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PROPOSED REGULATION ON EU INC. (28TH REGIME)

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INTRODUCTION

BusinessEurope welcomes the EU Inc. proposal (28th regime on company law) as an optional instrument to facilitate entrepreneurs and companies to incorporate, scale up, and operate across all Member States and EEA countries, and help attract investment by offering a reliable and simple EU corporate framework. The approach to prioritise administrative simplicity, flexibility, and digitalisation will help reduce the costs and administrative burden associated with company formation, which is highly positive from a business perspective.

The EU Inc. should not be seen in isolation but as one among the other EU initiatives and tools (present and future) that are necessary to make Europe more competitive. It should by no means be seen as a cure to all problems companies face in the Single Market. BusinessEurope elaborated on the necessary measures to improve the business environment, investment, and conditions for all companies in the EU, in its 'From Ambition to Delivery paper. While we fully support the proposal, we consider that a few improvements in a few specific respects can shape the EU Inc. into a uniform and attractive European corporate legal framework that genuinely promotes the growth of all companies, including SMEs, export-oriented SMEs, and start-ups in Europe, fosters competitiveness, and facilitates full access in the Single Market.

This position paper builds on our reply to the Commission Public Consultation from September 2025 and our Company Law Priorities from November 2024, reiterating our support for a 28th regime on Company law. It contains BusinessEurope's main priorities for the EU Inc., including core elements of the original proposal that should be preserved, as well as detailed comments on the relevant parts of the Commission's proposal where adjustments or clarifications are required.

MAIN MESSAGES

BusinessEurope **welcomes the EU Inc. proposal and endorses its overall objectives. The focus on company law** contributes to legal certainty, higher chances of quick adoption, and to a solid starting point for the development of the EU Inc. It is essential to maintain this focus to ensure a robust foundation for the regime and to allow it to deliver tangible benefits in practice.

BusinessEurope strongly supports **the following core elements of the EU Inc. Proposal, which must be preserved** for an efficient, legally certain, and workable outcome:

- The **form of a Regulation** is very important to ensure uniformity and less fragmentation.
- Automatic **recognition across Member States.**
- It should be **made available to all types of companies.** It should neither be limited to specific categories of companies, like innovative companies (or any other category difficult to define), nor exclude certain forms or sizes of companies.
- Possibility to **create an EU Inc. ex nihilo** or from scratch and by **individual entrepreneurs/persons,** not only by preexisting companies like the Societas Europaea (SE).

- An **optional company law instrument** that comes in addition to existing national company law forms.
- The **once-only and digital-by-design principles throughout the company lifecycle**, including, among others, in digital incorporation and operation, automatic transmission of information to tax, social security and ultimate beneficial owner authorities, digital shareholder meetings, and full integration with the **European business wallets** should be strongly upheld in the final text and strictly adhered to in order to ensure a quick, simple, and fully online-created company form.
- **Optional templates are welcome**, accompanied by sufficient **contractual freedom to founders and shareholders** to design the Instrument of Constitution/Articles of Association in a way that better meets the needs of the company. The form of templates should be future-proof and technology agnostic.
- **Preserving the blacklist of prohibited Member States practices in article 103** (e.g., obligation to have a local representative or physical presence to take up or exercise an economic activity in another Member State).
- **No requirement of unity of seat** should be imposed, whereby the registered seat and the main place of business or central administration need to be located in the same Member State, as this would go against freedom of establishment, recurrently recognized by case law of the Court of Justice of the European Union.
- **Proportionate safeguards of different nature and scope** are important in order to prevent EU Inc. misuse, money laundering, fraud, and misuse from third-country companies or foreign entities. Without compromising the attractiveness of this regime, appropriate legal and governance safeguards may also be considered where necessary to address sovereignty, security, and strategic autonomy principles.
- **National law references to be kept to a minimum.** It is important to limit reliance on national law. Also, in order for the EU Inc. to genuinely become a uniform and attractive company form across the EU, it is important to clarify when national law is applicable, both in areas covered by the regulation and in other areas.

The EU Inc. should not include specific provisions on labour law (as per Recital 83 and Article 4(2)), and on codetermination, it should be limited to what is already foreseen in Article 12. The European Commission has sufficiently justified in its Impact Assessment the choice of excluding other areas of EU law in this proposal. Otherwise, prolonged debates on legal competences, legal basis, and substance can arise, that would seriously delay or jeopardise the chances of adoption of the file.

