Deutsches Aktieninstitut

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Creating the Missing Piece – EU Inc. and the Path Towards a Genuine 28th Regime in the Single Market

No Recourse to National Law and No Limitation to Company Law

Position regarding the EU Commission's Proposal for a Regulation of the European Parliament and of the Council on the 28th Regime Corporate Legal Framework – 'EU Inc.', 15 May 2026

Table of Contents

Make the 28th Regime a Success Story

Deutsches Aktieninstitut generally welcomes the European Commission's proposal for a 28th regime in the form of an EU Inc. A uniform corporate law framework in the form of a 28th regime overcomes legal fragmentation in the internal market. It makes it easier for companies to expand and finance their business activities across the EU and thus contributes significantly to the strengthening of Europe's competitiveness.

However, there are gaps in the regulation with the consequence that national company law functions as a fallback solution. This contradicts the aim of a 28th regime, which should offer companies a genuine European alternative without recourse to national law. In addition, limiting the proposed regulation to company law is not sufficient to overcome the legal fragmentation of the internal market in insolvency, labour, tax and securities law.

Deutsches Aktieninstitut therefore proposes:

- As an optional legal form, **the EU Inc. must be "competitive":** flexible in its basic structures and corporate governance, **and "financing-friendly"** in its design. Otherwise, companies simply will not choose the new legal form and investors will not finance it. The proposal largely reflects this flexibility. However, the application of national law threatens to restrict this flexibility again. Legislator can address this problem by specifying additional cases, for which the articles of association apply, as well as further model articles of association as templates in the annex to the regulation.

- We expressly welcome **the "register once"** approach and **the fully digital procedure;** however, we **reject a mandatory involvement of a notary.**

- We recommend that **companies under the 28th regime should be able to grow from cradle to stock exchange listing without changing their legal form** and by means of amendments to their articles of association. The regulation currently provides for the possibility of listing only on multilateral trading facilities such as SME growth markets. However, the regulation itself should clearly stipulate that EU Inc. companies may also apply for admission to a regulated market and should not leave this merely as an option for Member States.

- We welcome the fact that the EU Inc. can also be used as a group subsidiary. Nevertheless, the **regulation should expressively mention the SE as a possible parent company** and the possibility for the managing directors of the subsidiary to **take the interests of the group** into account.

- We advocate **extending the deferred taxation** provided for in the case of the EU Inc. **for stock option schemes to employee share ownership schemes.**

- A 28th regime will only make a serious contribution to the Savings and Investment Union if it does not stop at company law but **also covers other areas of law such as insolvency, tax, labour and securities law.**

1 Hierarchy, Freedom to Shape the Articles of Association and Templates

1.1 Flexibility yes, recourse to national law no

The draft regulation offers companies **great flexibility through the hierarchy of applicable law.** According to this hierarchy, the **regulation applies first, followed by the provisions of the articles of association** agreed by the shareholders, and **finally national law** corresponding to the legal form designated by the Member States.

It is precisely this freedom of the articles of association that enables companies

- to have lean corporate administration from the outset,
- to ensure that the EU Inc. can, as the company grows and the shareholder base widens, keep pace with investor expectations of good corporate governance, and
- to allow the EU Inc. to be used both by start-ups and by larger companies, including as subsidiaries.

The consequence of this flexibility, however, is that the draft regulation is very concise. The regulation should provide greater clarity here, for example by identifying or regulating additional typical triggers of corporate law disputes. In this way, the legislator can address the uncertainty as to whether national law might still apply. This holds true, for example, to notice periods for shareholders' meetings, but also to the law on defective resolutions.

1.2 Provide Templates for Articles of Association and Contracts

We consider the proposal to provide EU templates as **model articles of association to be very useful,** as they offer several advantages from our point of view:

- Model articles contain typical provisions for different company sizes and stages of development and thus facilitate the rapid formation of a company, especially for micro-enterprises.
- Model articles help to express more clearly the policy choices of the legislator. Since legal disputes concerning an EU Inc. will be dealed with by national courts, the model articles provide additional information on what

the regulation considers to be typical and balanced. This enables a more consistent body of case law.

- Model articles contribute to ensuring that EU Inc. companies in comparable business situations are structured in a comparable way in all Member States. They can reflect private-limited-company-like as well as public-limited-company-like structures. They can illustrate a typical set of articles for a capital-market-oriented company and support the Member States in deciding whether, and in what form, they wish to admit the EU Inc. legal form to the regulated market (which, in our view, should be mandatory and not optional for Member States).

