EU Inc.: A Flexible but Incomplete Blueprint for European Startup Finance

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Abstract

This article examines the financial structure provisions of the EU Inc. Proposal (COM(2026) 321 final) by assessing their innovative scope and actual capacity to facilitate Europe-wide financing of start-ups and scale-ups. The analysis focuses on three areas: the abolition of the minimum share capital requirement and the introduction of no-par-value shares; the regime governing contributions in kind and distributions to shareholders; and the provisions on capital increases, paying particular attention to instruments that entitle the holder to new shares, and their relationship with Simple Agreements for Future Equity (SAFEs). While the EU Inc. framework introduces meaningful simplifications by largely consolidating solutions already adopted by certain Member States for private limited liability companies, the article argues that it falls short of creating a genuinely harmonised financing framework. The provisions of Article 68 are not specific enough to overcome the fragmentation of national SAFE practices, and Article 60 raises concerns about regulatory arbitrage because it allows EU Inc. to access regulated markets without adequate governance safeguards. The article concludes with concrete policy proposals, including targeted amendments to Article 60, the introduction of a dedicated MTF segment for EU Inc. shares and the Commission's adoption of a standard financing contract template to promote a European SAFE.

Keywords: EU Inc., Start-ups and scale-ups, SAFE (Simple Agreement for Future Equity), Share capital, Distributions, Harmonisation

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ABSTRACT: This article examines the financial structure provisions of the EU Inc. Proposal (COM(2026) 321 final) by assessing their innovative scope and actual capacity to facilitate Europe-wide financing of start-ups and scale-ups. The analysis focuses on three areas: the abolition of the minimum share capital requirement and the introduction of no-par-value shares; the regime governing contributions in kind and distributions to shareholders; and the provisions on capital increases, paying particular attention to instruments that entitle the holder to new shares, and their relationship with Simple Agreements for Future Equity (SAFEs). While the EU Inc. framework introduces meaningful simplifications by largely consolidating solutions already adopted by certain Member States for private limited liability companies, the article argues that it falls short of creating a genuinely harmonised financing framework. The provisions of Article 68 are not specific enough to overcome the fragmentation of national SAFE practices, and Article 60 raises concerns about regulatory arbitrage because it allows EU Inc. to access regulated markets without adequate governance safeguards. The article concludes with concrete policy proposals, including targeted amendments to Article 60, the introduction of a dedicated MTF segment for EU Inc. shares and the Commission's adoption of a standard financing contract template to promote a European SAFE.

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1. Introduction.

The Proposal for a Regulation of the European Parliament and of the Council on the corporate legal framework of the 28th regime – "EU Inc.", COM(2026) 321 final, of 18 March, laying down the rules for EU Inc.[1] – ("Proposal") has, in initial comments, prompted mixed reactions regarding its actual innovative scope and effectiveness in pursuing the objectives set out by the European legislator.

Although there are comments in favour of the Commission's proposal[2], one of the main criticisms is the uncertainty surrounding the purpose that the legislator intends to pursue by introducing the EU Inc.

On the one hand, as many had hoped in light of the recommendations contained in the Letta[3] and Draghi[4] reports and as reiterated in recital 5 of the Proposal, the introduction of the EU Inc. "responds in particular to the needs of start-up and scale-up

[1] Proposal for a Regulation of the European Parliament and of the Council on the corporate legal framework of the 28th regime – "EU Inc.", COM(2026) 321 final, 18 March 2026, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2026:321:FIN (last accessed: 12 May 2026).

[2] M. Ventoruzzo, "Welcome EU Inc!", Oxford Business Law Blog, 2 April 2026, https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/welcome-eu-inc (last accessed: 12 May 2026).

[3] E. Letta, *Much More than a Market*, April 2024, https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf (last accessed: 12 May 2026).

[4] M. Draghi, *The Future of European Competitiveness*, September 2024, https://commission.europa.eu/topics/competitiveness/draghi-report_en (last accessed: 12 May 2026).

companies"; on the other hand, as stated in recital 5 itself, the EU Inc. "should be legally open to all founders and companies who see it fit for their business model" and "existing companies, including EU Inc. companies, should also be able to set up EU Inc. subsidiaries, making the EU Inc. company legal form available for groups of companies".

The lack of a clear functional definition of the EU Inc. is viewed by some commentators as a structural weakness of the new corporate regime, as it would encourage the adoption of compromise solutions that are not considered suitable for fulfilling any of the objectives envisaged by the European legislator[5] .

Whilst the approach chosen by the European legislator makes it more difficult to assess the effectiveness of the Proposal, the fact that the EU Inc. can serve various purposes, including the financing of start-ups and scale-ups, the establishment of corporate branches by multinational groups operating in several Member States, or the formation of companies designed to carry out specific acquisition and financing transactions[6] , does not necessarily imply that the solutions contained in the Proposal are ineffective in favoring the scaling of more innovative companies.

It is from this premise that one must proceed in analysing the provisions relating to the financial structure of the EU Inc. and, in particular, to the share capital and transactions involving it, as well as to the rules governing distributions to shareholders. In relation to these aspects, it is also necessary to take into account the possible implications of the provision in Article 4 of the Proposal, according to which aspects of the EU Inc. not governed by the Proposal or the articles of association are "governed by national law, including the provisions transposing Union law, which apply to relevant national legal forms in the Member State in which the EU Inc. has its registered office".

This provision, which undoubtedly constitutes one of the main weaknesses of the EU Inc. framework[7], highlights the incompleteness of the proposal. The proposal only partially defines a 28th regime, which is not necessarily independent of the 27 national legal systems. In fact, the law of the Member State of incorporation supplements the EU Inc. regime defined in the proposal with regard to matters that the shareholders have not addressed through specific provisions in the articles of association.

Such an approach, in any case, places significant burdens on the shareholders and may therefore discourage the use of the EU Inc. Indeed, either the shareholders incur greater costs for drafting a particularly detailed set of articles of association (thereby forgoing the advantages in terms of reduced costs and incorporation times available where the standard model of articles of association is adopted) or – thus perpetuating one of the

[5] L. Enriques/C.A. Nigro/T.H. Tröger, "Why the 28th Regime Proposal Falls Short of Europe's Challenge", Oxford Business Law Blog, 19 March 2026, https://blogs.law.ox.ac.uk/oblb/blog-post/2026/03/why-28th-regime-proposal-falls-short-europes-challenge (last accessed: 12 May 2026).

[6] G. Waelkens/S. De Smet (Clifford Chance), "The EU Inc. Proposal: How Far Does It Really Go?", 26 March 2026, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2026/03/eu-inc-24-march-2026.pdf (last accessed: 12 May 2026).

[7] A. Palombo, "Why the 28th Regime Needs a Fallback Plan: The EU Inc Zone", Oxford Business Law Blog, 3 April 2026, https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/why-28th-regime-needs-fallback-plan-eu-inc-zone (last accessed: 12 May 2026).

major limitations on the cross-border operations of European companies[8] – they must bear the costs involved in assessing the impact of national legislation both for the purpose of choosing the Member State of incorporation and, subsequently, for identifying the rules applicable to the EU Inc. in respect of matters not regulated by either the Proposal or the Articles of Association.

2. The rules on financing are essential for the development of *start-ups* and *scale-ups* in the European Union.

The provisions regarding the financing of the EU Inc. contained in Articles 61 et seq. constitute a central element of the Proposal, as they are of crucial importance for the pursuit of what remains – despite the observations made regarding the multifunctional approach adopted by the Proposal – the European Commission's primary objective: to strengthen the European Union's competitiveness in technological development by encouraging the flow of financial resources towards start-ups and (above all) scale-ups, in order to reverse the trend whereby a significant number of innovative European companies are relocating to Delaware to access the funding necessary for their development. According to Mario Draghi's report on the future of European competitiveness, around 10% of scale-ups established in the European Union relocate abroad, with the vast majority (around 85%) moving to the United States. Furthermore, between 2008 and 2021, 30% of European 'unicorns' (i.e. start-ups with a valuation of over $1 billion) relocated their headquarters primarily to the United States in order to access the capital markets[9] .