We have strong **concerns about the added value of insolvency rules** in this proposal, especially regarding Chapter X on winding up of innovative startups, also in light of the recent reform of EU insolvency rules. We prefer the removal of this chapter, as maintaining these provisions risks reopening politically sensitive discussions that were only recently concluded during the negotiations on the EU insolvency reform.[1]

While this optional regime can be an important foundation for companies to set up and grow across the EU, **it is only one among many other measures** that are necessary to restore the EU's competitiveness and deeper Single Market integration. The **EU must not shy away or delay work on other important reforms**, which BusinessEurope lays out in our 'From Ambition to Delivery' publication. Many challenges and structural barriers, such as regulatory fragmentation, readiness and disparities among Member States regarding digital infrastructure, cybersecurity and data protection, differences in implementation between Member States, and operational constraints, continue to have a significant impact on business activity in the EU. In this context, it is important

[1] The Confederation of Industry of the Czech Republic (SPCR) does not fully support this position.

to ensure that the initiative is accompanied by a more comprehensive and structured approach to identifying and removing these barriers, including better incorporation of business input and effective monitoring and enforcement mechanisms, such as the Single Market Barrier Tracker and the Single Market Enforcement Taskforce (SMET).

COMMENTS ON KEY ELEMENTS OF THE PROPOSAL

1. PREVENTING FRAGMENTATION: REGULATION FORM + LIST OF FORBIDDEN MEMBER STATE PRACTICES

We welcome the fact that the EU Inc. is being proposed in the **form of a Regulation**, which is the most effective way to ensure uniformity in the national laws of Member States and to prevent fragmentation. However, there is still reliance on national laws. The future should not be 27 versions of EU Inc., complexity, and unproductive gold plating that hinder company creation and operation within the internal market. It is essential that **national law references are kept to a minimum.** It is also important to clarify when national law is applicable, both in areas covered by the regulation and in other areas. Implementing rules/guidelines might be necessary to ensure uniform application whilst helping to prevent abusive forum shopping (and circumvention) practices at the expense of third parties' interests (including workers, minority shareholders, creditors) and public interests (social security rules, tax, anti-money laundering, etc).

For companies, particularly start-ups, the harmonised interpretation of EU Inc. rules is crucial, as legal certainty depends not only on incorporation but also on predictable enforcement across Member States.

We also **welcome the blacklist of forbidden practices under Article 103.** Member States should treat EU Inc. companies the same way they treat other limited liability companies formed under their national laws, in order to ensure the effectiveness of the EU Inc. and a level playing field. Article 103 formal prohibition should be backed by rapid and practical enforcement, as challenging the national barriers can take years, which can be a halting factor for the prosperity of start-ups.

PROPOSED SOLUTION

- **Reliance on national law should be kept to a minimum. It should be further clarified when national law is applicable.**
- **EU Inc. founders should have access to means (including making use of existing internal market-related platforms) to quickly and effectively signal when Member States are breaching the list of practices in Article 103.**

2. PERSONAL SCOPE: OPENNESS/INCLUSIVENESS TO A WIDER GROUP OF COMPANIES AND METHODS, AND CREATION

The **EU Inc. should remain open to all types of companies**, even if (innovative) startups and scaleups will potentially be the ones benefiting the most. Following the objectives of the Regulation proposal, the EU Inc. should also enhance competitiveness and foster growth for all EU companies that operate at EU scale, irrespective of their size and type. All EU companies often have to deal with high levels of fragmentation and administrative burdens, so the opportunity to opt for the EU Inc. form should remain as open as possible.

We welcome that EU Inc. **can be created *ex nihilo*** (from scratch) and **also by natural persons** rather than just by companies/legal persons, as is the case with the *Societas Europaea* (SE). This ensures inclusiveness, with individual entrepreneurs also getting the opportunity to use the EU Inc.

