

Startup and Scaleup Ecosystem

Recommendations for Policy Change

Introduction

The facts are not to be disputed: Europe boasts an abundance of early-stage startups and is lacking in unicorns. Entrepreneurs come up with innovative ideas, found organizations, and approach their local economies with bold enthusiasm. And yet, there is an undeniable pattern in the growth process. Startups tend to experience a degree of growth early on, reach a plateau, and either remain on steady domestic footing or meet an untimely death. They have trouble expanding internationally, as the European market is fragmented and often proves a legislative nightmare that very few startups have the resources to manage. This is in clear contrast to the American landscape, which demonstrates significant advantage not necessary in legislative ease, but rather in size and openness. That European policymakers have still failed to realize the Single Market is a major legislative disappointment that has resulted in an unwelcoming internal ecosystem that forces startups to re-incorporate into each member state's market. Europe has repeatedly bypassed its opportunity to construct a landscape that is conducive to scaling startups in the same manner as that of the U.S. and has, accordingly, been deprived of countless unicorns.

With this in mind, and intent on completing the Single Market, we approach the European Commission with several suggestions regarding regulation and deregulation of the startup and scaleup landscape. All appeals for policy improvement fall into one of the following seven areas: Startup Single Market, value-added tax, copyright, data protection, data localization, digital identity, patent law, platforms, the SME Test, carveouts, artificial intelligence, and administration.

1. Single Startup Market

As noted above, the lengthy, complex, and unfinished business of the Single Market is a major issue in regard to startup and scaleup policy. We strongly believe that a bolder, more ambitious approach to this goal is necessary in order to provide a friendly and manageable European ecosystem for startups and scaleups. With this in mind, we recommend the construction of a single legal framework for qualified startups and scaleups, based on the [Startup Single Market](#), effective in Italy since 2012. Concrete information and recommendation regarding a pan-European version of Startup Single Market are outlined below:

1A. Single Startup Market—Italy

This Italian legislation includes a regime specific to startups and scaleups and facilitates a unique, simple, and competitive legal framework for corporate, labor, tax/fiscal incentives, stock options, and bankruptcy matters. For example, Italian startups that have been accepted into the database are immediately qualified for startup-specific legislation: the option to utilize the equivalent of the U.S.’s “Chapter 11” law, simplified labor law including the option to hire and dismiss talent more easily, the opportunity to offer stock options as a share company, and the possibility of engaging in equity crowdfunding, among others. There are between 20 and 30 legislative functions offered exclusively to startups and scaleups. The legislation has proven successful in Italy, putting aside a few logistic challenges. The most prominent challenge is validating startups in the database, which should prove easily solvable via a relevant algorithm on a functioning platform.

1B. European Single Startup Market

On a European scale, we recommend beginning with a pilot program of between 3 and 5 countries who will implement the startup-friendly legislation for a two-year period. During this time, other Member States can voluntarily engage as they see fit. The legislation should be simple, digital, and stand-alone. The Startup Single Market model should prove beneficial especially to smaller Member States looking to increase access to a larger market for their startups and scaleups. The idea of a European Startup Single Market received a positive response from representatives and policymakers in the UK and Estonia. This is also true of members of the Unicorn Forum (made up of CXOs from Europe’s most successful scaleups to date—Frédéric Mazzella of BlaBlaCar, Eric Wahlforss of Soundcloud, Renaud Visage of Eventbrite, Robert Gentz of Zalando, etc.).

2. Value-Added Tax

Second, we endorse the development of a seamless, easy-to-use pan-European clearing house for VAT recovery. This process needs to commence immediately, as it is no speedy undertaking – startups and scaleups are losing precious resources dealing with the administrative and financial burdens that the current VAT system creates. The Commission’s 2017 [modernization of VAT for e-commerce](#) was a step in the right direction and we applaud this action. In the future, we endorse a threshold of €50,000 as a more ambitious VAT declaration minimum. Walter Palma, Investment Manager at Caixa Capital, asserted that “The creation of a reasonable broad VAT-free threshold (say between €50k and €100k) would go a long way to incentivizing the creation of EU-centric e-commerce businesses by allowing them to quickly and economically test their strategies in the marketplace without the burden and costs associated with cross-border VAT compliance during the initial startup phase.”