As indicated in the recent report Drivers of relocation by innovative EU startups and scaleups[10] , produced jointly by the European Investment Bank and the European Commission, the main reasons behind the decision to relocate operations or establish a holding company in the United States include easier access to capital and, in particular, the fact that US investors, who are more willing to allocate larger sums to finance start-up growth, prefer to invest in companies headquartered in the United States and, in particular, in Delaware. In addition, the fragmented regulatory landscape resulting from the differing laws of Member States represents an obstacle for start-ups and scale-ups, as navigating the various national regulations can be complex and time-consuming.

It should be noted, however, that this complexity does not concern solely, and perhaps not primarily, company law: for example, the recent Regulation (EU) 2024/1689

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[8] G. Waelkens/S. De Smet (fn. 6).

[9] M. Draghi (fn. 4), 6.

[10] European Investment Bank/European Commission, Drivers of Relocation by Innovative EU Startups and Scaleups, 2026, https://www.eib.org/en/publications/20250217-drivers-of-relocation-by-innovative-eu-startups-and-scaleups (last accessed: 12 May 2026).

on artificial intelligence[11], adopted to ensure ethical and responsible development, is perceived by many players in the innovation ecosystem as an obstacle that slows down experimentation and increases compliance burdens at a stage where speed and flexibility are crucial[12].

3. Overcoming and dismantling the share capital regime: the abolition of the statutory minimum and the provision for shares without par value.

That said, the provisions relating to the financing of the EU Inc. that mark a clearer break with current regulations in some Member States are those concerning the abolition of minimum share capital and the ability to issue 'true' no-par-value shares. The latter are distinct from shares without an indication of par value, which are currently permitted under Italian and German law, among others.

The abolition of the minimum share capital is of considerable importance not so much because of the elimination of the initial outlay required to form the company, given that this burden has in essence already been removed due to the possibility, provided for in many Member States, of incorporating private limited liability companies with a capital of 1 euro, but rather because the absence of a minimum capital entails the non-application of a series of rules that apply in the presence of share capital, even if set at a purely symbolic amount.

In effect, the abolition of the minimum capital enables shareholders to allocate their contributions entirely to a reserve, thus avoiding the share capital maintenance regime entirely.

In particular, the abolition of the minimum capital results in the non-application of the rules on capital reduction for losses where the company – making use of the option provided for in Article 62 – does not provide for the formation of share capital or a statutory reserve. Given the literal wording of Article 77(4), however, it must be considered that capital reduction for losses is not mandatory even where the company opts (voluntarily) to establish share capital, with the articles of association or the resolution on the capital increase providing for the allocation of (at least) part of the contributions to it. The provision referred to above is, in fact, limited to excluding the safeguards provided for in the event of an actual reduction in capital in cases where ‘the capital is reduced for the sole purpose of covering losses that cannot be covered from other equity or for the purpose of increasing the capital at the same time by at least the amount of the reduction’, without prescribing an obligation to reduce capital where losses exceed a certain threshold, as required by Directive (EU) 2017/1132.

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[11] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L 2024/1689, https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=OJ:L_202401689 (last accessed: 12 May 2026).

[12] European Investment Bank/European Commission (fn. 10), 10.

Furthermore, where shareholders opt for the full allocation of contributions to reserves, the equity capital formed against such contributions, not being subject to the restrictions on share capital, may be freely distributed in accordance with Article 72. The provision of Article 63(2) is unequivocal in this regard, stating that "[a]ny consideration or part of a consideration for shares that is not contributed to capital shall not be subject to the restriction under paragraph 1 and shall be freely distributable in accordance with Article 72, unless otherwise provided in the articles of association or a decision to issue new shares".

The EU Inc. framework introduces significant simplifications for Member States that still adopt a more formal approach and have retained stricter rules centred on share capital. For instance, compared with the current provisions in Italy, removing the obligation to reduce capital due to losses is a notable innovation, as it differs from the rules governing public limited companies, which transpose the provisions of Directive (EU) 2017/1132 and provide for the 'recapitalise or liquidate' rule[13]. It also differs from the more permissive rules governing private limited liability companies (società a responsabilità limitata – s.r.l.) classified as innovative start-ups. For these companies, Article 26 of Legislative Decree No. 179/2012 allows for a longer timeframe for reducing capital when losses exceed one-third of the capital or the statutory minimum is breached, and the 'recapitalise or liquidate' rule applies.

The abolition of the minimum capital requirement and the obligation to set a share capital figure by allocating at least part of the contributions to it also gives rise to two other important consequences: i) The obligation to establish a statutory reserve cease to apply; ii) As previously mentioned, shareholders' contributions may be allocated entirely to the reserve. This means that, contrary to the provisions of Directive (EU) 2017/1132 and the legislation of many Member States for private limited liability companies, shareholding (whether represented by shares or quotas) can be issued in exchange for contributions not allocated to share capital. This removes the necessary link between the latter and the contributions made by shareholders.

As specified in recital 47, "[t]his structure ensures that bespoke classes of shares, share buybacks, redemptions and complex funding mechanisms can operate without creating frictions with conventional capital maintenance rules". Furthermore, pursuant to Article 64(5), for any part of the consideration that does not constitute a contribution to capital, the articles of association or the resolution to issue new shares may provide that the consideration must be paid within a specified period or upon the company's request,

[13] For public limited companies (S.p.A.), the 'recapitalise or liquidate' rule is set out in Art. 2447 of the Italian Civil Code. This rule requires that if losses reduce share capital below the statutory minimum, shareholders must either restore it or reduce it to the actual remaining amount and simultaneously increase it to the statutory minimum. If they fail to do so, the company must be dissolved. An equivalent provision applies to private limited companies (S.r.l.) under Art. 2482-ter of the Italian Civil Code. A derogation from this regime is provided for innovative start-ups by Art. 26(4) of Legislative Decree No. 179 of 18 October 2012 (as amended), which allows an extended timeframe for recapitalisation if losses exceed one-third of share capital or if the statutory minimum is reduced below the statutory minimum. This defers the application of Arts. 2447 and 2482-ter until the following financial year.

which may not exceed five years from the date of issue of the shares. This possibility therefore affords a further degree of flexibility, inasmuch as Article 69 of Directive (EU) 2017/1132 (transposed by Article 2439 of the Italian Civil Code) requires the full payment of the share premium.

It is worth noting that issuing shares (or 'quotas', as is the case with private limited liability companies in some Member States) against the full allocation of contributions to reserves marks the end of the organisational function of share capital as a benchmark for measuring each shareholder's rights based on their shareholding.

The EU Inc. regime demonstrates that the established necessity of share capital is based on an interpretative preconception[14]. As confirmed by the regulations governing Belgian limited liability companies, the proportional rights of each shareholder depend solely on the number of shares allocated to them, regardless of whether the corresponding contributions are allocated to share capital or a reserve[15].

The elimination of the obligation to allocate part of the contributions to share capital is linked to the significant innovation of introducing no-par-value shares. Specifically, pursuant to Article 61, the articles of association may state that 'the shares of the EU Inc. company shall have no nominal value and shall not represent a fraction of the company's capital'. This option must be exercised for all shares, given the prohibition on issuing shares with and without nominal value simultaneously.