3. MATERIAL SCOPE (I)

Labour law to remain unaffected, and worker participation provisions limited to the content of Article 12 of the proposal

The proposal should maintain its focus on how companies are set up and managed, from registration to corporate governance, share structures, and digital company procedures. No specific labour law rules should be devised. There should be no distinction between the general EU legal framework that applies to all EU companies and the rules that apply to EU Inc. companies. **The EU Inc. proposal does not affect rules protecting workers or their existing rights, and this should continue to be the case, as stated in Recital 83.** Businesses have the same obligations towards workers, whether they are incorporated under the EU Inc. or another national company law form. **Union and national employment law continue to be applicable according to Article 4(2) of the proposal.** Competence for these matters fundamentally lies with the Member States.

Should the legislative process on EU Inc. envisage introducing changes to labour law rules or rules on co-determination, which we would oppose, this would not only require a different legal basis (i.e., Article 153 TFEU) but would also lead to protracted negotiations similar to those in the past, e.g., surrounding the *Societas Europaea* (SE). Other previous initiatives, such as the *Societas Privata Europaea* (SPE) or the *Societas Unius Personae* (SUP), have already failed due to a lack of agreement on specific rules on co-determination/employee participation. These changes will compromise EU Inc.'s feasibility due to foreseen political blockage, slow adoption, and legal uncertainty.

The **proposal already includes all the proportionate and necessary safeguards against circumvention of rights (including on co-determination)**. Rules for employee participation are, namely, foreseen in recital 16 and in Article 12 of the proposal that covers all the possible situations:

- When the EU Inc. is created ex nihilo (from scratch) or by domestic conversion, merger, or division, labour rules for employee participation of the country of registration of the company apply;
- When an EU Inc. is created by a cross-border merger, division, or conversion of an existing company, then there are special EU company law rules concerning employee participation (from the 2019 Mobility Directive)[2] that will apply to protect workers.

[2] Directive (EU) 2019/2121.

4. MATERIAL SCOPE (II)

Questionable added value of additional insolvency rules

In light of the recent EU reform of EU Insolvency rules,[3] we are not convinced about the need for additional rules or even for a specific regime for the winding up of innovative startups. We fear that the existence of overlaps with national rules on liability, contract law, and company law may give rise to legal uncertainty, particularly where EU provisions interact with mandatory national law. As disputes will ultimately be assessed by national courts, this may also lead to divergent interpretations and unequal outcomes across Member States, even where the same EU rules apply. The proposal also lacks clarity regarding the role and powers of public authorities in initiating, supervising, or intervening in insolvency and liquidation procedures of EU Inc. companies. This raises concerns about enforceability and effective oversight, particularly in cases involving cross-border activities or potential abuse.

Insolvency proceedings for EU Inc. innovative start-ups (Chapter X of the proposal)

The Commission proposes in Chapter X a simplified windingup procedure for insolvent EU Inc. companies that qualify as innovative startups under the definition in the Commission recommendation accompanying the proposal. Among the features of these insolvency provisions, the proposal introduces a simplified liquidation procedure, allowing the debtor - provided that its accounts are up to date - to self-liquidate without the involvement of an insolvency practitioner.

We have identified several reasons why this separate and parallel insolvency regime for EU Inc. innovative start-ups would create complexities:

- Different insolvency regimes side by side can lead to inconsistencies. It may appear inconsistent to introduce a separate insolvency regime for a specific type of EU Inc., particularly given that the purpose of the legislation is to simplify and create predictability for entrepreneurs and investors. Assessing whether a company qualifies as an innovative startup may be complicated and risks leading to uncertainty as to which rules to apply.
- The parallel regime has different starting points: The start-up criterion ("as soon as a company is unable to pay its debts and they are due") lowers the threshold for insolvency and can lead to unnecessary termination of companies. It may also discourage timely restructuring efforts and increase the likelihood of premature liquidation of otherwise viable businesses, thereby undermining the objective of preserving economic value and employment.
- The Commission proposes that the simplified procedure be initiated at the debtor's request, with insolvency deemed to exist when the debtor is unable to pay debts as they fall due. A prerequisite for initiating the procedure should be that the inability to pay is not merely temporary.
- The proposed regime on insolvency for innovative start-ups may have implications for access to finance, as increased legal uncertainty and weaker creditor protection could lead to higher risk premiums or reduced willingness of lenders to provide financing.
- As a main rule, an external insolvency practitioner (comparable to a bankruptcy trustee) is to be appointed when a court or other designated authority decides to open the simplified procedure. The main rule may be departed from at the request of the debtor or creditors, provided that the debtor has an uptodate balance sheet and annual accounts. It does not seem appropriate that the windingup procedure may be carried out without the involvement of an independent practitioner tasked, inter alia, with protecting creditors' interests. For creditors, this means that they could be unable to recover assets, as the statement of liabilities could not be properly established due

