The EU Inc. – half European, fully digital, and genuinely innovative

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Keywords: EU Inc., 28th regime, EU company law

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The authors are members of the Informal Expert Group on Company Law and Corporate Governance (ICLEG) which advises the European Commission in the preparation of company law and corporate governance initiatives. The views expressed in this article are solely those of the authors.

All links were last accessed on 24 April 2026.

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The paper is due to be published in ECFR issue 2/2026.

Jessica Schmidt / Christoph Teichmann*

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A. The EU Inc. and the Evolution of EU Company Law

1 Nearly 25 years ago, on 8 October 2001, the Regulation introducing the European Company (Societas Europaea – SE) was adopted.[1] It was primarily designed for large enterprises with cross-border operations, as reflected e.g. in the complex incorporation rules and the high minimum capital requirement (EUR 120,000). For large companies, it has become an attractive legal form: in 2025, 30% of the companies listed in the German capital market index DAX and 16% of companies listed in the EURO STOXX 50 were SE or SE & Co. KGaA.[2] However, overall, the SE has not turned out to be the "blockbuster" hoped for.[3] Its greatest practical significance is probably in Germany and the Czech Republic, while its success in Germany is to a great extent due to the fact that it can be used to circumvent codetermination rules.[4]

2 The introduction of the SE was followed, in 2008, by the proposal for a European Private Company (Societas Privata Europaea – SPE).[5] The SPE was intended to fill the gap alongside the SE and to be particularly attractive for small and medium-sized enterprises seeking to access the internal market. However, since the proposal relied on the residual competence under Art. 308 EC Treaty (now Art. 352 TFEU), it required unanimity among the Member States. This ultimately caused it to fail in 2011 after intensive negotiations. The subsequent attempt in 2014 to introduce a European single-member company (Societas Unius Personae – SUP)[6] was equally unsuccessful. In both cases, the creation of a new European legal form mainly failed due to concerns that it might undermine social standards.[7]

3 Against this backdrop, at the beginning of the 21st century, the ECJ proved to be the driving force in European company law. In several judgments the Court established that any company validly incorporated in an EU Member State enjoys freedom of establishment throughout the internal market — even if it conducts no activity in its Member State of incorporation.[8] As a

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[1] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), OJ 10.11.2001, L 294/1.

[2] *Marcus Lutter/Walter Bayer/Jessica Schmidt*, Europäisches Unternehmens- und Kapitalmarktrecht, 7th edn., 2026, 29.10. For empirical data on SEs incorporated in Germany (as of 31 July 2023) see *Marcus Lutter/Christoph Teichmann* in: Marcus Lutter/Peter Hommelhoff/Christoph Teichmann (eds.), SE-Kommentar, 3rd edition, 2025, Introduction, para. 45 et seq.

[3] Cf. *Andrea Vicari*, European Company Law, 2021, p. 311; *Susanne Kalss/Jakob Deutsch*, Europäisches Gesellschaftsrecht, 2nd ed., 2025, p. 255; *Christoph Teichmann*, § 11 Supranationale Rechtsformen, in: Enzyklopädie Europarecht, Band 6, Europäisches Privat- und Unternehmensrecht, 2nd ed. 2022, p. 726.

[4] See *Lutter/Teichmann* (fn. 3), para. 50. For the strategies of circumventing codetermination by using the European Company see *Christoph Teichmann*, "Circumvention of Board Level Representation of Employees", in: Hanne S. Birkmose, Mette Neville & Karsten Engsig Sørensen (Ed.), Abuse of Companies, 2019, p. 79, 90 et seq.

[5] Proposal for a Council Regulation on the Statute for a European Private Company, COM(2008) 396. For an overall assessment see: *D.F.M.M. Zaman/C.A. Schwarz/M.L. Lennarts/H.-J. de Kluiver/A.F.M. Dorresteijn* (eds.), The European Private Company (SPE), 2009; *Heribert Hirte/Christoph Teichmann* (eds.), The European Company – Societas Privata Europaea (SPE), 2013.

[6] See *Pierre-Henri Conac*, "The Societas Unius Personae (SUP): A 'Passport' for Job Creation and Growth", European Company and Financial Law Review (ECFR) 2015, 139 et seq.

[7] The concerns of employee representatives are explained by *Robert Van het Kaar & Ilse Zaal* in Zaman/Schwarz/Lennarts/de Kluiver/Dorresteijn (fn. 5), p. 159 et seq. as well as by *Rüdiger Krause* in Hirte/Teichmann (fn. 5), p. 375 et seq.

[8] Recently confirmed in the case "*Edil Work 2*", ECLI:EU:C:2024:348. See *Jessica Schmidt*, "BB-Gesetzgebungs- und Rechtsprechungsreport zum Europäischen Gesellschafts- und Unternehmensrecht 2023/2024", BB 2024, 1859 (1871 f.); *Eberhard Schollmeyer*, "Die Zinnen von Schloss Torcrescenza – Das Edil-Works-2-Urteil des Europäischen Gerichtshofes vom 25. April 2024", Rs. C-276/22, Zeitschrift für Unternehmens- und Gesellschaftsrecht (ZGR) 2025, 150 et seq.; *Christoph Teichmann*, "Niederlassungsfreiheit als Verbot von Doppelbelastungen ('Edil Work 2')", Gedächtnisschrift für Gerald Spindler, 2026, p. 733 et seq.

result, founders are free to choose: They either select a legal form available in their home Member State, or they opt for any legal form offered in any other Member State. In the years which followed, English company law experienced a remarkable boom.[9] Many founders preferred the quickly and inexpensively available English private limited company to the legal forms offered by their home state. This development prompted company law reforms in many Member States in order to prevent — or at least mitigate — the outflow of founders.[10]

The resulting regulatory competition generated valuable innovations in many jurisdictions but made it even more difficult to keep an overview of the European landscape of company law. Today, many Member States no longer follow the traditional continental system of having a public limited company and a private limited company — the dichotomy that also underlies the consolidated company law directive (CLD)[11] (→ M.VIII). Instead, they have created a wide variety of new forms situated somewhere between these two poles, from the French Société par Actions Simplifiée (SAS)[12] to the Austrian FlexCo[13], just to name a few of them. This multitude of options within the internal market offers possibilities of legal arbitrage – to those who can afford the lawyers' bills – but it also creates legal uncertainty. Visiting the "Zoo of Organisational Forms"[14] becomes increasingly confusing and the separation of the place of incorporation from the place of business also means dealing with two different legal systems whose interfaces are often unclear. Unfortunately, the European legislature has so far been unwilling to harmonise the rules of private international law that would determine the applicable company law in a particular real-life situation.[15] 4

It follows that legal fragmentation in the internal market, as far as company law is concerned, has by no means decreased; if anything, it has increased. It has become part of an overly complex landscape of business law in Europe, a fact which was taken up in early 2025 by both *Mario Draghi*[16] and *Enrico Letta*[17] in their reports on the state of the internal market.[18] Both proposed supplementing the 27 national legal systems with a "28th regime" — a uniform set of rules applicable throughout the entire internal market. It was helpful that such a conceptual framework had been thoroughly prepared by European legal scholarship in recent decades. From 2007 to 2017, an international working group chaired by Paul Krüger Andersen and 5

[9] Even though, in the long run, this might have been a "flash in the pan": *Wulf-Georg Ringe*, "Corporate Mobility in the European Union – a Flash in the Pan? An empirical study on the success of lawmaking and regulatory competition", European Company and Financial Law Review (ECFR) 2013, 230 et seq.
[10] For Germany see *Christoph Teichmann*, "Die GmbH im Wettbewerb der Rechtsordnungen", ZGR 2017, 543 ff.
[11] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L, 30.6.2017, p. 169.
[12] Cf. *Pierre-Henri Conac/Isabelle Urbain-Parleani* (eds.), La Société Par Actions Simplifiée (SAS) – Bilan et Perspectives, 2016.
[13] *Julia Nicolussi*, "One Year of FlexCo: Reflections and Unveiling the Appeal of Regulatory Dualism", ECFR 2025, 195 et seq.
[14] Cf. *Holger Fleischer*, "The Menagerie of Organizational Forms in German Company Law", ECFR 2023, 593, 594.
[15] The variety of national solutions to international private law is elaborated by *Carsten Gerner-Beuerle/Federico M. Mucciarelli/Edmund Schuster/Mathias Siems* (eds.), The Private International Law of Companies in Europe, 2019.
[16] Draghi, The future of European competitiveness, 2024.
[17] Letta, Much more than a market, 2024.
[18] For more details of the debate preceding the Commission's EU Inc. proposal see *Anne Sanders*, "The Scope of the 28th Regime", 2025, PE 776.311; *Michele Siri*, "The '28th Regime' for Start-Up and Scale-Up Companies: What is there and What is Missing in the Current Debate on EU-Inc.?", ECFR 2/2026 (forthcoming).

Theodor Baums developed the "European Model Company Act (EMCA)"[19], a model statute intended to guide both national and European legislation.[20] A revised version of the EMCA will be published by the end of 2026. Even more ambitious is the project of a "European Business Code",[21] initiated in 2017 by Association Henri Capitant and covering all areas of business law, including a proposal for a "Societas Europaea Simplificata (SES)"[22]. An additional political push for the 28th regime finally came from the start-up community calling, under the label "EU Inc.", for a legal framework for innovative new enterprises.[23]

6 On 18 March 2026, the European Commission reacted to these initiatives by presenting a proposal for introducing "EU Inc." as a harmonised legal form to be integrated into the EU–Member States' legal systems (EU Inc. Regulation – EUIncR).[24] This article discusses the key elements of the proposal and evaluates them in the context of national and European company law.

