European Tech Alliance - Addendum Paper to EU Public Consultation on AI

The EUTA represents major European digital champions, scaleups and startups. We are pleased to contribute to the Commission's Consultation on its *White Paper on Artificial Intelligence - a European approach to excellence and trust.* **This paper aims to complement our questionnaire response with additional context and recommendations for a forward-looking policy framework.**

Based on the criteria to identify "high-risk" applications proposed by the Commission, we believe that a majority of applications used by EUTA members are unlikely to be deemed high-risk. In this context, it is difficult for us to take definitive positions on some of the consultation questions that relate to how risky applications should be addressed. Nevertheless, we are generally interested in the development of an EU framework as AI is critical to our ability to innovate and compete globally.

Across the wide variety of B2B and B2C services we provide, we use AI to increase efficiency and productivity and to develop high-quality digital services that respond to our customers' needs. We strongly support a human-centric approach to the development and use of AI to secure public confidence and public / private investments.

As we enter a period of sustained economic uncertainty, the EU's ambition to boost investment and innovation in AI has never been more important. While AI does not hold all the answers, it will be a crucial part of Europe's immediate recovery and return to long-term prosperity. Regarding the proposals to build an **'Ecosystem of Excellence'**, we recommend prioritising the following actions:

- **Ambitious measures to help European SMEs and startups** to innovate and grow using AI, including increased financing and knowledge transfer, technical expertise and partnerships with larger enterprises and academia.
- **Urgent action to upskill Europe's workforce**, including boosting the emergence of AI training modules across the EU and leveraging Europe's academic excellence to facilitate researcher mobility between the public and private sectors.
- **Increasing European businesses' ability to attract and retain the best talent,** for example by encouraging Member States to provide special residence permits for AI specialists coming from third countries to work for European companies.

Regarding the proposals to build an **'Ecosystem of Trust'**, we recognise that certain AI applications carry risks and fully support the EU's efforts to ensure AI is developed and used in a legal and ethical way. As you develop proposals in this area, we wish to emphasise the following:

- We share the Commission's view that **an EU framework for AI should be targeted and risk-based.** The cumulative focus on high-risk applications within high-risk sectors will help to avoid blanket regulation of AI, which would chill investment and innovation where the risks of using AI are negligible.
    - ➔ It will be important to **clarify in which "exceptional instances"** AI applications could be classified as high-risk outside of the cumulative criteria. In particular, the notion of "applications affecting consumer rights" is very broad and could lead to considerable legal uncertainty.

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➔ A holistic risk assessment framework should consider **the opportunity cost or potential risks of not using AI**, for example lower operational efficiency, slower customer service or reduced competitiveness in strategic sectors.

- It is critical at the outset to get the definitions right. 'AI' is often used as a catch-all term for data analytics in the policy debate. The EU should **clearly distinguish between AI, machine learning, deep-learning, algorithms and other relevant terms** in order to ensure uniform application and legal certainty across Europe.
- **Products and software are very different in nature and a clear distinction should be made in any EU AI regulatory framework.** Similarly, there should be a differentiation between products/services that may contain AI components and products/services that run exclusively or predominantly on AI. The same way a software is not exempt of bugs, the algorithm serving to operate an AI system cannot be exempt of bias either. Its inherent nature is to provide a statistical result based on data inputs, which means that the result provided represents the best probable possibility. As such, low-risk AI regulation is in line with the regulatory framework for software solutions.
- **Concerns regarding AI's use should be clearly defined and well-evidenced**. Ranking the importance of certain concerns[1] - for instance discriminatory outcomes or inaccuracies - on a generic numerical scale is misleading, because it should consider the context in which, or the likelihood that, such risks/harm might arise, their prevalence or ultimate impact, and other important parameters. Similarly, the importance of mandatory requirements will depend on context and the type of application in question.
- **A particular care is needed to define the boundaries of requirements**. Criteria like "sufficient broadness of data" or "adequate protection" leave an uncertainty area that may jeopardize the fostering of innovation. The judgement about "adequateness" or "sufficiency" of an implemented measure that is investigated during an ex-post analysis is always flawed by the knowledge of what went wrong. It would be better to identify minimum but precise conduct guidelines for the compliance to the requirements.
- The most effective technical and organisational measures to mitigate AI's risks are generally **situation-dependent**. Even within the category of "high-risk AI", we caution against one-size-fits-all requirements that are likely to be too rigid or quickly outdated. Nonetheless, it will be important to clearly identify the measures to apply, according to the situation, so that the companies are considered compliant with the requirements of a safe and transparent AI.
- A **thorough examination of existing law and parallel policy initiatives** should be conducted before introducing new rules specifically targeting AI-driven technologies and applications. We call for a consistent approach to AI in particular with the GDPR, sectoral regulation, the proposed ePrivacy Regulation and the EU's Data Strategy. Great attention should be paid to the coherence of the EU's approach to AI with any attempts to regulate AI within the upcoming Digital Services Act.

[1] Section 2 (Question 1) of the consultation: In your opinion, how important are the following concerns about AI (1-5: 1 is not important at all, 5 is very important)?

- **More clarity is needed on the potential effects of a voluntary labelling system for low-risk applications and how it would work in practice.** If such a scheme is introduced, its uptake (particularly among SMEs and startups) would require flexibility for businesses to choose the most effective measures. Obtaining the label should not require compliance with an identical set of requirements as for high-risk applications, but rather a set of standards that are more narrowly defined.

We are of course happy to discuss any of the points in our questionnaire response or in this supplementary paper. We share the European Commission's aim of making Europe a leader in AI and now, more than ever, want to see the tremendous power of AI put to the service of Europe's people and economy.

Who is the EUTA?

The European Tech Alliance (EUTA) brings together and give a voice to the major European digital champions and scaleups. We believe that Europe is good at tech and our sector is driving jobs and growth across the continent. With an overarching goal of fostering innovation in Europe, EUTA members are keen to provide expert insights to the EU institutions and promote EU competitiveness in the global tech space.

This paper has been developed at a preliminary stage in the policy discussions in order to share our members' expertise and inform the debate. It is not directly attributable to any individual member and we invite you to contact our members, should you like to better understand their specific situation.

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