[3] Directive (EU) 2026/799.

to a lack of access to documents and information, and in the absence of a practitioner capable of verifying the existence of claims. Companies' employees risk being unable to activate national wage guarantee schemes and, consequently, assert their entitlement to unemployment benefits, due to a lack of awareness of these procedures. Granting the debtor full control (absence of practitioner) during a windingup procedure is, in our view, incompatible with a sound legal order for a number of reasons, including the following:

- The fact that there is an up-to-date balance sheet does not guarantee the regularity of subsequent transactions to be carried out by the company, and is not sufficient to justify the absence of practitioners;
- Intangible assets, which could lead to difficulties in the event of a sale, particularly in the absence of a practitioner who could have ensured a transparent process;
- Small companies are not accustomed to managing financial figures, and support by a practitioner in dealing with certain creditors may be necessary;
- It is often difficult to ascertain the fair value of companies' assets and to find a buyer, especially in the absence of a practitioner;
- Absence of independent oversight also raises concerns from a public interest perspective, including the prevention of fraud, asset stripping, money laundering risks, and unequal treatment of creditors, particularly in cross-border contexts where effective supervision and enforcement is already more complex;
- The EU Inc. does not have a minimum capital requirement.

- The proposal leaves several issues unanswered, including the possibility of clawback of previously paid debts. Against this background, it may be questioned whether special insolvency rules for EU Inc will lead to the simplifications sought by the Commission, particularly given that the legislation applies only to certain categories of EU Inc.
- Finally, chapter X of the EU Inc. proposal largely resembles the earlier excluded chapter from the Directive on harmonisation of certain aspects of insolvency law (now in force), which concerned a simplified windingup procedure for insolvent microenterprises. There are substantive reasons to believe that the factors that led to insufficient support among co-legislators for the relevant chapter in the recently adopted Directive on the harmonisation of certain aspects of Insolvency Law remain valid.

PROPOSED SOLUTION

- **Specific provisions on winding up for innovative startups need to be reconsidered and removed.**[4]

5. REGISTERED OFFICE, CENTRAL ADMINISTRATION, AND PRINCIPAL PLACE OF BUSINESS – ARTICLE 9

We support that the EU Inc. shall have its registered office and its central administration or principal place of business in the Union. There should be **no unity of seat** requirement.

[4] The Confederation of Industry of the Czech Republic (SPCR) does not fully support this position.

6. KEEP DIGITAL, MODERN, EASY, AND FAST FORMATION & REGISTRATION PROCEDURES

Digital by design registration – Article 10

We strongly support the ability to use digital tools to incorporate and to link information on the company. This creates an incentive to opt for an EU Inc., enhances transparency, and is compatible with the latest reforms of EU company law.

The proposal provides for mandatory preventive administrative, judicial, or notarial control upon incorporation and during amendments to the articles of association. However, it is crucial to ensure that this requirement is not in practice undermining the objective of rapid incorporation (the proposed 48-hour deadline for the simpler EU Inc. structure that uses model templates) and limited cost, in order not to defy the purpose of the EU Inc., particularly in Member States with traditionally more cumbersome procedures. It would also be important to clarify whether 48 hours count as working or include non-working days and holidays, in order to allow sufficient and predictable time for preventive controls.

We particularly support, both at registration and during the rest of the lifecycle, the interconnection of national registers and exchange of information through BRIS and the associated digital exchange of information between registers and authorities responsible for the **tax identification number (TIN)** and the **VAT identification number, social security** and the **identification of beneficial owners (UBO registers)** for anti-money laundering purposes, which can significantly reduce administrative burdens for companies. This feature on automatic link (and update) of company information enhances transparency, helps fight misuse, and deters fraudulent behaviour.