B. Basic Concept of the "EU Inc."

7 The Commission intends to introduce a harmonised limited liability company, which will operate everywhere in the internal market under the denomination "EU Inc.". It is a new legal form which shall be introduced in the national legal systems of all Member States (Art. 1(a) EUIncR).[25] It shall be governed by the law of the Member State of incorporation, but at the same time benefit from a harmonised set of rules introduced by the EUIncR.[26] It is the aim of the proposal to respond in particular to the needs of start-up and scale-up companies, while it shall also be open to other founders who see it fit for their business model.[27]

8 With the decision to use the suffix "EU Inc.", the Commission follows the "EU Inc.-Initiative"[28]. Alternatives that were proposed included "Societas Europaea Unificata" ("S.EU")[29], "Societas Privata Europaee Unificata" ("SPEU")[30], or an EU suffix attached to the national company

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[19] https://ssrn.com/abstract=2929348. *Theodor Baums/Christoph Teichmann*, "Der European Model Company Act (EMCA) – Inspiration für Gesetzgeber und Wissenschaft im Kapitalgesellschaftsrecht", Die Aktiengesellschaft (AG) 2018, 562 ff.; *Evanghelos Perakis*, "The EMCA: General Principles and Main Content", ECFR 2016, 200 et seq.; *Jessica Schmidt*, "Der European Model Company Act (EMCA)", Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht (ZHR), 2017, 43 et seq.

[20] The group was inspired by the U.S. Model Business Corporation Act (MBCA) that serves as a benchmark for lawmaking in the United States. For a comparison see *Michael Klausner*, "A U.S. View of the European Model Company Act", ECFR 2016, 363 et seq.

[21] See the project website Draft European Business Code - Henri Capitant.

[22] *Urs Peter Gruber/Christoph Herrmann/Matthias Lehmann/Reiner Schulze/Christoph Teichmann*, "Harmonisierung des deutschen und französischen Wirtschaftsrechts", Europäische Zeitschrift für Wirtschaftsrecht (EuZW) 2021, 413 et seq.; *Dirk Verse*, "A New Start for the European Private Company: The Draft Statute for a 'Société Européenne Simplifiée' (SES)", ECFR 2022, 654 et seq.

[23] Let's create the ideal EU-Inc for Europe – together | eu-inc.org.

[24] Proposal for a Regulation of the European Parliament and of the Council on the 28th Regime Corporate Legal Framework – 'EU Inc.', COM(2026) 321. For the sake of simplicity, this paper already uses "EUIncR" although it is only a proposal.

[25] Recital 4 EUIncR.

[26] Recital 4 EUIncR.

[27] Recital 5 EUIncR.

[28] See above fn. 23.

[29] Resolution of the European Parliament (P10_TA(2026)0002, no. 13).

[30] *Victoria Goll/Alexander Stern*, "Wirkung und Gestaltung von Rechtsformzusätzen am Beispiel der ‚28. Rechtsform'", NZG 2025, 1458, 1465.

designation ("GmbH.EU", "SARL.EU", etc.)[31]. While the abbreviation "EU Inc." at least signals that the company is domiciled within the EU,[32] the reference to U.S. corporate terminology does not exactly display a strong sense of self-confidence in the attractiveness of the European internal market.

The company may be founded by one or more natural or legal persons, either from scratch or through domestic or cross-border conversions, mergers or divisions (Art. 3(c), (d) EUIncR).[33] It acquires legal personality upon registration in a Member State's business register (Art. 5(2) subparagraph 1 EUIncR). The proposal strictly applies the principle of "digital-only" by providing digital procedures applicable throughout the company life cycle – from incorporation to liquidation. By offering not only provisions on incorporation, corporate governance, and financial structure, but also for liquidation and winding-up of the EU Inc., the text goes notably beyond the *acquis* of the CLD. 9

The registered office and the central administration (or principal place of business) of the EU Inc. must be located within the EU (Art. 9(1) EUIncR).[34] Recital 11 EUIncR refers to the case-law of the ECJ (as mentioned above[35]) and concludes that the legal capacity of an EU Inc. lawfully incorporated in one Member State shall be recognised in any other Member State. Additionally, it emphasizes that an EU Inc. cannot be required to have its central administration (or principal place of business) in the same Member State as its registered office. Complementarily, the "black list" in Art. 103(2) EUIncR expressly prohibits Member States from imposing certain requirements on EU Inc. whose registered office is in another Member State. 10

C. Art. 114 TFEU as the Legal Basis

For its proposal of an EU Inc. Regulation, the European Commission uses Art. 114 TFEU as the legal basis.[36] This provision allows the adoption of measures for the achievement of the objectives set out in Art. 26 TFEU, which means the functioning of the internal market as constituted by the four fundamental freedoms. Instead, one might have considered Art. 50(2)(g) TFEU, which so far underpinned legal harmonisation in company law (in particular the CLD). Art. 352 TFEU also might have been considered, which served as legal basis for the existing supranational legal forms, such as the European Company (SE), the European Economic Interest Grouping (EEIG) and the European Cooperative Society (SCE). 11

Art. 352 TFEU, however, requires unanimity among the Member States. The SE Regulation (SER) provides a good illustration of where this leads to:[37] The content of the SER represents 12

[31] Suggested within the Informal Expert Group on Company Law and Corporate Governance (ICLEG).
[32] On the function as a European label *Goll/Stern* (fn. 30) p. 1461.
[33] See *infra* F.II.
[34] This provision is slightly more restrictive than Art. 54 TFEU, which grants freedom of establishment to all companies having *either* their registered office *or* their central administration *or* principal place of business within the Union. However, Art. 54 TFEU additionally requires that such companies are formed in accordance with the law of a Member State. It follows, that the former requirement does not force Member States to allow national legal forms to have their registered office or central administration/principal place of business outside EU territory (see *Teichmann* (fn. 3), § 9 para. 33, p. 610).
[35] See fn. 8.
[36] This issue is also addressed by *Siri* (fn. 18). The European Parliament had commissioned a study on the issue: *Jacques Ziller*, Le 28ème régime et les compétences de l'Union, July 2025, PE 776.160.
[37] Cf. *infra* fn. 62.

the lowest common denominator on which the Member States were able to agree; all contentious provisions were removed during the decades-long negotiations and replaced by references to national law. Since then, any further improvement is almost impossible to achieve because any reform would again require unanimity. The attempt to introduce a European Private Company (Societas Privata Europaea – SPE) ultimately failed for exactly this reason.[38]

13 Art. 114 TFEU permits “measures” for the approximation of national rules, which means both directives and regulations are admissible as legal instruments.[39] The objective of such measures is always the functioning of the internal market. The proposed EUIncR addresses both freedom of establishment and free movement of capital. On its wording, Art. 114 TFEU could therefore be appropriate.[40]

14 However, in a similar case concerning the SCE Regulation (SCER), the ECJ relied on Art. 352 TFEU as the relevant legal basis.[41] The European Parliament had taken the view that the SCE should be based on Art. 95 EC (the predecessor of Art. 114 TFEU). The ECJ countered that the creation of a supranational legal form did not amount to “approximation” of Member State laws and therefore did not fall within the scope of Art. 95 EC.[42] Against this backdrop, it is not surprising that EU Inc. is presented as a “new harmonised legal form”[43] to be “introduced in the national legal orders of all Member States”, which shall “benefit from a harmonised set of rules introduced by this Regulation”[44] – which means it is not intended to be a new supranational legal form.

15 In order to distinguish between a supranational legal form and the approximation of laws, a closer look at the relevant judgment is required. First of all, the Court referred to the fact that the SCE was to be introduced by a regulation. The SCE is “governed first and foremost by that regulation” and only in the case of “matters not regulated by the regulation” reference is made to national law.[45] The same could be argued for the EU Inc., as stipulated in Art. 4 EUIncR.[46] On the other hand, however, the Court’s description simply reflects the very nature of any regulation: The subject matter governed by it is subject to the regulation itself, and national law applies only to those issues not regulated by the regulation. Since Art. 114 TFEU is acknowledged to authorize the adoption of regulations as well, the regulatory mechanism of a regulation alone does not constitute a compelling argument for denying the application of Art. 114 TFEU. In other words, the mere fact that a matter is unified through the adoption of a regulation does not, in itself, mean that it cannot be regarded as approximation of national law in the sense of Art. 114 TFEU.[47]

[38] Cf. *supra* A.
[39] *Ziller* (fn. 36) p. 16.
[40] In the same vein *Siri* (fn. 18).
[41] ECJ, 2 May 2006, *European Parliament v Council of the European Union*, C-436/03, ECLI:EU:C:2006:277.
[42] ECJ (fn. 41), para. 44.
[43] E.g. recital 3 EUIncR.
[44] Recital 4 EUIncR.
[45] ECJ (fn. 41), para. 41.
[46] Cf. *Christian Bochmann/Janne Katrine Bochmann*, “Der Kommissionsentwurf zur EU Inc.”, Recht der Familienunternehmen (RFamU) 2026, 167, 168.
[47] The IAS Regulation (Regulation (EC) 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards, OJ 11.9.2002, Nr. L 243/1) may serve as an example which was based on Art. 95 EC, the predecessor of Art. 114 TFEU.

