How to make the EU Inc. a success

Summary

- Banks play a vital role in financing business and support activities of the EU targeted at the growth and global competitiveness of European businesses.
- The creation of a 28th regime for an optional legal framework for a new EU corporate entity (EU Inc.) can serve as a promising building block to overcome the existing fragmentation. It can help develop a true integrated market fostering growth, investments and financing opportunities.
- The focused approach on corporate law aspects and the specific needs of companies in their start-up phase is good and important, but it is not sufficient. To be truly successful and fully effective, the framework for the EU Inc. needs to address the continuously evolving financing needs of such a company during all stages of its life cycle. Besides equity, it always includes **debt financing, in particular loans**.
- One key issue currently missing in the proposal thus is a **targeted harmonisation of contract and insolvency law aspects related to debt financing transactions** in the EU. The present legal framework for debt financing transactions is based on national law and significantly impedes cross-border transactions within the EU. Harmonised rules for financing agreements, including collateral arrangements, could be integrated into or modelled on the **EU Financial Collateral Directive**. Safeguarding the effectiveness of **financing and collateral agreements** would allow market participants to use the same standard agreements across the entire EU, significantly increasing legal certainty and reducing financing costs.
- The proposed **special insolvency regime** would, however, not address these impediments or legal uncertainties for intra-EU financing transactions. It would, quite the contrary, create disadvantages for capital givers and thus make financing more difficult and unattractive.
- We further propose to grant the EU Inc. the right to establish legally segregated "compartments" under certain circumstances and for specific purposes: This would allow the EU Inc. to also serve as the **EU entity for investment funds and securitisation vehicles.**

Key aspects from a banking and financing perspective

I. Introduction

Banks are the backbone of the economy, being providers of credit and capital, financial intermediaries and offering other financial services to their clients, particularly to businesses – and thereby they facilitate economic growth.

We therefore support the idea of a 28th regime in the form of an optional EU legal framework for a new type of EU corporate entity. We believe that the EU Inc. can be an effective means to overcome the currently existing fragmentation of the EU markets which currently impedes the creation and financing of new companies operating in the EU. The EU Inc. can also serve as an instrument to forge the path to an even deeper integration of the EU capital markets fostering growth, investments and financing opportunities.

While there is a clear focus on the corporate legal regime of the EU Inc. and the directly related issues such as equity aspects, shareholder classes, financing through capitalisation, employee participation as well as the completely digital process of the registration of the EU Inc., **a crucial aspect is missing: addressing the financing needs of the EU Inc through debt financing**.

We strongly believe that **the harmonisation of the legal framework for debt financing transactions, in particular loans**, needs to be added to ensure the success of the new EU Inc. and to secure its growth and competitiveness.

Conversely, there is **no need for a special insolvency regime** for a certain subset of EU Inc., especially where such regime is disproportionately disadvantageous for creditors and in practice disincentivises financing transactions with such entity.

We further believe that it should be explored to the introduce an additional optional feature for the EU Inc: The ability to **establish legally segregated compartments** under certain circumstances and for certain purposes so that this new entity can also function as an EU standard vehicle for funds or securitisation transactions.

These issues are addressed in more detail below. However, in view of the general consensus over many of the core elements of the corporate regime, the focus is on those issues of particular relevance from the perspective of financial institutions providing financing to businesses such as the EU Inc.

II. Details of our suggestions

1. Digital Registry

The digital registration process of the EU Inc. and its major corporate actions/events will be central to the success of the EU Inc.

From the perspective of financial institutions, the following three aspects will be essential in this context.:

- **Legal certainty**: The digital registration has to provide for legal certainty for third parties - as of a defined point in time - relying on the information published in the register in the same way and with the same legal effects as the registration of other registered companies established under the laws of the relevant members state where the EU Inc. is registered.
- **Accuracy of and reliance on information for KYC/CTF purposes**: The information in the register should be comprehensive and accurate so that it can be used and relied on by authorised third parties accessing the registers, including for KYC/CTF-purposes. However, it must be noted that parties interacting with the EU Inc. will nevertheless require additional and more detailed information. The information available via the corporate register will often not be sufficient to comply with existing legal and regulatory requirements for KYC/CTF-processes.
- **Share transfers, encumbrance/pledges**: Share transfers and encumbrances, pledges or other third-party rights in rem in respect of the shares should be reflected in the register.

The Regulation should therefore clarify that third parties can legally rely on all information in the register.

2. Harmonisation of legal framework for financing transactions including collateral

In any phase of an entity's existence, financing can be provided through equity or debt financing, including loans. During the start-up phase, equity financing may typically play a greater role and debt-financing a more limited one. However, debt financing, in particular bank loans, are indispensable both in the initial start-up phase and later. Their relevance will continuously increase over time.