The proposal should also address the situation of EU special fiscal territories (as defined under Article 6 of the VAT Directive[5]) that do not fall within the EU VAT area and do not issue VAT identification numbers. The registration and information exchange system must accommodate EU Inc. companies registered in these territories, ensuring they are not operationally disadvantaged or excluded from the system due to the absence of a VAT number. Equivalent functionality and interoperability must be guaranteed for all EU Inc. companies registered within the territory of EU Member States, including special fiscal territories falling outside the EU VAT area.

While fast and fully digital incorporation (balanced by proportionate and appropriate safeguards against misuse and fraud) is a key and positive feature of the proposal, the speed of incorporation in itself may not be able to effectively address the underlying barriers faced by companies. Incorporation alone does not ensure access to essential elements for doing business, such as opening a bank account, securing financing, or obtaining the necessary permits. It is therefore important to remain realistic about what the EU Inc. proposal can achieve in terms of benefits.

Once-only principle and integration with European Business Wallets

The once-only principles should guide registration, filing, and acceptance of documents and information regarding the EU Inc. throughout the lifecycle of the company, in order to alleviate companies and physical persons in companies from the burden of resubmitting information in administrative and judicial procedures, where this information is accessible through BRIS or in the relevant business register. Relevant authorities should be able to extract relevant data from information already submitted, for example, in annual reports. Additional reporting requirements are not necessary and must be avoided.

[5] Council Directive 2006/112/EC.

It is positive that the EU Inc. builds on the EU Business Wallets (EBW) proposed Regulation, relying on existing EU instruments for its technical implementation. The Commission also needs to ensure that adequate operational and technical conditions exist for the implementation of the EU Inc. and that there is a solid foundation from an implementation standpoint. Therefore, the adoption of the EBW should ensure interoperability and also be timely for the implementation of the EU Inc.

EU central interface – Article 15 – consideration to be given to a "real" EU register

It is positive that a common EU interface managed by the European Commission is proposed for the registration of EU Inc. companies. However, this system relies on BRIS, meaning it depends on referral to Member States commercial registries. We regret that a separate European company register can only come as early as 2030 (after phasing out the EU interface). The creation of such an EU register is essential to consolidate the complete EU Inc. incorporation process so as to guarantee rapidness and flexibility which are the basis of this Regulation.

Due to the lack of a central EU register and the fact that registrations will be handled by national registration authorities, there is a risk that there will be differences in application and interpretation, which increases the risk of fragmentation. There are advantages to having an EU Company register. First, from an operational perspective, speed will be crucial; ideally, the EU Register should be fully functional by the time the EU Inc. enters into force, in order to avoid a fragmented and transitional reliance on interconnected national registers. Second, it is essential that the Commission takes clear responsibility for the development, maintenance, and governance of this register. The EU Register could play a central role in the credibility, reliability, usability, and good functioning of the EU Inc.

PROPOSED SOLUTION

- **A central EU registry for EU Inc. should be introduced sooner, without compromising the swift entry into force of the EU Inc. Regulation.**

Coherence with the Digital Tools in Company Law Directive[6]

Further clarification is needed on how the digitalisation and digital processes envisaged under the EU Inc. will align with, or differ from, the processes already imposed by the Digital Tools in Company Law Directive. It is important to prevent parallel and diverging digital processes, leading to confusion, inefficiencies, and additional costs.

Uniform Application Form – Article 13

We welcome the uniform application form for the formation of an EU Inc.

Requiring all prospective board members to sign applications under Article 13(2) could be considered disproportionate. It should also be ensured that the methods for signing documentation function adequately for board members resident outside the EU/EEA (see also, for example, Article 23).

Freedom to regulate the Articles of Association, alongside the provision of standardised \templates – Articles 7- 8

We welcome the flexibility afforded to the founders of EU Inc. companies under Articles 7 and 8 to develop their Articles of Association, allowing them to tailor the company to their intended objectives

[6] Directive (EU) 2025/25 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law.

and to regulate key matters and operational details within those articles. Regarding Article 4(2), it should be made clear that Articles of Association cannot undermine and circumvent national norms that have mandatory nature/norms of public order (e.g., banking law including capital requirements, labour law, consumer law, GDPR, AML, specific licensing requirements, etc.).