The legal analysis must therefore proceed a step further and elucidate what is distinctive about a supranational legal form apart from the fact that it is introduced by a regulation. In its SCE judgment, the Court continues the argument as follows: The conditions of formation of an SCE, which are laid down in Art. 2 of the contested regulation, are specific to that form of society.[48] In doing so, the Court refers to the fact that the formation of an SCE always requires a cross-border element, as is likewise characteristic of all other supranational legal forms.[49] In addition, the Court referred to the fact that an SCE could transfer its registered office from one Member State to another,[50] which at the time of the judgment, was only possible for supranational legal entities. 16

By contrast, reliance on Art. 114 TFEU (Art. 95 EC respectively), is possible, according to the Court, if the aim is to prevent obstacles to trade resulting from heterogeneous development of national laws.[51] The problem of heterogeneous development of national laws is exactly the reason why the Commission wants to introduce the EU Inc.[52] The key difference between this proposal and a supranational legal form lies in the fact that the EUIncR does not require a cross-border element. The EUIncR also covers purely domestic situations and, to that extent, displaces the regulatory competence of the Member States. It supersedes a whole range of provisions on incorporation and financing that would otherwise apply to the national legal form of reference (→ D.II.2). This illustrates a characteristic feature of legal harmonisation. 17

Finally, a distinction must be made with regard to Art. 50(2)(g) TFEU. This provision permits the adoption of directives for attaining freedom of establishment by coordinating safeguards, which, for the protection of the interests of members and others, are required by Member States' law. However, the link to the freedom of establishment is not particularly close, since the legal form in question can be established as a purely national incorporation. Moreover, the EUIncR does more than coordinating "safeguards" for the protection of the interests of members and others, but rather enables founders and investors to make certain arrangements that are currently not possible in the same manner under the divergent national legal systems.[53] The EU Inc. is intended to be particularly attractive for investors both from inside and outside the EU. The proposal therefore also relates to the free movement of capital and, in a sense, occupies the space on the threshold of EU capital markets law, the legal acts 18

[48] ECJ (fn. 41), para. 42.

[49] For cross-border requirements regarding the SE see Art. 2 SER. The requirement of a cross-border element was also relevant for the debate on the European Private Company (see *Günter H. Roth*, Vorgaben der Niederlassungsfreiheit für Kapitalgesellschaften, 2010, p. 54 et seq.).

[50] ECJ (fn. 41), para. 42. The same is regulated in Art. 8 SER.

[51] ECJ (fn. 41), para. 39.

[52] See *supra* A.

[53] The EU Inc. Initiative (fn. 23) criticised Europe's lack of uniformity creating hurdles for cross-border investment and efficient operational growth. In the same vein *Luca Enriques/Casimiro Antonio Nigro/Tobias Tröger*, "Can U.S. Venture Capital Contracts Be Transplanted into Europe? Systematic Evidence from Germany and Italy", ECGI Working Paper 848/2025; *Tobias Tröger,* "Warum der Vorschlag der EU-Kommission für ein 28. Regime den Herausforderungen Europas nicht gerecht wird", GmbHRundschau (GmbHR) 2026, R132 et seq.; for a more positive conclusion based on the empirical analysis of Italian company charters *Paolo Giudici/Peter Agstner/Antonio Capizzi*, "The Corporate Design of Investments in Startups: A European Experience, European Business Organization Law Review (EBOR) 2022, 787 et seq.

of which are likewise partly based on Art. 114 TFEU[54]. Hence, contrary to the opinion of some commentators[55], the choice of legal basis is therefore justifiable.

D. The Law Applicable to the EU Inc.

I. Why There Will Be No Purely Supranational EU Inc.

19 After the publication of the EU Inc. proposal, some commentators expressed disappointment: This is not the "28th regime" that had been expected.[56] EU Inc. is at best a "hybrid" legal form, relying partly on European law but also being subject to national law — meaning that users will still have to deal with 27 different legal systems. The disappointment is partly due to the grand political rhetoric: The problem of the internal market, it was said, is the fragmentation into 27 legal systems. Hence, a "single, harmonised set of EU-wide rules […] instead of facing 27 distinct legal regimes, would represent a real game changer."[57] Against this background, some commentators ask themselves whether they have overlooked something – they do not see the "real game changer" and keep demanding a supranational legal form whose rules are entirely of European origin, excluding any recourse to national law.[58]

20 However, looking at the supranational legal forms that already exist — and at proposals that were once on the table — it becomes clear: A supranational legal form floating freely above national law, providing autonomous European answers to all legal questions, cannot exist. It would be like an airplane that never needs to land, never needs to refuel, and never requires repairs. In reality, an EU Inc. will need to refuel or be repaired from time to time — and this will inevitably have to occur in one of the 27 Member States. The competent courts will encounter gaps in the EUIncR, just as they do with every national law. Plus, they will have to fill these gaps by drawing parallels to comparable cases or by drawing on legal principles from similar statutes. As there are no such legal principles at EU level and no similar statutes that courts can refer to, it may not really be desirable to exclude national law with all its rich treasures of corporate case law.

21 There is also the issue of the applicable legal base: If the EU Inc. is to become purely supranational, Art. 352 TFEU is inevitable.[59] The need to achieve unanimous agreement among all Member States leads directly to a dysfunctional supranational legal entity. There will always be points on which Member States cannot agree. Starting with politically sensitive issues like codetermination and continuing with apparently simple corporate-law questions. Just to give an example, the first SUP proposal provided that the sole shareholder could issue

[54] Although the competence basis there is also not undisputed (*Dirk Zetzsche/Robin Veidt*, in: Marting Gebauer/Christoph Teichmann (eds.), Enzyklopädie Europarecht, Volume no. 6, Europäisches Privat- und Unternehmensrecht, 2nd edition, 2022, § 12 para. 32 et seq.).
[55] *Heribert Heckschen,* "Die EU Inc. – Ein guter neuer Anfang?", Der Betrieb (DB) 17/2026, 1053, 1054 et seq.; *Hartmut Wicke/Mats Leverenz,* "Die neue EU Inc. – Trojanisches Pferd vor den Toren Europas", Deutsches Steuerrecht (DStR) 21/2026, III. (forthcoming).
[56] See the following comments on Oxford Business Law Blog (https://blogs.law.ox.ac.uk): *Luca Enriques/Casimiro A. Nigro/Tobias Tröger*, "Why the 28th Regime Proposal Falls Short of Europe's Challenge", Oxford Business Law Blog, 19 March 2026; *Wulf-Georg Ringe*, "EU Inc: Why Startups Gain – and Venture Capital Hesitates", 30 March 2026. Moreover, *Bochmann/Bochmann* (fn. 46), p. 168-169, 175; *Allessandro Palombo*, "Ensuring the 28th Regime Delivers", www.euinczone.com, 3.2.
[57] *European Commission*, "A Competitive Compass for the EU", 29.1.2025, COM(2025) 30 final, p. 4.
[58] See the references in fn. 56.
[59] See supra C.

instructions to the managing director.[60] The Council deleted this rule, as some Member States do not recognise such a right to give instructions in their national law.[61] Comparably, during negotiations mandated by Art. 352 TFEU, the SER's original "full statute" became a kind of "Swiss cheese": from the initial draft of over 400 articles, only 70 remained.[62] To conclude, a true supranational legal entity is both politically unfeasible and conceptually undesirable.

II. EU Inc. and National Law

1. The Function of Private International Law

Given the fact that a company type operating in the single market – even if it was a full-scale supranational legal form – cannot exist being completely detached from the application of national law, there is always a need for a guideline as to how to determine the applicable law. 22

First of all, company law matters need to be distinguished from other areas of the law, such as insolvency, labour and tax law.[63] In many cases the choice is obvious: the rules governing an insolvency procedure are not a matter of company law. But the dividing line becomes blurred, for instance, in cases of directors' liability in the vicinity of insolvency.[64] 23

Once the sphere of company law is left, Private International Law comes into play in order to determine the applicable law.[65] For some areas, there are European guidelines (e.g. insolvency law), in other matters (e.g. labour law), Private International Law actually still is largely a matter of national law. 24

2. Filling the Gaps of the Regulation

Concerning the EU Inc., Art. 4 EUIncR seeks to provide guidance for the task of drawing the line between the EUIncR and national company law. As a regulation, the EUIncR is directly applicable in all Member States and takes precedence over national law (Art. 288(2) TFEU). In this regard, Art. 4(1) EUIncR merely confirms what would apply anyway. 25

According to Art. 4(2) EUIncR, "matters that are not covered by this regulation or by the articles of association shall be governed by national law." This wording creates a twofold legal problem: First, the issue of delineating EU and national law. Second, the relationship between the articles of association and national law; the latter will be discussed below[66]. 26

With regard to the core issue of drawing the line between the EUIncR and national company law, the EUIncR is based on the following principle: *Matters covered by the Regulation are not governed by national law*. The tricky question is to find out whether and to what extent a 27

[60] Art. 23, Proposal for a Directive of the European Parliament and the Council on single-member private limited-liability companies, COM(2014) 212 final, 9 April 2014.
[61] See *Christoph Teichmann/Andrea Götz*, "How to make a molehill out of a mountain: the single-member company (SUP) proposal after negotiations in the council", in: A. Jorge Viera González/Christoph Teichmann (ed.), Private Companies in Europe: The Societas Unius Personae (SUP) and the Recent Developments in the EU Member States, 2016, p. 29, 50.
[62] On the long and winding road from the first idea of having a European business entity, starting in the 1950s, leading to the final adoption of the SER in 2001, see *Vanessa Edwards*, "EC Company Law", 1999, p. 399 et seq., *Christoph Teichmann*, "Binnenmarktkonformes Gesellschaftsrecht", 2006, p. 234 et seq.
[63] The scope of the *lex societatis* is discussed by *Gerner-Beuerle/Mucciarelli/Schuster/Siems* (fn. 15), p. 47 et seq.
[64] See *Gerner-Beuerle/Mucciarelli/Schuster/Siems* (fn. 15), p. 99 et seq.
[65] Cf. *Stephan Rammeloo*, "The Proposed SPE Regulation and Beyond – Complementary Functions of Private International Law" in: Hirte/Teichmann (fn. 5), p. 99, 110 et seq.
[66] See *infra* D.III.

matter is covered by the EUIncR.[67] In many cases, the EUIncR may govern specific aspects of a given topic (e.g. the digital form of shareholders' meetings) while remaining silent on others (e.g. nomination and function of a chairperson in the meeting). The crucial question will always be: Where does the Regulation end and where does national law begin?