3. Copyright

Third, we assert that the Commission should make copyright an instrument for innovation. In order to improve the business environment for organizations, Europe requires intellectual property legislation that aligns with technological development and the realities of a digital age. Intellectual property reform can be broken down into four clear action points:

3A. Extend and Coordinate Exceptions and Limitations

First, legislators should both extend and coordinate exceptions and limitations in copyright, as well as build added internet-friendly flexibility into the existing framework. Current models to consider might be copyright introduced in Japan and the U.K., which more expansively define ‘exceptions and limitations’ in copyright, or the ‘fair use’ system present in Israel, South Korea, and Singapore.

3B. Snippet Tax

Second, policymakers should reject the ‘snippet tax.’ The regulation would require online platforms to pay for usage of short excerpts as links to external articles. Financial burdens would be unreasonable and, realistically, this would decrease traffic to the external articles.

3C. TDM Exception

Third, legislators should include a broad exception for TDM (text and data mining), covering both commercial and non-commercial activities. Europe is the second largest region for data analytics – full of potential and a growing market. Its size should be taken advantage of in this regard. Exploiting this potential is impossible without a blanket TDM exception. With this in mind, Europe should devise such an exception in copyright law, granting startups the right to mine material for which they already own legal copyrights or which is freely available on the internet.

3D. Pan-European Startup & Scaleup Licenses

Finally, policymakers must provide pan-European licenses to all startups and scaleups. These licenses should render goods available in one member state legal in all 28 member states, sans exceptions. Legislation should take immediate effect and avoid gold-plating, a process which provides member states the authority to alter EU regulation by annexing domestic law, resulting in excessive procedural and other burden on startups and scaleups.

4. Data Protection

Fourth, data protection should be rendered simpler to follow and more coherent. Europe needs a data-policy framework that allows businesses to exchange the information they need without obstacle and focus on delivering their core values. In order to follow through on such legislation, policymakers should consider taking three urgent measures:

4A. Legal Clarity

In regard to data-protection regulation, it is vital to note that many issues are decided in courts. This results in a lack of legal certainty for scaleups, as they are unaware of legality (or illegality) of their activity and will not be clued in until they face significant financial burden via lawsuit. Startups and scaleups need legislation that is as crisp and transparent as possible, with no room for (mis)interpretation. They benefit from legal certainty and predictability in regulation; the ambiguity of a law, rather than what it permits or prohibits, is the real issue.

4B. Applaud for the Privacy Shield

Take steps to make sure cross-border data exchange is secure & effective. What is now the Privacy Shield – and used to be called the EU Safe Harbor Agreement – is an accord which allows startups and scaleups to store data of EU customers in the U.S. This is an easy-to-opt-in tool for startups to provide legal clarity and security in regard to cross-border data transfer. We

applaud this legislation and assert that it should remain in place. If repealed, startups and scaleups will experience an extreme increase in legal fees that will hit hard at limited resources.

5. GDPR

Legislators should make restoring European policy in data protection a priority. With GDPR put into practice on May 25, policymakers must take this opportunity to gauge capacity to handle the introduced legislation, as well as to observe its pain points. Surveying and analyzing the realities of current data protection law will allow policymakers to review and revise the legislation accordingly in 2020.

6. Structured Dialogue: Data Protection Authorities

It is also necessary to initiate a structured dialogue between national data protection regulators and startup associations. Data protection supervisors are often lawyers – this means that they need cultivate and develop specific expertise on practices of data-driven startups and scaleups, a practice that is only truly feasible via direct contact with the source. We request that Data Protection Authorities be open to receiving and responding to concerns of startup and scaleup communities.

7. Data Localization

Seventh, legislation should absolutely exclude any requirements for data localization – laws which necessitate collection, processing, and or storing of data to be carried out within the country of origin and to abide by domestic laws before being transferred elsewhere. The real interest of startups is in reliable, safe, and affordable data storage. Data localization results in quite the opposite: higher costs for cloud-driven services (on which many startups rely), increased uncertainty, and escalated regulatory burden. Moreover, localized data does not necessarily imply safer data – regulators should focus on raising data security standards rather than imposing national storage requirements.

8. eIDAS

We applaud the use of eIDAS for public sector services. If effective, we strongly endorse its employment in the private sector.

9. Unified Patent Court & Unitary Patents

We also applaud the ratification of the Unified Patent Court agreement by several Member States and endorse its ratification by all other member states in the coming months (in particular Germany, as this legislation cannot move forward without its signature). This will allow for Unitary Patents to be made a reality, thereby decreasing patent cost and legal complexity for startups and scaleups across Europe.