The optional nature of the EU templates provided is essential to facilitate the drawing up of Articles of Association and should remain. If the EU templates are too rigid or limited, there is a real risk that companies will quickly have to revert to tailormade statutes, thereby losing many of the practical advantages associated with speed, cost reduction, and harmonisation. Given that the EU templates are not a secondary element but rather a cornerstone of the effectiveness of the EU Inc., their design will be decisive for the success of the instrument.

PROPOSED SOLUTION

- **It is crucial that the optional templates are developed in a sufficiently flexible manner, in consultation with relevant business stakeholders, and offer a good range of options and configurations, making them attractive for companies and allowing them to tailor their corporate structure within the framework of standardisation, while remaining practical, proportionate, and workable across all Member States.**

Company names and trademarks

The proposed rules on company names appear reasonable as such, but are very brief compared to corresponding provisions in national law (see Article 6). It is positive that the central interface is to contain information on trademarks and designs and that existing resources, such as the EUIPO registers, are to be used. However, it must be ensured that the checks carried out are sufficient to avoid conflicts with other trade identifiers, such as trademarks, trade names, and business names, under national and EU law (see Article 13(7) and 15(6)).

Branch offices

It is our understanding that the provisions related to branches derive from general EU law. The EU Inc. should, like other companies, have the freedom to establish branches with minimum legal requirements, should they wish so for their cross-border operations. It should be possible for an EU Inc. company to operate in all Member States without additional registration of a branch office or legal entity, in order not to contradict the purpose of the EU Inc., which is to facilitate cross-border operations.

7. PROVISIONS ON DIRECTORS AND COMPANY ORGANIZATION

Disqualification of Directors – Article 22

To prevent criminal actors from gaining access to business activities, it is positive that a disqualification from serving as a director in one EU country results in a corresponding disqualification from serving as a director in a company registered under the EU Inc. Article 22 and Article 13(5).

PROPOSED SOLUTION

- **It must be expressly stated that the EU Inc. cannot in any way be used to circumvent other European legislation on the disqualification of directors under the Insolvency Directive (2019/1023) and the register of director bans under the Company Law Directive (2017/1132).**

Company bodies - Article 42: requirement of residence

Article 42(2) stipulates that at least one director must be resident in the Union. However, the term "resident" is not defined in the Regulation, and it is not clarified whether it refers to tax residence or habitual residence, nor what happens in the event of a change of residence after the appointment. This gap may lead to divergent national interpretations.

PROPOSED SOLUTION

- **Consider defining the concept of "resident" for the purposes of the proposed regulation.**

8. PROVISIONS RELATED TO MEETINGS

Meetings and voting by electronic means – Article 47

We welcome flexible rules on meeting formats and decisionmaking. It is essential that each company is able to organise its meetings and decisionmaking in the way that best suits the needs of the company and its owners – physically, digitally, hybrid, or through written procedures. The EU Inc. should recognize digital means as a fully equivalent option, respecting the principle of equivalence.

Quorum and Majorities - Article 49

It should be examined whether a default simple majority quorum requirement is appropriate for general meetings. Such a quorum requirement could allow one or more shareholders to block the company's activities simply by not attending or participating in a general meeting.

Deadlines of general meetings

Regarding deadlines of general shareholder meetings, it is important that the EU Inc. regulation provides clarity, avoids language that leads to 27 different approaches to general meetings, sets minimum standards that provide flexibility for adjustments in articles of association when shareholders wish so, without undermining shareholder protection in general.

9. PROVISIONS RELATED TO INVESTMENT, REGULATED MARKETS, STOCK OPTIONS, AND TRANSFER OF SHARES

The result of the EU Inc. should be to truly enable the free movement of human and financial capital across the EU, which startup and scaleup founders urgently need.

EU Inc in multilateral trading facilities and other regulated markets – Article 60

In case an EU Inc. company is admitted to trading on a multilateral trading facility or a regulated market, the effects of references to national and EU laws become particularly pronounced. It is explicitly stated that access to public markets will be subject to compliance with the applicable requirements under Union and national laws (Article 60). It will be key to understand how the application of national laws and regulations, as well as relevant national market practices and self-regulatory frameworks, will interplay with the EU Inc. framework.

Modern framework for ownership

We welcome that the proposal introduces a modern framework around share ownership, including **multiple classes or shares.** They provide flexibility for startups and scaleups to design the capital structure to their needs and facilitate growth.

