

**CORPORATE M&A**

Proposal for an EU Inc. Regulation

Simplification, digitalisation and flexibility for European entrepreneurs

On 18 March, the European Commission presented a proposal for a European regulation establishing the “EU Inc.”. This is a new form of limited liability company governed by a harmonised regime at European Union (“EU”) level. The proposal aims to remove structural barriers to the formation and growth of European start-ups and scale-ups.

The proposal provides for simplified incorporation and dissolution/liquidation procedures, promotes cross-border development of business activities, and brings more flexible access to finance.

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1. Incorporation of the EU Inc.

The process of setting up an EU Inc. company is carried out digitally through a central European interface acting as a single point for submitting and communicating information to the national commercial registers of the Member States of incorporation. Under the fast-track procedure, where standard articles of association are used, the company will be incorporated within a maximum period of 48 hours, at a cost not exceeding EUR 100. If customised articles of association are used, there is no maximum cost, and the incorporation procedure must be completed within five days. In both cases, ex ante control of the articles of association will be ensured upon incorporation and upon each amendment, through administrative, notarial or judicial channels.

The EU Inc. can also be formed by converting an existing company, or through a domestic or cross-border merger or division.

2. Focus on digitalisation

The performance of acts and procedures exclusively online is a defining feature of the EU Inc., from incorporation through to dissolution. Member States are prohibited from imposing additional formal requirements for the subscription or transfer of shares, in particular with regard to notarial certification of signatures.

The proposal provides for the possibility of using different classes of shares as well as financing instruments commonly used in venture capital and private equity investments.

Both registration and transfer of shares will be carried out in a digital and dematerialised form. The use of distributed ledger technology (DLT) and other digital solutions will be permitted. Online registration will have constitutive effect, and each shareholder will receive a digital certificate of ownership.

3. Flexibility in raising capital

Unless the articles of association state otherwise, the EU Inc.'s shares will have no nominal value. No minimum share capital will be required for the EU Inc. However, a balance sheet test and a solvency test will be required for distributions, acquisitions of own shares and share redemptions.

The proposal also provides for the possibility of using different classes of shares, including shares with multiple voting rights or non-voting shares, as well as financing instruments commonly used in venture capital and private equity investments, such as convertible instruments (SAFEs and CLAs), and warrants.

4. European Employee Stock Option Plan

The proposal also provides for the adoption of a stock option plan for EU Inc. (EU ESO) employees. Individuals who do not hold more than 25% of the company's voting or profit-sharing rights, and who have not held such rights in the preceding 24 months are eligible. Under the plan, warrants may be granted conferring rights to subscribe for shares in the EU Inc., subject to a minimum vesting period of at least 24 months from the date of issuance of the warrants. Taxation of income arising from stock options is deferred until the disposal of the shares, thereby avoiding the taxation of dry income.

5. Summary and next steps

The proposal is still far from achieving the objective of creating a fully harmonised legal framework at EU level. Several sources of fragmentation remain, in particular:

- The subsidiary application of national laws of the Member States in matters not covered by the Regulation. This leads to 27 national variants of the EU Inc. Nevertheless, the proposal sets out a list of prohibited national practices to ensure that Member States grant the EU Inc. treatment equivalent to that of other national limited liability companies, for example, regarding eligibility for state aid).
- The absence of harmonisation of the taxation of stock options, although the European Commission encourages Member States to tax such income as capital gains rather than employment income.

- The absence of harmonisation in the field of labour law.
- The absence of specialised EU-level courts to ensure the uniform application of rules governing the EU Inc., with the Commission encouraging Member States to establish or designate specialised chambers within national courts.

Nevertheless, the proposal represents a positive first step towards modernising European company law to bring it into line with the global and international reality of start-ups and scale-ups.

The proposal will now be submitted to the European Parliament and the Council for consideration, with the aim of adopting it by the end of this year and its implementation in 2027-2028. ■

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