10. Platforms

Next, the Commission recently proposed an initiative titled Fairness in Platform-to-Business Relations. This initiative attempts to address what the hotel lobby claims to be unfair trading practices between online platforms and businesses if these businesses are selling to consumers via the platform. In reality, this was in response to an attempt from the hotel and restaurant lobby to reverse progress made by platforms – that is, they had been threatened by industry disruption and found such an initiative important retaliation. In reality, online platforms allow entrepreneurs to maintain a tighter focus on their core value, reduce costs affiliated with launching a business, and broaden reach in Europe’s fragmented market. Startups not only use platforms but are often platform providers themselves. While the hotel initiative has already been launched, we propose that this type of measure is avoided in the future and not be repeated in other industries.

11. Carve-outs

As they consider changes in legislation on a broader scale, policymakers should reflect on the use of legislative carve-outs. While the idea of regulatory exceptions for startups and scaleups was surely well-intentioned, the reality of startup and scaleup growth is more complicated than the practice allows for. That is, while carve-outs work in the short-term, they fall short in the long-term. SMEs benefit from such a practice based on the notion that they will [remain small businesses](#) for the foreseeable future. On the other hand, startups and scaleups will, if doing their jobs right, grow rapidly within a relatively short period (5-7 years). This takes them from exempt to contingent in too short a period, as their growth will render the legislation from which they were previously excused now binding. With this in mind, we advocate that all laws should be revised until they are rendered workable for all parties, with no carve-outs necessary for more than that period.

12. Scaleup Test

In this same vein, we are aware that the [SME Test](#) has been put in place, evaluating laws through structured dialogue with startup and broader business communities to assess new legislation's impact on growth, productivity gains, and company scaling. This is a productive regulation and we endorse its continuation. Still, we advocate for an additional element: the Scaleup Test, which should further evaluate all proposed measures based on potential effect on small, high-growth companies' growth, jobs, and internationalization

13. Artificial Intelligence

In response to the Commission's recent proposal regarding artificial intelligence, we assert that all legislation concerning the technology be [startup compatible](#). This request is justified by the technology's origins: before AI appears in the mainstream in any form, it is innovated by a startup. Large companies generally buy AI solutions from startups or co-create alongside them. This should underline startups' and scaleups' status in the field – they are the focal point of future innovation in artificial intelligence. If legislation is too tight concerning the technology, then, startups will be unable to comply (either based on financial or other burdens). If they are not careful, policymakers taking the strict policy approach will kill off all AI innovation.

14. Administrative Progress


In considering reform on behalf of startups and scaleups, legislators need also account for improved administration practices. The following should be put in place:

14A. Documents Online and Translated

All official forms and documents should be available online and in certified translations of all EU languages.

14B. Digital Processes

Administrative services and registrations should be first and foremost a digital process, taken from paper into online systems which allow for increased pan-European and global accessibility.



14C. Digital Infrastructure Investment

Significant investment in Europe's digital infrastructure should take precedence. In fact, the goal should be 100% penetration of high-speed broadband and widespread rollout of best-in-class 5G internet access.

15. Consumer Rights Regulation

Finally, policymakers should harmonize consumer rules in member states via rapid approval of a single European commercial contract that companies and consumers can use on a voluntary basis for all cross-border transactions.





Acknowledgements & Signatories

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Our gratitude, as well, to those who contributed feedback in all forms: comments, constructive criticism, and additional innovative suggestions. As always, this paper is the work not of one person or organization, but of an entire bright, engaged, eager community. Using a crowdsourcing methodology, the document was drafted keeping in mind input and feedback from dozens of individuals and organizations, compiling decades' worth of experience in startup and policymaking fields. We applaud these contributors and their willingness to cooperate in a collective project that provides the startup and scaleup voice to the European Commission. We look forward to seeing the change this brings in the next term of EU leadership.

Below, we have provided below a list of signatories to the paper, all of whom endorse its contents in full, and many of whom have engaged to a certain degree in its construction.

Signatories

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Startup Britain

Bulgarian Business Forums

Startup Cyprus

Startup Estonia



- France Digitale
- Hellenic Startup Association (Greece)
- Startup Ireland
- Italia Startup
- Startin.lv (Latvia)
- Lithuanian Startups
- Luxinnovation (Luxembourg)
- Startup Delta
- Startup Poland
- Beta-i (Portugal)
- Serbia Startup
- Sapie (Slovakia)
- Startup Slovenia
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