ecosystem is. Consider soft measures to incentivise larger companies to share their private data with startup ecosystems.

➢ Create rules that make an AI liability regime in a complicated value chain comprehensible, with the view of establishing a ‘fail-proof’ environment. A ‘fail-proof’ environment would enable entrepreneurs to have a second chance and not chill investors from dedicating resources to AI.

➢ Entrepreneurs should not end up being held liable for problems they had no awareness or influence over. This includes the potential of an operator of an AI system using for a different purpose than intended by the developer. A clear liability regime would also take into account whether an AI system was at fault or whether it was merely a conduit.

Conclusion
Startups are key innovative players in the EU. There are a lot of entrepreneurs working on creating cutting-edge AI products or services which will benefit societies and economies around Europe. To give startup entrepreneurs the best possible opportunity to scale, any law on AI law needs to be both understandable and implementable for them. This includes a clear distinction between low and high risk applications to the extent that not every application is in the latter category and that the distinction does not lead to a large legal chasm between the two categories.

A startup-friendly approach to AI also takes into consideration the entire ecosystem and its interconnected nature. AI development and deployment in Europe is influenced not just by one AI regulation, but also, for example, through a fully implemented Public Sector Information directive.

An approach that is principle-based and protects European values does not have to come at the cost of innovation. It asks for a lawmaking process that puts startups first. Startups are the prime example of entrepreneurs with a ground-breaking idea looking to do the right thing. With them in mind, European AI legislation can provide a clear path towards scaling up in Europe.