Removing the par value of shares significantly simplifies the process, particularly with regard to capital increases. It removes the constraint of par value, allowing the issue price of new shares to be set freely. This price may be significantly lower than that set during previous share issues if the company has incurred losses in the meantime[16]. Furthermore, as stated in recital 45, this innovation may facilitate the use of capital-raising methods typical of venture capital. Non-par value shares, for example, allow convertible instruments such as Simple Agreements for Future Equity (SAFEs) and Keep It Simple Securities (KISS) to operate smoothly[17]. Where such instruments require conversion at a fluctuating, discounted price, the rigid application of the par value principle could legally prevent their execution.

That said, the actual innovative scope of the elimination of the nominal value of shares must, however, be assessed in the light of current European and national law.

While the provisions of Directive (EU) 2017/1132 regarding nominal value do not apply to limited liability companies, some argue that they would not prevent public limited companies from issuing no-par-value shares, since the Directive contains no

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[14] G. Strampelli, Distributions to Shareholders and Creditor Protection: The Impact of IAS/IFRS, Giappichelli 2009, 71 ff.

[15] J. Schmidt/C. Teichmann, "The EU Inc. – Half European, Fully Digital, and Genuinely Innovative", SSRN Working Paper No. 922/2026, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6720961 (last accessed: 12 May 2026), 33.

[16] J. Schmidt/C. Teichmann (fn. 15), 32–33.

[17] H. Culot, "The Belgian Private Limited Without Capital: How is it Faring?", European Company and Financial Law Review 20 (2023), 1, 4.

express prohibition to that effect[18] . According to this interpretation, in particular, Article 47, which states that 'shares may not be issued for an amount lower than their nominal value, or their book value in the absence of the former', would not be an obstacle[19]. This would be confirmed by the explanatory memorandum to the Commission's proposal to amend the Second Company Law Directive, which states that 'Shares may not be issued at a price lower than their nominal value or, in the absence of a nominal value, their book value. This prohibition applies to all share issues without exception, not only to the initial issue in the context of the company's incorporation. This does not imply that subsequent share issues cannot be made at a nominal or book value lower than that of a previous issue, provided that the price at which the new shares are issued complies with the above-mentioned obligation"[20] .

The Finnish legislature introduced an explicit provision to this effect in 2006. This permits the issue of shares without par value for both public (Julkinen osakeyhtiö) and private (Yksityinen osakeyhtiö) limited companies[21], provided that Article 47 of Directive 2017/1132 (formerly Article 8 of the Second Directive on share capital) does not preclude this[22].

Following the 2019 company law reform, the same option is implicitly provided for in Belgian law for private limited companies, for which the minimum capital requirement has been abolished and all contributions may be allocated to reserves[23]. Furthermore, even in other legal systems that do not provide for no-par-value shares, approaches to this effect have become established (albeit not uncontroversial), allowing for the issue of shares below book value. Significant in this regard is the guidance from the Milan Notarial Council[24] , according to which "[it is] on the other hand legitimate, always in the context of a paid-up capital increase by a joint-stock company (S.p.A.) with shares without par value, to issue new shares at a price lower than the 'book value' of the existing shares at the time the resolution to increase capital is adopted (i.e. equal to the share capital prior to the increase, divided by the number of shares prior to the increase), provided that the total amount of the new contributions is equal to or greater than the amount of the share capital increase".

[18] H. De Wulf, "Shares in the EMCA: The Time is Ripe for True No-Par-Value Shares in the EU, and the Second Directive is Not an Obstacle", European Company and Financial Law Review 13 (2016), 246, 246 ff.

[19] European Model Companies Act, SSRN 2017, 49, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2929348 (last accessed: 12 May 2026).

[20] Commission Staff Working Document, Annex to the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital, COM(2004) 730 final, https://eur-lex.europa.eu/procedure/EN/191922 (last accessed: 12 May 2026).

[21] Finnish Limited Liability Companies Act, Chapter 3, Section 5.

[22] European Model Companies Act (fn. 19), Section 2.08.

[23] H. Culot (fn. 17), 3 ff.

[24] Corporate Law Committee, Milan Notarial Council, "Increase in Share Capital and Shares Without Par Value", Guideline No. 36 (2004), https://www.consiglionotarilemilano.it/massime-commissione-societa/36/ (last accessed: 12 May 2026).

Although issuing no-par-value shares is permissible for limited liability companies under current European law, and some Member States have introduced this option, the EU Inc.'s explicit ability to do so is nonetheless important, as it extends this option to all companies incorporated in this form, regardless of their country of incorporation. This ensures greater flexibility, particularly with regard to share capital increases, which are often required at a lower issue price than previous increases or at the time of incorporation, especially in start-ups and scale-ups[25].

4. The regime governing contributions and distributions to shareholders.

The abolition of the minimum share capital requirement and the obligation to allocate at least some of the contributions to capital also affects the other components of the legal capital system relating to the formation and maintenance of capital. These components thus become entirely discretionary and apply only where shareholders have decided in the articles of association or upon issuing new shares.

Regarding the formation of share capital, the EU Inc. regulations firstly make it clear that the regime for identifying entities eligible for contributions and estimating contributions in kind is independent of the formation of share capital through allocating contributions to it[26].

The identification of the entities eligible for contribution and the estimation of their value are, in fact, necessary to establish the value of the shareholders' holdings and their relative weight, as well as to protect creditors through the formation of the company's assets, thereby avoiding the overvaluation of the assets contributed.

This is confirmed by the rules on contributions in kind set out in Article 65 of the Proposal. Pursuant to these rules, all contributions in kind made in exchange for shares must have a determinable value, regardless of whether they are allocated to share capital or reserves. Furthermore, the value of contributions in kind relating to the first shares must be specified in the articles of association. Where new shares are issued in consideration of a contribution in kind, the value of the contribution must be specified in the resolution relating to the issue of the shares.

Furthermore, with regard to the valuation of contributions in kind Articles 65 states that, prior to the issue of shares in consideration of a contribution in kind, a report must be drawn up by one or more independent experts appointed or approved by an administrative or judicial authority. In addition, the experts' report must contain a description of each asset comprising the contribution, the valuation methods used and an indication of whether the values determined by applying these methods correspond to the value stated in the articles of association or the authorising resolution. The report must be filed and made available to the public in the Companies Register. Finally, if a contribution

[25] J. Schmidt/C. Teichmann (fn. 15), 33.
[26] G. Strampelli (fn. 14), 66 ff.

in kind is significantly overvalued in relation to its fair value on the subscription date, the shareholder who made the contribution must compensate the company for the difference.

The provisions of Article 65 therefore make it clear that the regime for identifying and valuing transferable assets, as set out for EU Inc., also applies where all contributions are allocated to reserves and the shareholders have decided not to form share capital.

That said, the provisions of Article 65 contain two aspects that appear to undermine the coherence of the overall framework.

Firstly, Article 65 prohibits the contribution of labour and services to share capital[27], thereby introducing an element of rigidity that is difficult to justify within the EU Inc. framework, which is characterised by maximum flexibility. This is particularly relevant given that Member States are likely to designate the limited liability company as the reference company type for the purposes of Article 4 of the Proposal. This is a company that is not subject to the constraints imposed by Directive (EU) 2017/1132, and national legislation already permits the contribution of labour and services to this type of company, provided that appropriate safeguards are in place. In Italy, for example, this is provided for by Article 2464 of the Civil Code, provided that the contributor provides an insurance policy or a bank guarantee to secure the value of the services contributed.