28 If the EU Inc. were a supranational legal form, one could argue that its text should, when in doubt, be interpreted as being exhaustive. A national court would then be barred from applying its own notions of "completeness" to determine whether the EUIncR contains a "gap."[68] Yet since the EU Inc. is not meant to be a supranational legal form, but a harmonised national company type, the answer may vary across different areas of company law. As a general rule, the interpretation of the EUIncR has to follow the *effet utile*-principle.[69] For some matters it can be assumed that the EUIncR aims for a complete solution without the interference of national law, whereas in other cases it may be evident that no comprehensive regulation is intended. For example, provisions in the articles of association enabling venture capital financing should not generally be reviewed under national law, because a key aim of the EUIncR is to create a uniform European framework enabling such structures.[70] The detailed provisions on shares and financing implicitly reflect this intention. In other areas, the EUIncR does indeed govern certain aspects, but it clearly does not claim to regulate the matter fully and comprehensively. As already mentioned, the provisions on shareholder meetings can serve as an example for this category.[71] In such a case, all matters that are not explicitly covered by the EUIncR are still governed by national law (e.g. provisions on the nomination and the functions of a chairperson in the meeting).

29 For the supplementary application of national law, Member States are asked to designate the "relevant" national legal form to which reference should be made (Art. 4(2), (3) EUIncR). This method of using a "legal form of reference" was developed in Art. 1.1.2 of the SES proposal.[72] It takes into account that many Member States have introduced flexible corporate forms that no longer fit neatly into the classical public/private company dichotomy.[73] Thus, France will likely refer to the SAS rather than the SARL, which is less popular there than the GmbH is in Germany. In Germany, referencing the GmbH is the obvious choice. Each Member State must then determine whether the law governing the national legal form of reference needs adjustments to improve the functioning of the EU Inc. In Germany, for example, the question will arise as to whether the GmbH should be allowed access to regulated markets, since only then the full potential of the EU Inc. can be unleashed[74].

30 A more ambitious step would consist in gap-filling by reference to the EMCA. On a theoretical level this idea is not as innovative as it seems. For the SE as well as for the SPE, it has been

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[67] The same challenge would arise if EU Inc. was to be a supranational legal entity (cf. regarding the SPE-Proposal *Christoph Teichmann*, "The Law Applicable to the European Private Company", in: Hirte/Teichmann (fn. 5), p. 71 et seq.).
[68] Cf. *Teichmann* (fn. 67), p. 88 et seq. on the SPE.
[69] See Court, C-106/77 (*Simmenthal*), 9 March 1978, no. 24, C-253/00 (*Munoz*), 26 June 2000, no. 28: National courts applying provisions of EU law must ensure that they take full effect.
[70] See recitals 43, 45 sentence 1 EUIncR.
[71] The same is true for directors' duties. Their full regulation is not a core aim of the EUIncR, and the text reflects this. The relevant provision is quite concise and can hardly be read as exhaustive (see *infra* I.IV.2).
[72] See *supra* fn. 22.
[73] See *supra* text accompanying fn. 11 and *infra* M.VIII.
[74] See *infra* M.VIII..

suggested to fill remaining gaps by applying general principles.[75] These principles, it was argued, could be derived either from a synoptic analysis of EU Company Law or from a comparative analysis of national legal systems. At the time, this idea was rejected as it seemed to be too much of a challenge for national courts to meet these methodological expectations. Today, it may be different with the EMCA offering exactly the synoptic comparison, including the *EU acquis*, that was missing at the time of earlier proposals. Some national courts have already started using the EMCA as a source of inspiration for their judgments.[76] For the EU Inc., however, this solution would only make sense in combination with a unified judiciary system, which will be discussed below[77].

III. Articles of Association

If one takes the EUIncR literally, the articles of association rank alongside the EUIncR and above national law: Pursuant to Art. 4(2) EUIncR, national law only applies in areas not regulated by either the EUIncR or the articles of association. This raises the question of whether the articles may regulate topics not addressed in the EUIncR — and thus displace national law. 31

The better arguments speak against such "displacing autonomy" of the articles. If the EUIncR does not create a supranational legal form but only harmonises particular company law issues, then the articles of association can displace national law only where the EUIncR grants such power to the shareholders. Examples include the definition of voting majorities (Art. 49(2) EUIncR) and the structuring of share classes (Art. 55(2) EUIncR). Such clauses would not be necessary if there were a complete "displacing autonomy" of the articles (*argumentum e contrario*). Hence, in remaining areas, not covered by the EUIncR, drafting the articles will be subject to the autonomy that is granted by the national legal form of reference. 32

The question of the validity control of the articles is also significant. Venture capital financing frequently relies on standardised clauses that have always faced scrutiny under national fairness principles (e.g. good faith).[78] Under the EUIncR's regulatory method, this cannot be entirely excluded in the future, as the EU Inc. remains embedded within the legal framework of the national legal form of reference. However, national courts must follow the *effet utile* principle and take into account the normative approach underlying the EUIncR, particularly the goal of enabling the Europe-wide use of common venture capital clauses. 33

IV. How to Achieve a "Bulletproof" Core-Harmonisation

1. A Clear Commitment to Party Autonomy in Internal Affairs

Even if it is not achievable to design the legal form as fully European in scope, consideration should be given to how at least the practically relevant core areas can be regulated in such a way that national courts are prevented from replacing the shareholders' intentions by their own views and traditions. 34

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[75] For the European Company see *Walter F. Lindacher*, "Maßgebendes Recht, Auslegung und Lückenschließung", in: Marcus Lutter (ed.), Die Europäische Aktiengesellschaft, 1978, p. 1, 9, for the SPE see *Robert Drury*, "The European Private Company", 9 European Business Organization Law Review (2008), 125, 131.
[76] The EMCA has, for example, been cited by court decisions in Lithuania and is also used as a model for the reform of the Companies Act in Lithuania.
[77] See *infra* D.IV.2.
[78] See references *supra* fn. 53.

35 First of all, the design of the legal framework should start with the assumption that the internal affairs of the company shall be left to the free arrangement of its shareholders.[79] This applies, for instance, to areas such as the governance and decision-making procedures within the company. In some of these areas, the wording of the EUIncR is too ambiguous, to say the least; the regulation should rather clearly specify the extent to which the will of the shareholders takes precedence over divergent concepts under national law. This will be further elaborated regarding the governance of the company[80] and shareholder meetings[81].

36 Art. 7(2) EUIncR, which requires the articles of association to address all topics listed in the annex, could be used for expanding the autonomy of the articles. It resembles the "regulatory mandate" concept ("*Regelungsauftrag*") developed in the SPE debate to prevent incomplete articles.[82] So far, however, the EUIncR annex contains only the *essentialia negotii* (e.g. company name, corporate purpose, details on shares, financial year). It could be a much more powerful tool for allowing shareholders autonomy in the articles if it listed more of the relevant issues, such as the organisation of shareholder meetings or the procedure to make use of the shareholders' right to information. The long list of items contained in Annex I to the SPE Proposal might serve as an inspiration.

37 Given the prevalence of party autonomy, mandatory rules – whether of European or national origin – are required only where third-party interests come into play. In the past, rules adopted in the interests of creditors have often been a major stumbling block. The EUIncR, however, follows an innovative concept: It protects creditors through a distribution rule which is more protective than many national rules[83] and thereby creates the freedom to grant shareholders considerable flexibility in matters of financing.

2. An Institutional Framework for Litigation

38 Finally, institutional arrangements are key to the attractiveness of EU Inc.[84] Delaware, as has been pointed out, has achieved and defended its position as a leading jurisdiction in corporate law not only because its legislature is responsive to business needs, but also due to its specialised judiciary in corporate law matters.[85]

39 Recital 81 EUIncR advocates establishing specialised judicial chambers in each Member State. The EUIncR could be more ambitious and impose a duty to establish such specialised judicial chambers, or as a minimum to designate one of the existing national courts to assume this function – at least as a second instance court which has to resolve on purely legal matters and

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[79] The same idea was applied when drafting the SPE proposal; see *Teichmann* (fn. 67), p. 88.

[80] See *infra* I.II.

[81] See *infra* I.V.

[82] *Peter Hommelhoff/Christoph Teichmann*, "Eine GmbH für Europa: Der Vorschlag der EU-Kommission zur Societas Privata Europaea (SPE)", GmbH-Rundschau 2008, 897, 898; *Christoph Teichmann*, in: Hirte/Teichmann (fn. 5), p. 72, 83.

[83] See *infra* M.IV.

[84] In the same vein European Parliament, P10_TA(2026)0002, no. 37; *Palombo* (fn. 56), p. 10; Rüdiger Veil, "Ein Europa, ein Gesellschaftsrecht: Die Vision eines 28. Regimes", in: Susanne Kalss/Ulrich Torggler (eds.), Unionsrecht – Impulsgeber oder Störfaktor, 2026, V.1 (forthcoming).