However, the current templates in the annex to the regulation appear too rudimentary for these purposes. They merely require information on capital and shares and the identification of the founders, but do not include typical corporate governance arrangements that would, for example, be helpful for start-ups. In addition, the raising of further capital, for instance from venture capital or private equity investors, currently always requires individually negotiated agreements. Supplementing the regime with model contracts / model shareholders' agreements could close this gap by proposing standard clauses that are common in the market and fair and balanced for both sides.

2 Incorporation, One-Stop-Shop und Digitalisation

2.1 „Register Once“ Without Notarial Certification

We welcome the fact that the draft regulation is based on the idea that the EU Inc. can operate in all Member States with a single registration (“register once”). This significantly lowers the barriers to internationalisation, particularly for SMEs.

However, rapid company formation is only possible if notarial certification is not necessary. At present, this is only optional. **At least where model articles of association are used, notarial certification should not be required.** The **same should apply where an EU Inc. is incorporated as a subsidiary.**

2.2 Digital Where Possible, Analogue Where Necessary

We welcome the principle of purely digital procedures, according to which all procedures within the scope of the EU Inc. regulation are carried out exclusively online. This applies in particular to the formation of companies, the filing and registration of branches, the issuance of shares, subscriptions and transfers.

However, in-person and analogue procedures are also important and appropriate. In particular, in case of a small group of shareholders, there is no need for digital or hybrid meetings or sessions.

3 EU Inc. Regime to Include the SE as Parent Company and Employee Share Schemes

Legal persons also establish companies. **With the EU Inc., European groups will be able to set up subsidiaries easily and with legal certainty across Europe.** This facilitates mergers, strategic alliances and operational expansion across borders. The use of a uniform legal form reduces transaction costs and simplifies group-wide management structures.

However, the **draft regulation does not mention the Societas Europaea (SE) as a possible parent company.** Article 19 refers to Annex II or IIB of Directive (EU) 2017/1132, which provides a list of the national company forms in the Member States. It is possible that the regulation regards the SE as a national company form which, for example, essentially takes the form of a national public limited company. Nevertheless, **legislator should expressly clarify that the SE can be the parent company of an EU Inc.**

It is also **essential that the regulation addresses the concept of the group interest,** if necessary also by way of appropriate provisions in the articles of association. Otherwise, subsidiaries cannot take into account the interests of the parent company, which prevents effective group governance and group compliance.

Employee participation in the capital of their own company through stock option schemes is largely limited to start ups/scale ups. **Established companies typically use employee share schemes to give their workforce a stake in the company's capital.** As a rule, the company grants a discount on its own shares pruchased by employees.

We therefore advocate **extending the deferred taxation provided for in the case of the EU Inc. for stock option schemes to employee share schemes.** Furthermore, we advocate to clarify that any monetary benefit resulting from the discount granted by the company is tax-free.

4 Ensure Flexibility in Financing and Allow Listing Without Restriction

We welcome

- the fact that the draft regulation does not provide for a mandatory nominal value for the shares of an EU Inc. When issuing shares, the articles of association define the nominal value. It is also left to the articles of association to determine whether a capital contribution is required or not. Moreover, the regulation does not restrict the type of consideration that may be provided for a share and allows, among other things, contributions in kind in the form of work and services. This is particularly helpful in the context of restructurings.

- the fact that **the EU Inc. does not require a minimum capital. Creditor protection in the EU Inc. is instead ensured by distribution restrictions based on solvency and liability.** Traditional capital maintenance rules apply only insofar as the company decides to increase capital. All distributions are, however, subject to a balance-sheet test and a solvency test, which ensure that the company remains able to meet creditors' claims.

- the fact that **the structuring of capital measures and voting rights falls within the autonomy of the articles of association.** This makes it possible for companies, for example, to introduce multiple-voting-right shares or to provide for an amount of authorised capital that reflects the company's financing needs.

However, **we recommend making listing on a regulated market an integral part of the 28th regime.** An IPO is a crucial mechanism for raising equity and financing (future) European Champions . For early investors as well as founders, an IPO enables an exit from the company in order to finance further "hidden gems" elsewhere.