From a systemic perspective, an even more problematic issue is the power granted to shareholders under Article 65(4), whereby they can exclude the valuation carried out by the independent expert in full, or in relation to the portion of the contribution in kind not allocated to share capital[28]. This can be achieved through a specific provision in the articles of association, or via a decision of the general meeting adopted with the same majority required for amendments to the articles of association. Granting such power does not adequately consider the fact that the expert's valuation is intended to protect the interests of both shareholders and creditors, even where contributions are not credited to share capital. Therefore, the possibility of waiving this right should not be left to the shareholders, as this would jeopardise the reliable valuation of the company's assets. Furthermore, the mere fact that the assets of EU Inc. might, as a rule, consist of assets of limited value (as is often the case with start-ups and scale-ups, whose assets normally consist of intangible assets not recognisable on the balance sheet) cannot justify such a provision, given that EU Inc. could also be used for other purposes by companies with greater assets[29].

The elimination of the minimum share capital requirement, and, most significantly, of the requirement to allocate a portion of the contributions to share capital, also impacts the regulations governing distributions to shareholders, which, irrespective

[27] Conversely, contributions of work and services may be freely made where such contributions are not allocated (in whole or in part) to the capital but are instead allocated to reserves, as clarified in the explanatory notes to COM(2026) 321 final.

[28] J. Schmidt/C. Teichmann (fn. 15), 34.

[29] The fact that the independent expert's valuation report on non-cash contributions is intended to protect the interests of creditors as well, and therefore cannot be freely waived by the shareholders, is also confirmed by Directive (EU) 2017/1132, Art. 49(4).

of whether share capital has been established or not, are based on the system (clearly modelled on that in force in Delaware) of the balance sheet test and the solvency test.

Specifically, pursuant to Article 72 of the Proposal, the board of directors must certify, in a statement signed by all members, that, on the basis of the latest financial statements and after carefully examining the company's current and future situation, it has reached the reasonable conclusion that the distribution does not prejudice the company's financial position and solvency in accordance with the two tests provided for therein.

Under the balance sheet test, the directors of an EU Inc. must ensure that following a distribution, the total value of assets set out in the most recent balance sheet remains greater than the total value of liabilities and capital. Although this is not expressly clarified in the Proposal, if no share capital is provided for and all contributions are allocated to reserves, the balance sheet test is deemed to have been passed if the value of the assets is at least equal to that of the liabilities, as there is no obligation to maintain additional asset value. This confirms that share capital (and not just the minimum capital) is not a necessary element of the regime governing distributions to shareholders, even when the limit on such distributions is based on the annual financial statements[30].

In addition to the balance sheet test, directors must also carry out a *solvency test* to verify that, following the distribution, 'the company will be able to pay its debts as they fall due in the normal course of business in the 12 months following the date of the distribution'.

Although it was originally introduced in the United States, the solvency test has long attracted academic attention in Europe[31] and is already used in various legal systems. Since 2012, it has been required for Dutch limited liability companies (B.V. – Besloten Vennootschap) under Article 2:216 of Book 2 of the Dutch Civil Code. This states that: i) The general meeting may distribute profit from the financial year, provided that following the distribution, the net assets exceed the reserves that must be maintained by law or the company's articles of association; ii) The general meeting's resolution shall not take effect until the board of directors has approved it. The board may express a dissenting opinion if it reasonably anticipates that the company will be unable to pay its debts following the distribution[32].

The distribution regime applicable to limited liability companies in Belgium is even more similar to that envisaged for the EU Inc., as the 2019 Code of Companies and Associations – from which the EU Inc. proposal appears to have drawn significant

[30] G. Strampelli (fn. 14), 150 ff.

[31] W. Schön, "Balance Sheet Tests or Solvency Tests – or Both?", European Business Organization Law Review 7 (2006), 197, 197 ff.; J. Rickford (ed.), "Reforming Capital: Report of the Interdisciplinary Group on Capital Maintenance", European Business Law Review 15 (2004), 925, 925 ff.; G. Strampelli (fn. 14), 150 ff.

[32] C. Van der Elst/E.P.M. Vermeulen, "The Dutch Private Company: Successfully Relaunched?", ECGI Law Working Paper No. 215/2013 (2013), 14 ff., https://www.ecgi.global/sites/default/files/working_papers/documents/ssrn-id2267522.pdf (last accessed: 12 May 2026).

inspiration – abolished the minimum share capital (Art. 5:1) and subjected distributions to shareholders to a two-part test (Art. 5:142) that coincides with the criteria for making such distributions provided for the EU Inc.[33]. However, the powers of the corporate bodies differ: whilst the articles of association of the EU Inc. may delegate the decision regarding distributions to the board of directors, Belgian legislation takes a more traditional approach and entrusts the general meeting with deciding the amount of the distribution based on the balance sheet test using the annual accounts. It also requires the board of directors to assess whether and when the general meeting's resolution can be enforced based on the solvency test. This involves verifying whether, despite paying the dividend, the company will be able to honour its debts within the twelve months following the distribution, based on reasonable expectations (Art. 5:143)[34].

Furthermore, it should be noted that, even in jurisdictions such as Italy where a solvency test is not expressly required, it is nevertheless considered part of the directors' duties to avoid implementing distributions that could jeopardise the company's solvency, even if these have been legitimately resolved by the shareholders[35] .

More generally, as is evident from the national legal systems referred to above, the abolition of share capital and the introduction of the dual test set out in Article 72 mean that the system of creditor protection shifts from ex ante protection consisting of the limits imposed by the capital system to an ex post system centred on the liability regime of directors, as set forth in paragraph 4 of Article 72.

In light of this, the possibility to grant the board of directors the power to decide on the distribution of profits, as set out in paragraph 4 of Article 72 and in line with the current regulations in Delaware, is justified. However, Article 72 allows for greater flexibility, as it states that the articles of association can authorise either the board of directors or another body. This raises some questions. Firstly, by making explicit reference to 'another company body', the wording of the provision may create uncertainty as to the possibility of delegating to the chief executive officer the power to decide on the distribution of profits, given that it is doubtful whether the chief executive officer can be considered a corporate body. However, such a possibility seems to be admissible. For instance, under Italian law the chief executive officer is characterised by legal scholarship as a unipersonal body[36]. Furthermore, given the systemic inconsistency that would result, the possibility of entrusting the supervisory body with the power to decide on the distribution of profits must likewise be considered precluded. Therefore, the scope of the provision appears to be limited to cases where the company adopts a system of

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[33] H. Culot (fn. 17), 2 ff.

[34] It is worth noting that, pursuant to Article 5:142(3) of the Companies and Associations Code, the portion of net assets corresponding to the unamortised value of capitalised start-up, expansion and development costs is not distributable. This provision transposes Art. 12(11) of Directive (EU) 2013/34, which must therefore be deemed applicable to EU Inc. as well. This may impose a further limitation on the harmonisation provided by the EU Inc. regulations, as the transposition of Directive (EU) 2013/34 in Member States is not uniform.

[35] G. Strampelli (fn. 14), 200 ff.

[36] G.F. Campobasso, *Diritto commerciale. Diritto delle società*, 9th ed., UTET 2015, 375.

administration and control involving a supervisory board that performs supervisory functions and holds senior management powers. This could justify assigning the power to decide on the distribution of profits to that body. However, it would seem more consistent for this to be entrusted to the management body, given the nature of the tests provided for in Article 72.

In line with the US model, while formally maintaining the distinction between distributions and the purchase of own shares, the Proposal uniformly regulates the rules governing distributions to shareholders and extends the provisions of Article 72 to the purchase of own shares. Article 74 stipulates that the purchase and acceptance of own shares as collateral are both limited to the amounts distributable on the basis of the balance sheet and solvency tests.