[85] For a deeper analysis see *Holger Fleischer*, "Gerichtsspezialisierung im Gesellschaftsrecht", Festschrift für Theodor Baums, 2017, p. 417 et seq., referring in particular to *Joseph R. Slights III/Elizabeth A. Powers*, "Delaware Courts Continue to Excel in Business Litigation With the Success of the Complex Commercial Litigation Division of the Superior Court", 70 The Business Lawyer (2015), 1039 et seq. Already mentioned by *Roberta Romano*, "Law as a Product: Some Pieces of the Incorporation Puzzle", I J. L. Econ. & Org. (1985), 225, 280 and summarised by *Christoph Teichmann*, Binnenmarktkonformes Gesellschaftsrecht, 2006, p. 338 et seq.

not on the facts. It can be expected that these specialised courts will take into account the case law of their counterparts in other Member States, which national courts otherwise seldom do. To encourage and support this, the case law database of the Judicial Network of the EU (JNEU)[86] could and should be expanded.

Arbitration could also be a solution to the fragmentation problem.[87] In such an environment, however, transparency of rulings – published in anonymised form – would be essential for the evolution of a coherent body of case law.[88] Even a specialised EU Court might be desirable,[89] but it seems doubtful whether the political momentum will be sufficient for such a step. 40

No matter which institutional arrangement will be designed, the EU Inc. could offer the unique chance to build a Europe-wide body of case law which the competent courts (national, European or arbitration) could draw on. The EMCA could be a source of inspiration for developing such case law, either on a mandatory basis or as a recommendation, preferably mentioned in the recitals of the EUIncR. 41

E. Digital EU Interface and prospects of a Central Digital Register

Contrary to widespread demands[90], there will be no central EU register for EU Inc. – at least initially. This is a sensible decision, because setting up such a central register would not be feasible in the short term, both for technical and political reasons.[91] However, as part of the Business Register Interconnection System (BRIS),[92] a central EU interface is to be created through which the formation of the EU Inc. and all filings to the register can be processed – regardless of the Member State in which the EU Inc. is established (cf. Art. 15-17, 27(1) and recital 21 EUIncR). However, its use is not mandatory; instead, an EU Inc. can also be formed and file all documents and information directly online with the respective national register (Art. 18, 27(1) EUIncR). 42

In the future, the central EU interface is to be further developed by the Commission towards a central digital register for EU Inc.; Art. 34 EUIncR empowers the Commission to adopt corresponding implementing acts. This step-by-step approach is sensible and expedient. Once the central digital register for EU Inc. is fully operational, it would also be logical to create a general central EU company register in the long term. 43

[86] https://curia.europa.eu/site/jcms/d2_5136/en/national-case-law.
[87] European Parliament, P10 TA(2026)0002, no. 37; *Palombo* (fn. 56), p. 21
[88] *Palombo* (fn. 56), p. 22.
[89] *Palombo* (fn. 56), p. 22.
[90] See EU-Inc Policy Proposal, 2025, Section 2.1; *Florian Möslein*, Simplification of registration of companies in the 28th regime. Towards a single digital company register, 2025, PE 776.000.
[91] See also SWD(2026) 121, p. 35.
[92] https://e-justice.europa.eu/topics/registers-business-insolvency-land/business-registers-search-company-eu_en.20

F. Formation

I. Formation *ex nihilo*

1. Registration Procedure

44 The guiding principle of "digital-only" applicable throughout the entire life cycle of EU Inc. (cf. Art. 10(1), recital 12 sentence 2 EUIncR) applies from the time of its formation. An EU Inc. is formed by using a digital, machine-readable application form available in all official EU languages, in which the information is collected as structured data and which must be signed by the prospective members of the board of directors by means of trust services referred to in the eIDAS Regulation[93] (Art. 13(1), (2) EUIncR). The details of the application form are determined by an implementing act of the Commission (Art. 35(3)(b) EUIncR). All this goes beyond the CLD as amended by DigiD II[94], which continues to allow offline formation for national limited liability companies and commercial partnerships and only prescribes the possibility of filing register applications online as a minimum standard.[95]

45 The application form shall be accompanied by the articles of association signed by the founding shareholders by means of trust services in accordance with the eIDAS Regulation (Art. 13(4) EUIncR). The articles of association shall be digital, machine-readable and store information as structured data (Art. 7(3) EUIncR).

46 Notably, the articles of association shall be drawn up bilingually: in addition to the official language(s) of the Member State of registration also in a language customary in the sphere of international business and finance (i.e. *de facto* in English) (Art. 7(4) EUIncR). This is highly welcome as it ensures that the articles of association as the "constitution" of the EU Inc. can be easily accessed and understood by all relevant stakeholders in the internal market as well as by third country investors.[96] In case of divergences between the language versions, the EUIncR differentiates: Where the standard articles of association are used, both language versions shall have equal legal value (Art. 7(5) subparagraph 1 EUIncR); this is evidently sensible because the standard articles of association exist in all official EU languages with each having equal legal value. However, where the EU Inc. adopts non-standard articles of association, the official language(s) of the Member State of incorporation shall prevail; the EU Inc. shall be liable for any damages caused to bona fide third parties relying on an inaccurate, incomplete, or misleading "English" version (Art. 7(5) subparagraphs 2-3 EUIncR).

2. Preventive Control

47 Preventive control is a cornerstone of the European rules governing incorporation (see Art. 10 CLD). It ensures that the data subsequently entered into the register is substantively accurate and legally reliable. The debate of recent years has shown that preventive control is both

[93] Regulation (EU) No 910/2014 of the EP and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73; last amended by Regulation (EU) 2024/1183, OJ L, 2024/1183, 30.4.2024.

[94] Directive (EU) 2025/25 of the EP and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 on the expansion and optimisation of the use of digital tools and procedures in company law, OJ L, 2025/25, 10.1.2025.

[95] For more details, see *Lutter/Bayer/J. Schmidt* (fn. 2), 9.48 ff., 10.1 et seq.

[96] Cf. recital 9 sentences 5-6 EUIncR.

necessary and feasible also in the context of digital incorporation.[97] The EUIncR builds on this stage of development of European company law. According to Art. 14(1) EUIncR, at the time of the formation of the EU Inc. (as well as after any amendment, Art. 27(2) 3 EUIncR) the articles of association shall be subject to a preventive administrative, judicial, or notarial control, or any combination thereof. This corresponds with the standard laid down in Art. 10 CLD.[98] Hence, Germany, for example, can apply its tried and tested combination of judicial and notarial control also to the EU Inc.

The points to be verified pursuant to Art. 14(2)(a), (b), (d) and (e) EUIncR by and large correspond with those to be verified pursuant to Art. 10(2) subparagraph 2 (a), (b) and (d) and Art. 13g(3)(a)-(c), 13j(4), 13k(1), (2) sentence 1 CLD. However, whereas Art. 10(2) subparagraph 2 (c) CLD requires checking that the substantive legal requirements are met, there is no corresponding requirement in Art. 14(2) EUIncR. Art. 14(2)(c) EUIncR only requires checking that the name and object of the EU Inc. comply with the requirements of the EUIncR. However, as the EU Inc. is subject to the national provisions applicable to the relevant national legal form of reference pursuant to Art. 4(2) EUIncR and as it cannot be assumed that the Regulation is intended to fall short of the standards established by the CLD, the relevant national provisions implementing Art. 10(2) subparagraph 2 (c) CLD will apply. Checking that the relevant substantive legal requirements are met is therefore also mandatory for EU Inc.[99] 48

A welcome novelty are the automatic cross-checks of the proposed name of the EU Inc. with registered Union trademarks and national trademarks (Art. 13(7) EUIncR); digitally advanced Member States have already practised this for some time and are more efficient in this respect than Member States which do not make use of electronic tools for cross-checking company names yet[100]. 49

3. Fast-track

In line with widespread demands[101], there will be a "fast-track" formation procedure in case of which preventive control and registration are completed within 48 hours and with a maximum cost of EUR 100 (Art. 16(2), 18(2) EUIncR). However, this "fast-track" procedure can only be used if the EU template for standard articles of association is used in accordance with Art. 8 EUIncR. In view of the limited checks required in such cases, preventive control and registration within 48 hours seem realistic in principle.[102] However, the deadline is not tied to working days; the registers will therefore also have to operate on weekends and public holidays. If the formation is not carried out in the "fast-track" procedure, preventive control and registration shall be completed within 5 working days (Art. 17(2), 18(2) EUIncR). 50

[97] *Christoph Teichmann*, "Digital Incorporation: The Case for a Trustworthy Commercial Register", in: Bastiaan Kemp/Mieke Olaerts (eds.), Twenty Years of European Company Law, 2024, p. 173 et seq.
[98] On Art. 10 CLD: *Lutter/Bayer/J. Schmidt* (fn. 2), 9.88 ff., 10.50 ff.
[99] Hence, the concerns of some commentators (e.g. *Heckschen* (fn. 55), 1056 et seq.; *Wicke/Leverenz* (fn. 55), IV.) are not justified.
[100] *Christoph Teichmann*, "Die elektronische Gründung von Kapitalgesellschaften", GmbHR 2018, 1, 7 et seq. for Estonia and Denmark.
[101] Esp. EU-Inc Policy Proposal (fn. 23), Section 2.1.
[102] The concerns voiced by some commentators (e.g. *Heckschen* (fn. 55), 1058) seem exaggerated as many Member States already practice online registration, including preventive control, without significant incidences of abuse having become apparent, while some criminals have even managed to outsmart the supposedly secure German system.

51 One may assume that the deadlines only begin to run when the application form and articles of association have been submitted completely and properly, because only then a proper legality check can be carried out. However, there is still a significant difference to the registration deadlines pursuant to Art. 13g(7), 13k(1) subparagraph 1 CLD (5 or 10 working days), which lay down a mere processing period that only begins to run when the legality checks have been completed.[103] If all documents are complete, a legality check should be feasible within 5 working days. However, it remains unclear which other deadlines apply in case the competent authority raises any objections; this should be clarified.