Debt financing faces particular challenges in the EU since financing and collateral arrangements are governed by member state contract and insolvency laws which currently differ significantly. Consequently, all cross-border financing transactions within the EU have, in each case, to be adjusted to the laws applying to the specific set of circumstances and jurisdictions involved. The same is true regarding collateralisation. This exposes the parties to significant legal uncertainties, impedes the use of established standard agreements across the EU and increases financing costs.

The only major harmonisation instrument addressing these specific issues has been the EU Financial Collateral Directive[1] (FCD). However, the personal and material scope of the FCD is very restrictive. The FCD's rules have been transposed differently into national laws, particularly due to many opt-in and opt-out options. Hence, its harmonisation effects have been limited.

A targeted harmonisation of the contract law rules for standard financing and collateral arrangements and their insolvency effects would ensure that both investors and EU Inc. as counterparties will be able to rely on the same financing and collateral arrangements across the EU, thereby significantly reducing legal risks and financing cost.

At the same time, such targeted harmonisation would have a significantly greater impact on a positive EU investment climate than a separate insolvency regime for certain types of failed EU Incs: The harmonisation of the civil law framework, related to financing and collateral arrangements and their insolvency effects, would horizontally affect the whole market and all its participants. A separate insolvency regime for certain types of EU Incs. would, in contrast, only affect direct investors and contractual partners of the failing EU Inc. See further below under item 3.

The harmonised legal framework for financing and collateral arrangements could either be integrated into the FCD or could be implemented by a separate legislation.

The proposed Regulation should therefore address such targeted harmonisation. Recital 43[2] should better reflect the need for both cross-border equity investments and debt financing.

3. No specific insolvency regime

The proposal for a specific simplified insolvency regime for innovative start-up companies needs to be removed:

The failure of a company necessarily raises very particular challenges primarily determined by its specific business model, assets and market conditions which cannot be easily resolved by a standard, simplified insolvency regime. Such regime for a certain sub-set of EU Inc. companies is therefore unlikely to significantly increase the attractiveness. To the contrary, certain features of the proposed regime effectively work as strong disincentive for external/debt financing:

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[1] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements

[2] Recital (43): *Fragmentation of the laws of Member States concerning the financing of Union businesses constrains companies in their ability to attract investors, in particular from other Member States and third countries. Cross-border investors such as venture capitalists and angel investors are deterred by high transaction costs, complex cross border due diligence, and unfamiliar national corporate structures. To overcome these barriers and align with the objectives of the Commission Communication of 19 March 2025 entitled 'Savings and Investments Union. A Strategy to Foster Citizens' Wealth and Economic Competitiveness in the EU', the EU Inc. should be subject to a harmonised financing framework. This framework should be specifically designed to attract and facilitate cross-border equity investment by providing harmonised highly flexible and legally certain funding mechanisms. It should also balance and accommodate the needs of founders and of early-stage and growth investors to ensure that EU Inc. companies are highly attractive when competing for venture capital and other investments on a global scale.*

By favouring equity owners in granting them broad rights during the resolution process, the regime in turn disadvantages creditors disproportionally.

Specifically, the proposed stay directly and negatively affects the effectiveness of core risk mitigation functions of collateral arrangements and other risk mitigating instruments such as netting agreements. This means that counterparties to the EU Inc. will no longer be able to rely on these types of arrangements to reduce their risk exposure to this entity.

Such a general stay without exemptions for collateral and other risk-mitigating instruments will therefore directly increase financing cost and, in certain circumstances, make the EU Inc. ineligible for certain business activities: Any EU Inc. qualifying for this special insolvency regime would, for example, not be able to enter into hedging and many other types of financial market transactions with other market participants relying on financial collateral and netting arrangements.

The proposed special insolvency regime also raises concerns in view of a number of additional systemic and structural deficiencies, such as:

- The proposal does not provide for any adequate safeguards for creditors.
- Clear rules and criteria are lacking for determining the extent of the debtors' assets or insufficiency of assets and the proposed time limits are too short.
- The proposal does not provide for the involvement of a neutral party overseeing or verifying the process and findings.
- There are no clear rules which address the many questions and uncertainties directly connected to the concept of "innovative start-up", in particular provisions addressing the consequences of changes of business models over time, possible abusive use of this special insolvency regime in order to evade the application of otherwise applicable insolvency law and provisions clarifying how to coordinate this regime with the member state company and insolvency laws which will be needed to complete aspects not covered in the Regulation itself.

The proposed special insolvency regime is neither helpful nor necessary and thus should be removed from the proposal.

4. Possibility to establish compartments

Establishing the EU Inc. goes hand in hand with the opportunity to introduce - under certain circumstances and for specific purpose - segregated "compartments" which are insulated from a potential failure of the managing company and other compartments:

The ability to establish insolvency-remote, legally segregated compartments is an important feature of investment companies and securitization vehicles increasing efficiency and reducing costs for investors. Allowing the EU Inc. to establish compartments would make it possible to set out a common, internationally competitive EU standard corporate entity for investment funds and securitisation vehicles significantly facilitating investments in the EU.

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