Consequently, the same limit applies to the redemption of redeemable shares issued under Article 76 of the Proposal. Regarding this category of shares, it is worth noting that under the aforementioned provision, the right of redemption may be granted to the company, the shareholders, or both. This makes the instrument flexible enough to facilitate raising capital through shareholdings that allow shareholders to exit upon achieving predetermined performance targets or other circumstances identified at the time the shares are issued.

In accordance with the substantive criterion that characterises the regime governing distributions as set out in the Proposal, the effective reduction of share capital as referred to in Article 77 also falls within the scope of distributions. It is therefore subject to balance sheet and insolvency tests that correspond to those set out in Article 72 for the distribution of profits and the purchase of own shares.

Article 77, however, provides for a further safeguard, in that the board of directors' declaration regarding the balance sheet test and the solvency test must be accompanied by a report drawn up by an independent expert appointed or approved by an administrative or judicial authority, certifying that the expert has examined the company's situation and is not aware of any factor indicating that the declaration is unfounded[37].

This provision is justified by the fact that the distribution concerns the portion of equity declared unavailable by the shareholders through the allocation of contributions to capital. The legislator's greater caution, however, also appears justified by the fact that, as no minimum capital is required, the capital may be reduced in full, as evidenced by the application of *the balance sheet test*, which requires only that liabilities be covered by assets. Consequently, through a full reduction of the capital, the shareholders may decide to abandon the share capital system, thereby making the entire net equity available.

5. Increase in share capital. The issue of "securities entitling the holder to new shares" and the Simple Agreement for Future Equity.

[37] J. Schmidt/C. Teichmann (fn. 15), 36.

Where the articles of association provide for part of the contributions to be allocated to share capital, the rules set out in Articles 70 and 71 of the Proposal apply in the event of subsequent capital increases.

In general, the provisions on capital increases contained in Articles 70 and 71 are similar to those set out in Directive 2017/1132, including with regard to the exclusion of subscription rights. However, given financing practices that have emerged in venture capital transactions, the provisions in Article 68 relating to instruments that enable the subscription of shares deserve particular attention.

Firstly, either the general meeting or the body designated by the articles of association may issue warrants, convertible shares or 'other instruments entitling one to new shares', with the option to exclude pre-emption rights where appropriate. From the perspective of established financing techniques for start-ups and scale-ups, paragraph 4 of Article 68 is of particular interest. Pursuant to this paragraph, where the company’s shares have a nominal value and the issue price of the convertible instrument is lower than this nominal value, the difference may be covered by reserves deemed available for distribution by the board of directors pursuant to Article 72. In such a case, the capital increase to service the conversion of the instruments referred to in Article 68 will be partly paid up and partly nominal.

As stated in recital 51 of the Proposal, such a structure for the capital increase may be suitable for investment arrangements in start-ups, particularly in the seed or pre-seed phase. These are known as Simple Agreements for Future Equity (SAFEs) and Keep It Simple Securities (KISSs), which were initially developed by two major US start-up accelerators. Although they differ in some respects, they essentially follow a contractual framework that allows an investor to obtain a future stake in the company at a valuation and with rights to be negotiated at the time of the resolution for a future capital increase. The date of this increase is undetermined at the time of investment, as defining these aspects is complex in the early stages of a start-up's activity, when the investment is made[38] .

Regarding SAFE agreements, which have become more widespread in Europe, the investor makes a contribution that is not repaid (and is therefore recorded in the company’s equity), in exchange for the right to obtain a stake. The extent of this stake is determined based on the company's value at the time of the subsequent capital increase. Another investor subscribes to this increase, thus introducing an element of independence into the valuation process. This investor contributes to determining the company's valuation relevant for converting the initial investor's SAFE investment into equity interests.

To prevent the company from carrying out a subsequent capital increase on unfavourable terms in order to nullify the right to 'conversion' provided for by the SAFE, corrective measures are in place. These include a minimum value for the capital increase

[38] J.F. Coyle/J.M. Green, “The SAFE, the KISS, and the Note: A Survey of Startup Seed Financing Contracts”, Minnesota Law Review Headnotes 103 (2018), 42, 42 ff.

and a minimum percentage subscription by third-party investors. Furthermore, unlike US contractual practice, a deadline is usually set by which the capital increase must be finalised and the equity interest allocated to the SAFE counterparty (thus bringing the SAFE structure closer to that of the KISS).

That said, when assessing the provisions of Article 68 of the Proposal, it should be noted that the success of such financing methods in the US has primarily been driven by the high level of standardisation achieved through the widespread use of uniform contract templates prepared by accelerators or law firms. In contrast, although there are some contract templates designed for use across all EU Member States[39], there are national variations of the SAFE that differ significantly and represent a major obstacle to start-ups raising capital in Member States other than their country of incorporation.

Although this is expressly stated as their objective, it seems doubtful that the provisions of Article 68 of the Proposal are capable of decisively addressing this fragmentation.

For example, in the Italian legal system, concerns are fuelled by the characteristics of the SAFE, which make it difficult to classify under any typical contractual category or as one of the financial instruments regulated by the legislature. Furthermore, even if the SAFE were to be classified as one of the equity-like financial instruments referred to in Article 2346(6) of the Civil Code, the regulation of which is largely left to the articles of association, the definition of the underlying contractual framework would remain uncertain. Consequently, the view that the SAFE represents an autonomous, atypical contractual category would prevail.

According to the contractual model promoted by the Italian Tech Alliance, which has redefined the acronym SAFE as 'Subscription Agreement for Future Equity' to confirm the distinctive features of the Italian version, the SAFE qualifies as a contract of uncertain outcome within the meaning of Article 1469 of the Italian Civil Code. This is because, despite the provision of a deadline by which the capital increase must be determined, the allocation of the shareholding is not certain in return for the initial investment (to be allocated to a designated reserve) [40]. Indeed, Article 2.5 of the model contract provides that “[t]he Payment is to be considered non-interest-bearing and does not accrue interest. Without prejudice to any further legal remedies available to the Investor, the failure to allocate the Investor’s Shareholding in the Company’s share capital due to a fault attributable to the Company, the Founding Shareholders or the Significant Shareholders, entitles the Investor to seek compensation for damages”.

This contractual practice differs from those established in other Member States. In France, for example, the Bon de Souscription d'Actions – Accord d'Investissement

[39] EU-FAST (Founders’ Agreement Standard Terms), open-source standard investment template, https://proposal.eu-inc.org/1-3-EU-FAST-14d076fd79c581c39709f743d9800d0b (last accessed: 12 May 2026).

[40] Italian Tech Alliance, Subscription Agreement for Future Equity – SAFE (2023), https://www.italiantechalliance.com/risorse (last accessed: 12 May 2026).

Rapide (BSA-AIR)[41], introduced by the incubator The Family, is a method of financing start-ups that is considered functionally equivalent to the SAFE. Under this method, the investor receives a warrant issued at a price equal to the amount of their investment in return for the initial investment. This entitles them to subscribe for a variable number of shares, determined by the company's valuation at the time of a subsequent event. BSA-AIR warrants, which can only be issued by public limited companies, do not immediately grant the right to acquire a stake in the issuing company. This is because the entry of warrant holders into the share capital is contingent upon the occurrence of a subsequent event, as defined in the issue agreement. This event is typically a new round of financing or a liquidity event. From the moment of their issue, which requires a resolution at a shareholders' meeting, the company is required to comply with the provisions of Articles L228-98 et seq. of the Code de commerce, which are designed to protect the holders of such instruments and limit the company's discretion in relation to decisions concerning its financial structure.

The differences are even greater in German practice[42] , where the financing of *start*-ups in the seed and pre-seed stages takes place mainly through the issue of convertible bonds (Wandeldarlehen), as this method of financing is more beneficial from a tax perspective for the investor and operators have not developed a specific financing agreement comparable to the SAFE.