4. Once-only

52 In practice, the biggest hurdle for founders is often not the registration with the companies register, but the submission of information and applications to other authorities. It is therefore to be welcomed that the once-only principle is to apply to EU Inc. as regards the most important registrations with other authorities. Art. 20(1) EUIncR mandates an exchange of information between the register and the tax authorities responsible for issuing the tax identification number (TIN) and the VAT identification number as well as the beneficial ownership register and the social security authorities immediately after registration. The EU Inc. shall then obtain the TIN and VAT identification number from the relevant tax authorities digitally, without delay and without the need for a separate application, except in limited justified cases where additional case-specific information is required (Art. 20(3), recital 26 EUIncR).

II. Formation by Transformation

53 The EU Inc. can also be formed through the transformation (conversion, merger, or division) of existing legal entities. All legal entities which can participate in a conversion, merger, or division under national law can participate in the creation of an EU Inc. by way of a national conversion, merger, or division (Art. 21(1)-(4) EUIncR).

54 By contrast, only limited liability companies can participate in the formation of an EU Inc. by way of a cross-border conversion, merger, or division. This corresponds to the scope of Title II Chapters -I, II and IV CLD, to which Art. 21(5) EUIncR expressly refers. However, it ignores the cross-border freedom of establishment – which encompasses the freedom to convert, merge and divide – of all companies within the meaning of Art. 54(2) TFEU based on Art. 49, 54 TFEU (especially partnerships).[104] Member States could and should expand the possibilities of cross-border conversions, mergers, and divisions accordingly.

55 The “embargo period” of 2 years for the formation of an EU Inc. by a national conversion, merger, or division, as well as for the conversion of an EU Inc. into a national legal form (Art. 21(4), (6) EUIncR) is also problematic. This “embargo period” is apparently intended to prevent abuse, but – just like its model in Art. 66(1) 2 SER – it erects an unnecessary hurdle.

[103] Cf. recital 22 sentence 6 DigiD II; *Lutter/Bayer/J. Schmidt* (fn. 2), 10.64.
[104] For more details, see *Lutter/Bayer/J. Schmidt* (fn. 2), 5.69 ff.

G. Branches

Art. 36-40 EUIncR on branches in other Member States build upon the *EU acquis* in Title I Chapter III Sections 2-3 CLD, while developing and enhancing it significantly by applying the guiding principles of "digital-only" and "once-only". Branches of EU Inc. can be registered both through the EU central interface and the national register (Art. 37(1)-(2) EUIncR). There is also a multilingual branch application form (Art. 38 EUIncR) and an extended once-only principle applies (Art. 39 EUIncR). Art. 40 EUIncR governs the availability of branch data in the national registers and BRIS as well as the exchange of information. 56

H. Transparency and Cross-border Use of Company Data

Chapter III of the EUIncR on transparency and cross-border use of EU Inc. company data is closely based on the standards of the CLD (which were recently significantly reformed by DigiD II) but develops them significantly in many respects. 57

I. Transparency of Company Data

Art. 25(1)-(3) EUIncR (cf. Art. 14 CLD) regulate which data are to be made publicly available in the Member States' register. 58

Pursuant to Art. 25(4) EUIncR, the requirements of Art. 16(3)-(6) CLD regarding disclosure and its effects as well as Art. 16a(3)-(4) CLD on true copies and trust services apply *mutatis mutandis*. Although Art. 16a(3)-(4) CLD – strictly read – only pertain to the form of copies and extracts, this presumably also means that there is a right to get such copies and extracts (which is regulated in Art. 16a(1)-(2) CLD). As regards digital copies and extracts, Art. 25(5) EUIncR requires compatibility both with the EUDI Wallet and the forthcoming EU Business Wallet[105] (the latter is yet to be added to the CLD). 59

Art. 26 EUIncR regulates which data about EU Inc. is made publicly available via BRIS (cf. Art. 19 CLD) and stipulates that Art. 19b CLD pertaining to group information also applies *mutatis mutandis* to EU Inc. 60

Art. 29 EUIncR requires the disclosure of certain "key information" on the business correspondence and the website of EU Inc. as well as of branches in other Member States. However, the necessary "key information" differs from that in Art. 26, 35 CLD: In particular, the EUID must be indicated instead of the register and register number, as well as the digital correspondence address and the digital presence (e.g. website) of the EU Inc. This takes into account the evolution of the register system and the guiding principle of "digital-only". In the future, it would be expedient to align Art. 26, 35 CLD accordingly. 61

II. Filing of Documents and Information to the Register

The EUIncR goes an important step further than the CLD[106] in terms of filings of documents and information to the register: All filings of EU Inc. shall be fully online, either via the national register or via the central EU interface (Art. 10(1), 27(1), (5) EUIncR). 62

Regarding identification means, all filings shall use either identification means in accordance with the eIDAS Regulation or the forthcoming EU Business Wallet (Art. 23(1) EUIncR for filings 63

[105] COM(2025) 838.
[106] This prescribes online submissions only as a minimum standard, cf. *Lutter/Bayer/J. Schmidt* (fn. 2), 9.48 et seq.

via the EU central interface, Art. 27(5) EUIncR for filings with the national register). Notably, unlike recital 10 sentence 3 DigiD II, neither the text of the EUIncR nor the recitals explicitly allow complementary public remote audiovisual identity controls, including electronic checks of identity photos. This omission has sparked concerns, especially in Germany (where such controls are mandatory[107]), raising fears that insufficient identity verification could jeopardise the reliability of the registers.[108] Similar concerns have also been voiced in the context of the EU Business Wallet proposal.[109]

64 The EU now finds itself at a pivotal crossroad: Should it pursue a fully digital ecosystem where identification rests solely on the EUDI Wallet and the EU Business Wallet or should complementary remote audiovisual identity controls remain available (at least as a Member State option)? The answer ought to hinge on two factors: (i) the resilience and integrity of the identification processes via the EUDI Wallet and the EU Business Wallet, and (ii) whether remote audiovisual identity controls provide sufficient added value in terms of security (acknowledging that they may also be compromised, especially in light of the ever more powerful new AI tools). If the objective is building a fully digital ecosystem with swift and seamless digital identification, then there are compelling arguments for ensuring that both the EUDI Wallet and the EU Business Wallet provide an exceptionally high level of security, thereby reducing or eliminating the need for complementary remote audiovisual identity controls.

65 A viable middle path might involve exceptionally permitting remote audio-visual controls on a case-by-case basis where there are reasons to suspect identity falsification or ensuring compliance with the rules on legal capacity and on the authority to represent the company. In fact, Art. 10(3) sentence 1 EUIncR could already support such an interpretation: although it only expressly mentions the requirement of physical presence in exceptional circumstances, it allows authorities more generally to “take measures” – which could be interpreted as encompassing remote audiovisual identity controls (since they can be qualified as a “minus” to the requirement of physical presence). Nevertheless, clarifying this would be prudent.

66 Regardless of the approach ultimately chosen, standards should be consistent across both the CLD and EU Inc. frameworks.

III. Up-to-date Registers

67 The provisions to ensure that the register data is up-to-date are in principle the same as those of Art. 15 CLD, to which reference is made in part; however, where amendments to the articles of association within the EU template structure are filed, the deadlines and the cost limit of the “fast-track” procedure apply (Art. 27(2)-(4) EUIncR). However, according to Art. 27(3) sentence 4 EUIncR, the deadlines and cost limit of the “fast-track” procedure shall only apply if the articles of association are filed via the central EU interface. This seems inconsistent, because at the time of incorporation, the “fast-track” procedure under Art. 18(2) EUIncR is also available via the national register.

[107] Cf. § 16c BeurkG (Beurkundungsgesetz – Notarisation Act).
[108] See e.g. *Bochmann/Bochmann* (fn. 46), p. 167, 170; *Heckschen* (fn. 55), 1056; *Wicke/Leverenz* (fn. 55), IV.
[109] See e.g. CNUE, Position Paper Digital Business Wallets, 19 March 2026, 1.2 (https://www.notariesofeurope.eu/wp-content/uploads/2026/03/CNUE-Position-on-European-Business-Wallets-EN-final.pdf).

IV. Once-only

Art. 28 EUIncR mandates the once-only principle for all administrative and judicial procedures throughout the entire life cycle of the EU Inc. It thus goes a significant step further than the CLD, which mandates the once-only principle only for the formation of subsidiaries and the establishment of branches[110]. With regard to an EU Inc., public authorities shall consult all information accessible via BRIS and in the national register directly there (e.g. in the context of tax proceedings or the award of public contracts) and shall not request it again from the EU Inc.[111] However, Art. 28(2) EUIncR sets out a reservation – essentially corresponding to Art. 16f GesRRL[112] – in the event of reasonable grounds to suspect abuse or fraud. 68

V. EUCC and Digital EU Power of Attorney

Just like limited liability companies and commercial partnerships within the meaning of Annexes II and IIB CLD, EU Inc. will also be able to use the EU Company Certificate (EUCC) and the digital EU power of attorney (Art. 30, 31 EUIncR, cf. Art. 16b, 16c CLD[113]); the forthcoming EU Business Wallet, which still needs to be added to the CLD, is already included here. 69

VI. Further Provisions on Cross-border Use of Company Data

In addition, Art. 32(1)-(2) EUIncR lay down exemptions from legalisation or a similar formality (e.g. apostille) corresponding to Art. 16d CLD[114]. 70

Regarding translations, Art. 33(1) EUIncR goes somewhat further than Art. 16g(1) CLD[115], in that it not only lays down a duty to endeavour not to require translations but generally prohibits translation requirements in the cases listed. 71

Finally, it is consistent and sensible that Art. 32(4) EUIncR stipulates that Art. 16e CLD[116] shall apply *mutatis mutandis* in case of reasonable doubt as to the origin or authenticity of documents. 72

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[110] See *Lutter/Bayer/J. Schmidt* (fn. 2), 10.61, 11.50 et seq.
[111] See also recital 28 EUIncR.
[112] See *Lutter/Bayer/J. Schmidt* (fn. 2), 9.248 et seq.
[113] See on Art. 16b, 16c CLD *Lutter/Bayer/J. Schmidt* (fn. 2), 9.123 et seq., 9.213 et seq.
[114] See on Art. 16d CLD *Lutter/Bayer/J. Schmidt* (fn. 2), 9.229 et seq.
[115] See on Art. 16g(1) CLD *Lutter/Bayer/J. Schmidt* (fn. 2), 9.234 et seq.
[116] See on Art. 16e CLD *Lutter/Bayer/J. Schmidt* (fn. 2), 9.242 et seq.