While a listing of an EU Inc. on a multilateral trading facility (MTF) like the SME growth market **is possible without any restrictions, admission to trading on a regulated market is dependent on the consent of the respective Member State.** This **restriction is difficult to understand,** not least because the move from an MTF to the regulated market is a further key growth step for many companies. If a Member State does not provide an admission to a regulated market for the EU Inc., moving to the regulated market would require a change of legal form. This prospect drastically reduces the attractiveness of the EU Inc. **It also runs counter to the trend in Europe towards allowing even private limited companies to have**

their shares traded on capital markets. Following company law reforms, this already applies to the Dutch BV, the Belgian BV and the Italian PMI-SRL. **Against this background, denying the EU Inc. access to the regulated market is a disadvantage in a European, let alone international, comparison.**

Also**, under the draft regulation, issuers in the legal form of an EU Inc. must comply not only with the specific rules of the market operator (MTF rulebook).** The Commission **proposal even refers to EU capital market law:** a company in the legal form of an EU Inc. should be able to obtain access to multilateral trading facilities such as SME growth markets for the trading of its shares, and Member States should not prohibit such access. **If a company in the legal form of an EU Inc. applies for the admission of its shares to trading on such markets, it should, according to the recitals, comply with all applicable requirements of Union law and national law, inter alia by the Market Abuse Regulation (EU) No 596/2014.** The application for admission thus triggers the application of capital market law. As long as no such application is made, the EU Inc. is of course free from these requirements. Once the EU Inc. takes this admission step it must adapt its articles of association and comply with disclosure requirements that did not previously apply.

The **legislator could use the same regulatory technique for the regulated market.** We **therefore recommend that, provided the EU Inc. complies with the additional capital market obligations applicable to the regulated market, stock exchange listing should be possible without further restrictions.**

5 Include Additional Areas of Law

We welcome the further initiatives announced in the accompanying Communication from the European Commission (COM (2026) 320 final), such as the Fair Labour Mobility package and the Head Office Tax (HOT) system. So far, the draft regulation is essentially limited to company law. In the interest of establishing a genuine Savings and Investment Union, we recommend extending the 28th regime to additional areas of law. In this way, the 28th regime would offer a modular, scalable EU legal framework – starting with company law and later extendable to tax law, insolvency, labour and securities law.

- In **insolvency law,** national rules remain among the least harmonised areas. There are significant differences in creditor hierarchies, restructuring procedures and discharge periods. This makes both the cross-border continuation of businesses and the development of secondary markets for non-performing loans more difficult. Divergences between Member States in insolvency law encourage forum shopping and undermine legal certainty and investment. It appears essential here to implement growth-friendly harmonisation of insolvency filing requirements. **Particularly for start-ups, excessively strict insolvency triggers such as "over-indebtedness" must be avoided,** as there is structurally greater uncertainty about going-concern forecasts in their case. Otherwise, a company in a Member State such as Germany would have to file for insolvency earlier than in another Member State. Nevertheless, the simplified, digital and standardised insolvency procedure envisaged in the regulation for a subset of EU Inc. companies, namely "innovative start-ups", creates a special regime within the 28th regime. The rationale for linking insolvency rules to "innovation" is not apparent to us. Distinguishing innovative start-ups from other start-ups on the basis of a Commission Recommendation (Recommendation on the definition of innovative enterprises, innovative start-ups and innovative scale-ups, C(2026) 1800) also cannot be achieved in a legally certain and uniform manner.

- In **tax law**, there are material differences and divergent interpretations between Member States, for example regarding VAT, cross-border loss relief or the taxation of pensions. We therefore recommend further developing the 28th regime to include tax aspects. The provisions on employee stock options foreseen for the EU Inc. are only a starting point.

- **Labour law** and rules on employee participation differ greatly between Member States with regard to co-determination, protection against dismissal and representation rights of employees. This often makes it

more difficult to use European legal forms such as the Societas Europaea (SE) on a cross-border basis. In our view, however, the 28th regime should not yet contain its own labour law rules, as the political dimension could considerably delay the process. This is already due to the fact that a different legal basis, Article 153 TFEU, would be relevant in this field.

- **Not only in insolvency and tax law, but also in securities law – which governs the creation and custody of shares, bonds and other capital market instruments – there are major differences.** These differences make cross-border trading and settlement of securities complex and expensive. This also limits the potential of a pan-European legal form designed as a 28th regime. Moreover, these differences stand in the way of market-driven consolidation of trading and post-trading infrastructures, thereby hindering a more effective pooling of liquidity in an integrated EU capital market.

  The Legislator should therefore develop a framework for securities law, which

  - provides a uniform EU-wide legal framework for the issuance, transfer and custody of securities, including book-entry securities and electronic or tokenised securities,
  - reduces legal uncertainty and transaction costs in cross-border securities trading, and
  - enables the use of securities as collateral for loans, derivatives and repo transactions under a single European framework.

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