These examples (which could be extended to other national legal systems) demonstrate the differences between Member States regarding start-up financing. However, it appears that the provision of Article 68 of the Proposal and the removal of the nominal value of shares under Article 61 may, at best, help to overcome some of the existing regulatory constraints at national level. These measures are not sufficient to promote a harmonised practice at European level, which is the main objective that the European Commission should pursue in its attempt to bridge the existing gap with the United States in terms of start-ups raising financial resources.

In addition to the fact that the content of Article 68 of the Proposal is rather generic and does not regulate the characteristics of the 'convertible' instruments that may be issued by the EU Inc., it is crucial to note that some of the national variations of the SAFE are contractual in nature and do not involve the issuance of financial instruments. These are therefore governed by the civil law provisions in force in the relevant Member State, which fall outside the Proposal's scope and, pursuant to Article 4(2), must apply to all aspects not regulated by the Articles of Association. In the absence of an established European practice regarding SAFEs and standard contractual arrangements, it seems highly unlikely that the considerable scope for contractual autonomy can compensate for

[41] Swanbase, "BSA Air: Guide Complet pour Startups" (2026), https://swanbase.co/blog/bsa-air-guide-complet-startups/ (last accessed: 12 May 2026).

[42] Orrick, Convertible Bonds for Tech Companies (2019), https://media.orrick.com/Media%20Library/public/files/insights/olns-02-convertible-loans.pdf (last accessed: 12 May 2026).

the brevity of Article 68 of the Proposal or promote the harmonisation of start-up financing methods.

The inadequacy of the Proposal in pursuing this objective also appears to derive from the fact that the differences between various national implementations of SAFE or similar financing methods largely stem from issues and assessments related to accounting and tax matters, which are not covered by the EU Inc. regime and remain governed at a national level. Furthermore, the risk of fragmentation is heightened by the absence of specialised EU Inc. courts, as national courts are likely to adopt different approaches, making it even more difficult to harmonise financing arrangements for start-ups. This should be the European legislator's primary objective, as it would foster the development of a start-up and scale-up ecosystem capable of competing with that of the United States.

6. Conclusions and policy proposals.

Having examined the provisions relating to the financial structure, capital transactions and distributions to shareholders of EU Inc., it is possible to assess the Proposal's innovative scope and its actual capacity to facilitate Europe-wide financing of start-ups and scale-ups.

As regards the first point, as previously mentioned, provisions similar to those laid down for the EU Inc. in Articles 61 et seq. of the Proposal are already in force in some Member States for non-joint-stock companies. Under Article 44 of Directive (EU) 2017/1132, the rules on the maintenance and alteration of capital apply, in fact, only to joint-stock companies. Furthermore, it cannot be overlooked that solutions similar to those contained in the Proposal with regard to the regime governing distributions to shareholders and contributions in kind were already provided for in the Proposal for a Council Regulation on the Statute for the European Private Company (SPE)[43] , which, whilst requiring a minimum capital of one euro, already left to the discretion of the articles of association, amongst other things, the elimination of the procedure for valuing contributions in kind and the introduction of the solvency test, in addition to the balance sheet test. A similar approach was adopted in the subsequent proposal for a directive on the Societas Unius Personae (SUP) (COM/2014/0212), combining a minimum capital requirement of one euro with a dual creditor protection system. This mechanism was based on a balance sheet test and a solvency statement, which had to be signed by the management board before any distribution to the sole shareholder could be made. Under the SUP Proposal, any director recommending or ordering a distribution in breach of these

[43] European Commission, Proposal for a Council Regulation on the Statute for a European Private Company (SPE), COM(2008) 396 final, https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52008PC0396 (last accessed: 12 May 2026).

requirements would incur personal liability, and any such distributions would be subject to recovery[44].

In light of these precedents, it should first be noted that the national rules referred to above, as well as the SPE and SUP proposals, confirm that EU Inc. is intended for small enterprises with high growth potential. Such enterprises are typically established as limited liability companies or simplified joint stock companies in certain Member States[45]. It is therefore easy to foresee that Member States will designate these company forms as the reference point for identifying the national rules intended to fill the gaps in the EU Inc. framework not remedied by statutory autonomy. This raises the question — for which there is no immediate solution — as to whether it will be possible to incorporate the EU Inc. as a public limited company in such a case. However, it would appear that this should not be permitted, as otherwise it would lead to interpretative and application difficulties that would be hard to overcome and could affect the use of the EU Inc.

The above does not rule out the possibility of establishing even large companies (such as, for example, branches of multinational groups) in the form of an EU Inc., whilst it renders unrealistic (unless it stems from a genuine misunderstanding of the Proposal's aims) the assertion that the EU Inc. could become one of the corporate forms generally used for the purposes of listing. That this is not the European Commission's intention is confirmed not only by the fact that the EU Inc. does not replace but rather complements the Societas Europaea (SE), which is designed for larger enterprises entering the market. This is demonstrated by the list of companies that have adopted this corporate form to date. Furthermore, the EU Inc. framework clearly focuses on start-ups and scale-ups, as evidenced by the previous analysis, which shows that it contains numerous provisions specifically aimed at these types of company and drawing on established practice in this area. Moreover, recital 42 states that the EU Inc.'s access to regulated markets is intended 'to further support scale-ups and other more mature EU Inc. companies in meeting their equity needs', which seems to confirm that this is the intention of the Proposal.

If, therefore, a certain degree of innovation is to be recognised in the EU Inc. framework – even though, as regards the rules on financial structure, it is largely the result of bringing together solutions adopted in certain Member States for limited liability companies not subject to Directive (EU) 2017/1132 – it remains to be assessed whether it is actually capable of facilitating the achievement of the objectives set by the legislator.

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[44] V. Knapp, "Directive on Single-Member Private Limited Liability Companies: Distributions", European Company and Financial Law Review 12 (2015), 191, 191 ff.

[45] On the French société par actions simplifiée (SAS), see P.-H. Conac, "La société par actions simplifiée: une révolution démocratique", in: P.-H. Conac/I. Urbain-Parleani (eds.), La société par actions simplifiée, Dalloz 2016, 1 ff.; M. Ventoruzzo, "The SAS from the Italian Perspective", in: P.-H. Conac/I. Urbain-Parleani (eds.), La société par actions simplifiée, Dalloz 2016, 177 ff. On the Polish prosta spółka akcyjna (P.S.A.), see A. Opalski/K. Oplustil/T. Sójka/A.-M. Weber, "The Simple Joint Stock Company: Emergence of a New Close Company in Poland", European Company and Financial Law Review 21 (2024), 604, 604 ff.; M. Mazgaj/A. Mucha, "The New Kid on the Block on the European Market for Corporate Legal Forms: A Polish Laboratory for a Modern Close Corporation", European Company Law Journal 17 (2020), 45, 45 ff. More generally on the overcoming of the traditional continental dichotomy between public and private limited liability companies, see J. Schmidt/C. Teichmann (fn. 15), 4.

Taking into account the limitations highlighted above, it seems reasonable to conclude that the EU Inc. framework does not offer effective solutions to facilitate the financing of scale-ups[46]. As noted by the Commission itself[47], this constitutes the main weakness of the European system: there are numerous start-ups financed by venture capital, but the number of unicorns is significantly lower than in the United States. In 2025, for example, there were around 2,000 unicorns in the United States, compared with only 330 in the European Union. In order to develop scale-ups, it is essential to create a harmonised regulatory framework so that they can raise capital at a European level, rather than only or primarily in their Member State of incorporation.