I. The Organisational Structure of EU Inc.

I. The Function of the Articles of Association

73 Chapter V EUIncR is dedicated to the internal organisation of the company. It starts with a strong commitment to party autonomy (Art. 42(1) EUIncR): "The articles of association shall lay down the rules concerning the organisation of the EU Inc. company and the conditions under which it is managed." The next subsections clarify that an EU Inc. shall have a board of directors (Art. 42(2) EUIncR) and that the general meeting of the shareholders shall have the power to appoint and dismiss directors at any time (Art. 42(4) EUIncR).

74 Presumably, Art. 42(1) EUIncR establishes the general principle that the articles of association may lay down rules on the organisation of the company and the conditions under which it is managed, insofar as such rules do not conflict with Art. 42 et seq. EUIncR. This effectively means that Art. 42 et seq. EUIncR provide a general framework, leaving all remaining matters to be regulated in the articles of association – even where the national law applicable to the relevant national legal form of reference would not grant such freedom. Such extensive freedom in structuring the internal affairs of the EU Inc. is highly welcome, as it grants founders and shareholders maximum flexibility to organise their internal affairs as they deem appropriate.

75 However, the legislative drafting falls short in this regard. On a cursory reading, despite the apparent intent of the drafters, Art. 42 EUIncR could be misconstrued, leading courts to assess the articles of association against national law instead. It is therefore strongly advisable to clarify this point.

II. Board of Directors and General Meeting

76 Pursuant to Art. 42(3) EUIncR, the board of directors "may exercise all the powers of the company that are not required, by the applicable rules in accordance with Article 4, to be exercised by the general meeting or by another statutory body." This wording seems to suggest a hierarchy of the company's organs with the board of directors at the top. Other provisions, however, appear to rather support the primacy of the shareholders: They may dismiss the directors at any time, and they are entitled to give instructions to the board of directors (Art. 42(4) EUIncR).

77 Priority of the board of directors' competence may nevertheless be assumed in respect of the company's external relations: As a legal person, the company is represented in legal transactions by its directors. Internally, however, the board of directors does not enjoy absolute primacy. Art. 42(3) EUIncR should rather be interpreted as a default rule, which grants power to the board of directors whenever no other body is responsible. Shareholders may therefore adopt resolutions on matters of management and convey these to the directors in the form of binding instructions. In addition, the articles of association may establish further bodies and assign specific competences to them. This flexibility of the internal organisation of a non-listed limited liability company seems to reflect a common understanding in most European company law jurisdictions.[117]

[117] *Philippe Didier*, "La flexibilité de la gouvernance de la SAS", in : Conac/Urbain-Parleani (fn. 12), p. 123 et seq. ; *Paul L. Davies/Sarah Worthington/Christopher Hare*, Gower, Principles of Modern Company Law, 11th ed. 2021, para. 9-002 et seq. (p. 221 et seq.); *Thomas Raiser/Rüdiger Veil*, Recht der Kapitalgesellschaften, 6th ed., 2015, § 41 (p. 533 et seq.).

Against this backdrop, the text of the EUIncR could be more specific as to whether the articles of association may establish additional corporate bodies and which competences may be assigned to them. At least indirectly, Art. 42(3) EUIncR and recital 32 suggest that the creation of additional bodies is permitted. This power of the shareholders should be expressly regulated in the EUIncR itself; otherwise, it remains unclear to what extent national law becomes applicable. The risk of national law creeping in becomes apparent in the wording of Art. 42(3) EUIncR, whereby the powers of the board will be subject to the applicable rules "in accordance with Article 4" – which includes the subsidiary application of national law[118]. 78

III. The Shareholders' Right to Give Instructions to the Board of Directors

The question as to whether the general meeting shall have a right to give instructions to the directors of the company has frequently been disputed in the European context. It was originally provided for in the SUP proposal but was subsequently deleted.[119] The issue was also controversial in the context of the SPE.[120] At first glance, it appears self-evident that management must respect the will of the shareholders. It is equally self-evident that an instruction by the shareholders is legally binding only insofar as it does not violate mandatory law. Accordingly, for example, the directors of an EU Inc. would not be required to comply with an instruction ordering a distribution to the shareholders if no liquid funds are available for such a distribution[121]. 79

In some legal systems, the shareholders' right of instruction is expressly regulated.[122] In other countries, the law remains silent. Instead, reliance is placed on the assumption that a director who may be dismissed at any time will in practice comply with the shareholders' wishes.[123] While this may be true in practice, it leaves unresolved the question whether a director who opposes the shareholders thereby commits a breach of duty. A statutorily regulated right of instruction therefore does not only serve the interests of the shareholders but also creates legal certainty for directors. After all, dismissal for cause due to a breach of duty generally entails different legal consequences than dismissal without cause. It should also be taken into account that – especially in a cross-border context – it is not always a sensible option to dismiss a director merely because he or she refuses to follow an instruction. Qualified persons with knowledge of the local market are not always readily available. 80

Moreover, a cross-border group is subject to numerous compliance requirements, which, by the way, are often based on EU law.[124] From the point of view of a diligent parent company, the question as to whether the directors of a subsidiary must follow its instructions thus ceases to be a purely academic one. The parent company has no alternative but to ensure 81

[118] See *supra* D.II.2.
[119] See *supra* D.I.
[120] *Christoph Teichmann*, "Influence, management and Control in the European Private Company", in: Mette Neville/Karsten Engsig Sørensen (eds.), Company Law and SMEs, 2010, p. 351, 360.
[121] Cf. the strict rules on distributions of an EU Inc. → M.IV.
[122] See for Germany § 37(1) GmbHG (German Limited Liability Companies Act), based on which directors are obliged to comply with decisions taken by the shareholder meeting.
[123] See Gower (fn. 117), p. 224: the removal power of shareholders "can be a powerful inducement to the directors to follow the line of action preferred by the shareholders."
[124] *Christoph Teichmann*, "Die grenzüberschreitende Unternehmensgruppe im Compliance-Zeitalter", ZGR 2017, 485, 492 et seq. referring to the Capital Requirements Directive and to EU Competition Law as important examples; in the same vein *Mathias Habersack*, "Gedanken zur konzernweiten Compliance-Verantwortung des Geschäftsleiters eines herrschenden Unternehmens", in: Peter Hommelhoff/Marcus Lutter/Christoph Teichmann (eds.), Corporate Governance im grenzüberschreitenden Konzern, 2017, p. 270, 272 et seq.

compliance within its subsidiaries; otherwise, compliance violations occurring at the subsidiary level may result in joint liability of the parent company. By expressly regulating the issuance of instructions, the EUIncR therefore enhances the attractiveness of the EU Inc. for usage within cross-border business structures. For the same reasons, a right to give instructions has been advocated by the expert group drafting the EMCA[125] and by the international expert group *Forum Europaeum on Corporate Groups*.[126]

IV. Rights and Duties of directors

1. Power of representation

82 Art. 43 EUIncR governs the power of representation of the directors in accordance with the principles laid down in Art. 9 CLD. The articles of association may provide for individual or joint representation; other limitations on the power of representation may not be relied upon against third parties (Art. 43 (1)-(3) EUIncR).

2. Duties of Care and Liability

83 Art. 44(1) EUIncR explicitly regulates the duties of the directors. In this respect, the EUIncR goes beyond the CLD, which contains no harmonised rules on directors' duties. For directors of an EU Inc., Art. 44(1) EUIncR provides that they must act in accordance with the articles of association, act in good faith and in the best interests of the company, as well as with reasonable care, skill and diligence. Art. 45 EUIncR provides rules of procedure for the event of a director having a conflict of interest, unless otherwise provided in the articles. With regard to related party transactions → I.IV.3.