Employee Stock Options (EU-ESO): Targeted strengthening of employee participation

We welcome the common European framework for employee stock options (EU-ESO), allowing EU Inc. companies to offer employees and board members the possibility to participate in the company's success (under Article 78). This flexible and modern capital regime, specially designed for the needs of innovative startups and scaleups, can support companies in attracting and retaining talent, in particular when competing internationally, and should be preserved.

While outside the core of the proposal, it will be important, especially for startups and scaleups, to preserve simple and uniform rules on EU-ESO. More prescriptive requirements in the Regulation risk reducing the attractiveness and practical usability of such instruments.

Digital register of shares

It should be checked whether rules of the share register (e.g., the numbering of every single share) are incompatible with the possibility of dematerialising EU Inc. shares in central securities depositories or tokenising these shares in DLT infrastructures regulated under the European CSDR[7] and the DLT Pilot Regime. If the EU Inc. is incompatible with central depositories, its shares cannot be admitted to regulated markets or MTFs, making public trading practically impossible.

It would be important to clarify whether the EU Inc. proposal also waives the creation of the reserve provided for in Article 63(1)(b) of the Company Law Directive (2017/1132) in situations where own shares are recognised as a deduction from equity and do not appear as a balance sheet asset.

The concept of "constitutive effect" in the digital register may not be entirely clear and would benefit from further clarification. According to Article 52, it appears that registration in the digital share register would have a constitutive effect, meaning that rights over the shares would only become effective upon such registration, following a review by EU Inc. of the relevant documentation and legal titles. This could create obstacles for commercial transactions and business financing. Any delay between the execution of the transaction and its registration in the digital register could result in periods of legal uncertainty during which the acquirer would not yet have enforceable rights. This situation could be especially problematic in cases of transfers mortis causa.

Transfer of corporate assets other than shares

The Regulation seems to address only ordinary share transfers, but not other corporate or asset transactions where sufficient formal documentation already exists. For example, in cases such as a share transfer as a capital contribution to another company or in structural modifications (e.g., mergers), these transactions must already be formalized in a public deed under some legal systems. It should be clarified how to efficiently address these situations.

Investor and shareholder protection

Clarifications might be necessary, for example, on the interplay between the EU Inc. rules and local legal requirements (e.g., local conversions) to understand how investors, minority shareholders, and creditors are duly protected to ensure that different interests are adequately balanced.

Shareholder informal resolutions

It could be considered to enshrine (e.g., in Article 48) informal shareholder resolutions as a reference for consensual decisions, adopting the model already provided by legislation or corporate codes in some national laws, allowing the traditional formality requirements, such as, for example, convocation processes, to be waived when there is agreement among all shareholders.

[7] Consolidated text Directive (EU) 2022/2464.

10. IMPORTANCE OF PROPORTIONATE SAFEGUARDS DURING THE LIFECYCLE OF THE EU INC.

Knowing that company law (rules of incorporation and /operation of a company) is not supposed to address every single obstacle or risk or even prevent every misuse, we welcome the goal to balance the simple and fast procedures with adequate tools and controls available to relevant registrars and authorities, without unnecessarily adding to the burdens of businesses.

There are several safeguards foreseen in the regulation (e.g., solvency and balance sheet test, director liability, automatic exchange of information between authorities on the company and their ultimate beneficiaries). These need to be preserved and be designed in a legally certain and Union-wide robust way.

It is our understanding that preventive controls will take place with the EU Inc., as they do with any other national legal form, and this should remain the case. For example, anti-money laundering checks are not exclusive to one or the other entities, but it is a control that involves a whole ecosystem with many actors, such as banks, accountants, auditors, lawyers, tax advisers, real estate agents, and even notaries (for the latter in those EU countries that have a notarial tradition). It is important that the proposal clarifies (in a recital or in a guidance document) which obliged entities perform customer due diligence at the point of incorporation and the subsequent supervision, particularly in cross-border scenarios where the registered office is in one Member State, but economic activity predominantly takes place in another Member State. Also, it should be clarified what the role of the Anti-Money Laundering Authority would be in this situation. These clarifications would be helpful to ensure effective and consistent supervision across the Union.

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