In addition to the lack of a harmonised regulatory framework regarding tax, accounting and labour law, the EU Inc. regime is insufficiently robust and potentially distorting with regard to access to capital markets, which is essential for raising capital and providing exit opportunities for investors. Furthermore, it falls short in facilitating the creation of a harmonised framework for financing start-ups and scale-ups.

With regard to access to capital markets, Article 60 of the Proposal merely stipulates that Member States must permit the listing of EU Inc.'s equity and debt securities on multilateral trading facilities, such as SME growth markets. Member States may also grant access to regulated markets. In both cases, EU Inc. is subject to applicable European and national capital markets regulations.

This cautious (and "salomonic"[48]) approach appears to be a consequence of the decision to allow enterprises of all sizes to use the EU Inc., not just start-ups and scale-ups[49]. This represents a significant departure from the existing EU corporate law framework, which is based on the fundamental distinction that closed companies benefit from maximum flexibility in governance and financial structure, while public companies are joint-stock companies subject to more stringent regulatory requirements[50]. These requirements include those imposed by EU directives, national implementing legislation

[46] W.-G. Ringe, "EU Inc: Why Startups Gain – and Venture Capital Hesitates", Oxford Business Law Blog, 30 March 2026, https://blogs.law.ox.ac.uk/oblb/blog-post/2026/03/eu-inc-why-startups-gain-and-venture-capital-hesitates (last accessed: 12 May 2026).

[47] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Towards a 28th Regime for EU Companies", 2026, https://commission.europa.eu/document/download/2d1b62a4-7807-4808-aed1-36f1f58ac1e7_en (last accessed: 12 May 2026).

[48] J. Schmidt/C. Teichmann (fn. 15), 37.

[49] The fact that in some Member States private limited liability companies may trade their shares or interests on capital markets does not justify the provision of Article 60 of the Proposal, but would rather call for allowing the admission of EU Inc. shares or interests to multilateral trading facilities only, and not to regulated markets. See J. Schmidt/C. Teichmann (fn. 15), 37.

[50] J. Schmidt/C. Teichmann (fn. 15), 37, noting that "If the respective Member State designates a private company as the national legal form of reference (as will probably be the case in Germany), the possibility of the EU Inc. accessing the capital markets signifies a break with the traditional continental European concept of capital protection underlying the original Capital Directive and now Title I Chapter IV CLD. This traditional concept is based on the dichotomy of public companies (Annex I CLD), which have access to the capital markets and are therefore subject to particularly strict capital protection requirements, and other companies (private companies) (Annex IIA CLD), for which this is not the case".

and listing standards. Allowing the EU Inc. to access regulated markets undermines this distinction in two ways. Firstly, it creates opportunities for regulatory arbitrage, as companies can use the EU Inc. to avoid the capital maintenance and governance rules that apply to listed entities under EU and national law. Conversely, if the EU Inc. were subject to the requirements that accompany listed status, such as the provisions on shareholder meetings, proxy voting and related-party transactions in the Shareholder Rights Directive II (SHRD II), the flexibility that makes the vehicle attractive would be substantially eroded.

In light of the above, Article 60 of the EU Inc. Regulation Proposal should be substantially amended. Firstly, access to multilateral trading facilities (MTFs) and, where permitted by Member States, regulated markets should be restricted to EU Inc. companies that qualify as innovative start-ups, as defined in the Commission's recommendation of 18 March 2026[51]. Secondly, trading in EU Inc. shares should take place on a designated MTF segment. Article 33 of MiFID II (as amended by Directive 2024/2811) already provides a workable mechanism whereby an MTF operator can register an MTF, or a segment of an MTF, as an SME Growth Market, provided it is clearly distinct from other MTF segments in terms of its name and rulebook. Trading EU Inc. shares in a dedicated segment would offer EU Inc. better opportunities for growth and expansion within the EU, while preventing the distortions that would result from unrestricted listing. Thirdly, EU Inc. companies that qualify as innovative start-ups should necessarily take the form of joint stock companies in the case of access to regulated markets.

Moreover, a more ambitious approach — going beyond the creation of a single capital market, as set out in the Market Integration and Supervision Package published by the European Commission on 4 December 2025[52]— would have required the exploration of alternative, more targeted solutions when defining the rules for the EU Inc. These solutions would facilitate access to the capital markets for scale-ups in a more gradual manner, with the possibility of lighter regulatory burdens.

One such initiative is the introduction of the Private Intermittent Securities and Capital Exchange System (PISCES) in the United Kingdom[53]. PISCES consists of a regulated secondary market that cannot be used by companies to raise capital through listing. It allows shareholders of unlisted companies to trade their shares during periodic trading windows. The system operates within a more flexible regulatory framework that allows companies to exclude certain categories of buyers, such as potential competitors[54].

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[51] J. Schmidt/C. Teichmann (fn. 15), 37.

[52] European Commission, Market Integration and Supervision Package (4 December 2025), https://finance.ec.europa.eu/publications/market-integration-and-supervision-package_en (last accessed: 12 May 2026).

[53] London Stock Exchange, “Private Securities Market (PISCES)”, https://www.londonstockexchange.com/raise-finance/equity/private-markets/private-securities-market?tab=benefits-for-companies (last accessed: 12 May 2026).

[54] London Stock Exchange, Private Securities Market Rules (2026), para. 3.3, https://www.londonstockexchange.com/resources/raise-finance-resources?tab=private-securities-market (last accessed: 12 May 2026).

Although concerns have been raised in this regard that merit careful consideration[55], PISCES could facilitate the flow of resources to start-ups and scale-ups. It would enable founders to realise the value of their shareholdings and adjust their risk exposure without leaving the company entirely. In addition, it would allow early-stage investors, including angel investors and venture capital funds, to transfer their shares to later-stage investors. These investors could then reinvest the proceeds in new seed and pre-seed funding, thereby fuelling the innovation ecosystem. Furthermore, employees and executives holding shares acquired through stock options would have the opportunity to sell them, either partially or wholly[56]. Instead of restricting this opportunity to private equity investors, as suggested in the Commission's March 2, 2026, targeted consultation on private equity exits, the European Commission could consider establishing temporary trading platforms for innovative startups and venture capital investors[57].

As mentioned above, the EU Inc. framework does not appear to be well-suited to the objective of establishing a "harmonised financing framework", as outlined in recital 43 of the Proposal. Such a framework would enable start-ups and scale-ups to attract investment from venture capitalists and angel investors in other EU countries. Currently, these investors are deterred from cross-border investments due to high transaction costs, complex cross-border due diligence and unfamiliar national corporate structures[58].

Although the elimination of the minimum share capital and the nominal value of shares may facilitate the harmonisation process, the provisions relating to capital raising and, in particular, those of Article 68 concerning "instruments entitling to new shares" do not appear sufficient to foster the emergence of financing practices that are usable and recognisable in every Member State and conducive to cross-border investments, including by non-European investors, replicating the success of the US SAFE and KISS schemes. This is also attributable to the lack of harmonisation of tax and accounting treatment, as the Proposal does not comprehensively address the tax and accounting rules governing convertible instruments, leaving this aspect to the fragmentation of national regimes. Furthermore, the effectiveness of the Proposal's provisions on the financing of the EU Inc. remains subject to the application of Article 4, which refers to the national law of the Member State of the registered office for matters not regulated by the Proposal

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[55] E. Ferran, "Regulating for Growth in an Era of Rising Economic Nationalism: UK and EU Perspectives", SSRN 2025, 14 ff., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5360053 (last accessed: 12 May 2026).

[56] Taylor Wessing, "PISCES – An Introduction to the UK's New Private Securities Trading Platform", 15 October 2025, https://www.taylorwessing.com/en/insights-and-events/insights/2025/10/pisces-an-introduction-to-the-uks-new-private-securities-trading-platform (last accessed: 12 May 2026).

[57] European Commission, Targeted Consultation on Private Equity Exits, 2 March 2026, https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-private-equity-exits-2026_en (last accessed: 12 May 2026).

[58] N. Arnold/A. Dizioli/A. Fotiou/J. Frie/B. Hacibedel/T. Iyer/H. Lin/M. Nabar/H. Tong/F. Toscani, "Lifting Binding Constraints on Growth in Europe: Actionable Priorities to Deepen the Single Market", IMF Working Paper No. 25/113 (2025), 6 ff., https://www.imf.org/en/Publications/WP/Issues/2025/03/28/Lifting-Binding-Constraints-on-Growth-in-Europe-Actionable-Priorities-to-Deepen-the-Single-567267 (last accessed: 12 May 2026).

or the articles of association. With regard to financing, as already mentioned, this reference takes on particular significance in relation, for example, to the regulation of convertible instruments and the judicial interpretation of investor protection clauses.

There is therefore a real risk that the EU Inc. may offer financial instruments that are technically more flexible than those currently available under Member States' legislation, but that their practical appeal to investors remains constrained by the fragmentation of the tax regime and the inability to offer (in the absence of specialised courts) investors a uniform degree of legal certainty, which are essential preconditions for effective convergence towards the new European regime[59] .

While it is true that the issue just raised is a significant limitation of the EU Inc. framework — since the main obstacles to European start-up growth are primarily concerned with the fragmentation of substantive rules on capital raising, rather than being administrative in nature, meaning that the introduction of digital procedures can only address part of the problem[60] — it must nevertheless be borne in mind that the spread of financing methods generally accepted by investors in start-ups and scale-ups depends to a large extent on the ability of entities within that ecosystem (incubators, accelerators, law firms) to devise flexible and simple solutions, including the definition of contractual formats. This has been demonstrated by SAFE and KISS in the United States, and by financing methods inspired by them that are used in some Member States.

Although there are already some initiatives in this regard[61] , given the limitations of the Proposal outlined above, it seems doubtful that the EU Inc. framework could trigger such a virtuous circle, as it does not appear that the provisions contained in the Proposal alone are sufficient to overcome the differences that currently exist between established practices in Member States regarding the financing of *start-ups*, which have prevented the emergence of a single contractual model, such as SAFE or KISS in the United States.

In order to overcome fragmentation and promote the establishment of a European SAFE, the Commission could consider (by analogy with the provisions for the articles of association under Article 8) adopting a financing contract template usable in every Member State to overcome the differences that currently characterise national practices. This would make it possible to overcome the limitations highlighted in Article 68 without, however, eliminating the degree of flexibility it affords and, therefore, without precluding the emergence of different financing methods that may be identified in practice, including through the development of alternative contractual formats. It is significant that support for this approach is also expressed in the proposal signed by over 24,000 founders, investors and executives in the technology sector in Europe — which significantly influenced the Commission in defining the rules for EU Inc. — and which specifies that the definition of a standard template, known as EU-FAST, should not "prevent EU-Inc

[59] N. Arnold et al. (fn. 58), 13.

[60] L. Enriques/C.A. Nigro/T.H. Tröger (fn. 5).

[61] See fn. 39 above.

from accepting other investment instruments that are widely used across Europe provided they comply with the future EU regulations governing the affairs of such entities”[62] .

In conclusion, whilst the above observations highlight certain limitations of the Proposal, they do not lead to an irremediably negative assessment of the EU Inc. framework. Rather, they lead to the conclusion that judgement should be reserved on the Proposal, taking into account the fact that it constitutes the main element of the broader legislative plan aimed at creating the 28th regime. According to the Commission's ambitions[63], this regime should enable European companies to have a harmonised approach “in all matters concerning their business”. From this perspective, it will be important to ascertain whether the announced initiatives, which aim to remove obstacles posed by fragmented tax and labour rules[64] and allocate significant resources to financing high-growth companies, particularly scale-ups in the technology sector[65], will be effectively implemented.

Only if these measures prove effective is it possible that EU Inc. will become the centre of gravity of a financial ecosystem for start-ups capable of competing with that of the United States.

While this remains the central challenge for the European legislator, the EU Inc. framework outlined in the Proposal may nonetheless be viewed favourably, regardless of whether the aforementioned effects are ultimately achieved, as it appears capable of generating a desirable spillover effect on national legislation[66]. This is particularly evident in the case of Italy, whose regime for limited liability companies is excessively rigid and complex, imposing, among other things, stringent constraints centred on share capital

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[62] EU-Inc Policy Proposal, An Industry Blueprint for the Upcoming 28th Regime, 2025, 15 ff., https://proposal.eu-inc.org/?v=14d076fd79c58146b048000caeed686a (last accessed: E. Ferran, “Regulating for Growth in an Era of Rising Economic Nationalism: UK and EU Perspectives”, SSRN 2025, 14 ff., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5360053 (last accessed: 12 May 2026).).

[63] European Commission (fn. 47).

[64] In particular, the Commission will further assess the possibility of allowing 100% cross-border teleworking for innovative start-ups and scale-ups across the Union as part of the forthcoming Fair Labour Mobility Package, https://ec.europa.eu/regional_policy/whats-new/newsroom/21-01-2026-eu-consultations-on-labour-mobility-and-skills-in-border-regions_en (last accessed: [date]). On tax matters, the Commission has proposed a Head Office Tax (HOT) system, https://taxation-customs.ec.europa.eu/taxation/business-taxation/head-office-tax-system-smes-hot_en (last accessed: [date]), that would allow small and medium-sized enterprises to apply the tax rules of their country of origin. Furthermore, the Business in Europe: Framework for Income Taxation (BEFIT) initiative, https://taxation-customs.ec.europa.eu/taxation/business-taxation/business-europe-framework-income-taxation-befit_en (last accessed: [date]), aims to establish a single legislative framework for corporate taxation in the EU.

[65] M. Schörner, “One Fund to Scale Them All? Filling Crucial Financing Gaps with the Scaleup Europe Fund”, Jacques Delors Centre Policy Brief, 7 April 2026, https://www.delorscentre.eu/en/publications/detail/publication/one-fund-to-scale-them-all (last accessed: E. Ferran, “Regulating for Growth in an Era of Rising Economic Nationalism: UK and EU Perspectives”, SSRN 2025, 14 ff., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5360053 (last accessed: 12 May 2026).).

[66] S. Jung, “European Legal Forms – Underlying Systematic and Principles”, European Company and Financial Law Review 17 (2020), 491, 491 ff.

requirements. The Proposal makes it clear that such constraints are unnecessary and that there is considerable scope to modernise the regulation of limited liability companies.

In this regard, Article 4 of the Proposal could play a catalytic role by encouraging the revision of more conservative national legislation, which might otherwise find itself at a competitive disadvantage compared to Member States that have already adopted solutions closely aligned with those characterising the EU Inc., such as in the Netherlands and Belgium. In fact, it is precisely because of Article 4 that those jurisdictions could become popular locations for the incorporation of the new company form. These jurisdictions would attract companies operating in other Member States where the integration of the EU Inc. framework with national provisions would be more difficult and could lead to greater rigidity.

From this perspective, one must therefore agree with the assertion that the EU Inc. framework and, more generally, the 28th regime, can help to overcome the current fragmentation not only through harmonisation (which is the main aim of the Proposal) but also by encouraging competition between legal systems[67], not only because companies can always opt for one of the national laws as an alternative to the 28th regime, but also because Member States will be able to compete to attract the incorporation of EU Inc.

[67] T. Vos, "The 28th Company Law Regime: A Mix of Harmonisation and Regulatory Competition", European Company Law Journal (2026), 4, 4 ff.

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