84 A director shall be liable to the company for any breach of a duty deriving from the EUIncR, the articles of association or a shareholders' resolution (Art. 44(2) EUIncR). This liability is limited by application of the famous business judgment rule (Art. 44(3)(a) EUIncR). It has the value of offering a "safe harbour" in relation to business decisions insofar as they are taken in good faith, with the care of a reasonably prudent person and based on a reasonable belief that the action was in the best interests of the company. However, contrary to e.g. German law[127] or the EMCA[128], Art. 44(3)(a) EUIncR does not include an information adequacy dimension; this is only supplemented by recital 34 sentence 3 EUIncR.[129] It is strongly advised to include this directly into the text of Art. 44(3)(a) EUIncR to ensure that the business judgment rules provides a truly safe harbour for directors.[130]

85 Moreover, it is crucial to establish an institutional infrastructure ensuring that judgments in individual cases are based on similar legislative concepts.[131] Currently, while it is true that the business judgment rule is well-known in most or all EU Member States, its application varies

[125] As elaborated by *Pierre-Henri Conac*, "The Chapter on Groups of Companies of the European Model Company Act (EMCA)", ECFR 2016, 301, p.309 et seq.
[126] *Forum Europaeum on Corporate Groups*, "Proposal to Facilitate the Management of Cross-Border Company Groups in Europe", ECFR 2015, 299 et seq.
[127] Cf. § 93(1) 2 AktG (Aktiengesetz = Stock Corporation Act).
[128] S. 10.01(3) EMCA.
[129] Rightly critical on this *Simone M. Sepe*, "The EU Inc Business Judgment Rule: A Safe Harbour without a Harbour", Oxford Business Law Blog, 13 April 2026.
[130] Justifiably calling for this *Sepe* (fn. 129).
[131] See *supra* D.IV.2.

across jurisdictions: A comparative case-based approach reveals that the application of this standard to the same case does not always produce identical results.[132]

The intention of harmonising legal standards for directors is even more undermined by Art. 44(4) EUIncR, stating that the liability of directors shall "be further governed by the applicable national law". This reference seems convincing in areas like the calculation of damages or limitation periods, issues which are closely related to national civil law concepts. But it could open Pandora's box in many other aspects.[133] The liability of directors raises a multitude of important issues, like the onus of proof or its application to shadow directors. If the EUIncR wanted to increase its harmonising effect with regard to directors' duties, it might be advisable to consider the approach of Chapters 9 and 10 EMCA, including provisions on *de facto* directors and corporate opportunities. 86

3. Related party transactions and special rules for single member companies

Art. 46 EUIncR addresses related party transactions. However, contrary to Art. 9c Shareholder Rights Directive (SRD)[134] it does not impose mandatory rules. Instead, in line with the generally flexible framework for the EU Inc., Art. 46(1) EUIncR explicitly allows the articles of association to require that certain or all related party transactions are either approved or brought to the attention of the board of directors, the general meeting or the directors or shareholders not involved in those transactions or to specify related party transactions that shall not be concluded. In addition, Art. 46(2) EUIncR subjects any director or shareholder in breach of such provisions in the articles of association to liability. 87

In case of single-member companies, Art. 46(3) EUIncR – in line with Art. 5 Single Member Companies Directive (SMCD)[135] – mandates all contracts between the sole member and the company as represented by that sole member be drawn up in writing, except for contracts related to the current operations concluded under normal conditions. Like elsewhere in the EUIncR (and in Art. 5 SMCD), "in writing" does not require paper, but instead means a "durable medium" within the meaning of Art. 4(1)(62) MiFID II[136]. Although this special rule for single-member companies has some affinity to related party transactions, it would be better placed in a separate article. 88

4. The Missing Group Dimension

Within a cross-border setting, the relationship between the shareholders and the directors is almost always an issue of group governance.[137] As already mentioned, an EU Inc. can be and will often be the subsidiary of a parent company located in another Member State or even in 89

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[132] See the conclusion of an instructive case study on directors' duties by *Theis Klauberg*, in: Mathias Siems/David Cabrelli (eds.), Comparative Company Law, 2013, p.59.
[133] Critical also *Veil* (fn. 84), V.1.
[134] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184, 14.7.2007, p. 17; last amended by Directive (EU) 2025/1, OJ L, 2025/1, 8.1.2025.
[135] Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies, OJ L 258, 1.10.2009, p. 20; last amended by DigiD II.
[136] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), OJ L 173, 12.6.2014, p. 349; last amended by Directive (EU) 2024/2811, OJ L, 2024/2811, 14.11.2024.
[137] See already *Christoph Teichmann*, "Corporate Groups within the Legal Framework of the European Union", ECFR 2015, p. 202 et seq. as well as *Conac* (fn. 125).

a state outside the EU. As a matter of fact, an EU Inc. might be particularly attractive for foreign investors who intend to set up a legal entity within the EU without the need to first study 27 different jurisdictions.

90 According to Art. 44(1)(b) EUIncR, the directors are obliged to act "in the best interests of the company". Within a group of several legal entities being managed by one parent company, however, the interest of one entity may not always be easily aligned with the interest of the others. This may particularly be true for group-wide compliance measures which are rather in the interest of the parent, which has a strong interest if not a duty to avoid non-compliant behaviour all over the group. In this respect, however, the provision of Art. 44(1)(b) EUIncR may be interpreted in a way that directors of an EU Inc.-subsidiary may have to resist disadvantageous measures even if they are in the interest of the group. The parent company could not counter this by issuing instructions, since the obligation to act in the company's interest constitutes a mandatory legal limit that an instruction may not violate.

91 The legal framework becomes even fuzzier if we consider the fact that courts in different Member States may interpret the "interest of the company" in different ways. In some jurisdictions it is taken for granted that the interest of the company solely reflects the interest of the shareholders; other jurisdictions take a more nuanced approach and argue that directors' duties are owed to the company as a legal entity which allows to include the interests of other stakeholders.[138]

92 Thus, group-wide compliance is lacking a coherent and reliable framework. Even in large corporate groups, group-wide corporate policies are nowadays formulated and applied without a clear understanding of whether they would in fact afford legal protection in a crisis. From the standpoint of a prudent group management, this is a highly unsatisfactory situation.[139] The solution to this dilemma could be to expressly acknowledge that an EU Inc.-subsidiary is allowed to take into account the interest of the group when weighing the pros and cons of a particular measure which is induced by the group's management. Here again, the EMCA could serve as a model.[140]

V. Decision-making within the Bodies of the EU Inc.

1. Meetings in Digital Form

93 Meetings of the board of directors and the general meeting of shareholders may be held fully online or in hybrid form; Member State provisions that impede meeting and voting by electronic means are explicitly prohibited (Art. 47(1) EUIncR). The board of directors shall determine the electronic communication means to be used (Art. 47(2) EUIncR). The minimum requirements for online or hybrid meetings are regulated in Art. 47(3) EUIncR, in particular the right of all participants to attend and vote.

[138] For an assessment of this debate see *Susan Watson/Lynn Buckley*, "Directors' positive duty to act in the interests of the entity: shareholders' interests bounded by corporate purpose", Journal of Corporate Law Studies, 2024, 233 et seq.; *Anne Lafarre/Christoph van der Elst*, Concepts of Company Law, 2025, p. 136.
[139] Cf. the statements of the Italian Pirelli group's general counsel, Chiappetta, in *Francesco Chiappetta/Umberto Tombari*, "Perspectives on Group Corporate Governance and European Company Law", ECFR 2012, 261, 265, and, in the same vein, of the general counsel of BASF, *Georg Franzmann*, "Vom Gesellschaftsschutzrecht zum Enabling Law für Unternehmen" in: Hommelhoff/Lutter/Teichmann (fn. 124), p. 393, 401.
[140] For further details see Conac (fn. 125). p. 311 et seq.

Many other legal issues which regularly pop up in shareholder meetings remain unmentioned. Such as the notice to be given when calling for a meeting, the agenda and documents that need to be distributed, the place for the physical gathering in case of hybrid meetings, the nomination and function of a chairperson in the general meeting. Guidelines as to whether shareholders may be excluded from exercising their voting rights in cases where a conflict of interest might arise are also missing. 94

According to the basic principles of Art. 4 EUIncR, this would mean that all these issues are governed by national law. However, in this key aspect of its functionality, the EU Inc. should not simply be left to Member State autonomy on articles of association. In fact, the drafters apparently intended that the general principle established in Art. 42(1) EUIncR that the articles of association may lay down rules on the organisation of the company and the conditions under which it is managed, insofar as such rules do not conflict with the Art. 42 et seq. EUIncR., also applies regarding these issues. To provide legal certainty, this should be clarified. Some aspects might also be included in the Annex giving the EU Inc. the right to regulate them in the articles.[141] 95

2. Written Shareholders' Resolutions

"Written resolutions"[142] of the general meeting of shareholders are possible in two variants (Art. 48(1) EUIncR): Either the articles of association provide for adoption of resolutions without a meeting by means of written resolutions, or all shareholders agree in writing to cast votes in writing. This wording seems to indicate that only the first alternative can be regulated by the articles of association, while the second is offered by the Regulation itself and not open for party autonomy in the articles. 96

Art. 48(2)–(4) EUIncR regulate the details, in particular the use of electronic means for adopting the resolution. The relationship between these rules and any provision in the articles of association remains unclear. Apparently, the articles are only to be given the competence to allow written resolutions in principle, while the implementing rules are to be taken from the EUIncR. It would be recommendable to clarify that all of this applies only insofar as the articles of association do not provide otherwise. 97

3. Majority requirements

A resolution is adopted by a majority of the votes of those present or represented at the meeting, unless the articles of association provide otherwise (Art. 49(1) EUIncR). The EUIncR does not specify what constitutes proper representation; in this respect, it is once again not fully clear whether (i) this may be regulated in the articles of association based on the general principle established in Art. 42(1) EUIncR and national law applies pursuant to Art. 4(2) EUIncR only to the extent that this is not the case, or (ii) national law applies pursuant to Art. 4(2) EUIncR in principle, including the autonomy granted there under the articles of association. 98

Noteworthy is the qualified majority required for amendments to the articles of association (Art. 49(3), 50(1) EUIncR): This amounts to two-thirds of the votes cast which is below the three-quarters majority in some national laws (e.g. German GmbH law[143]). Shareholders on whom additional obligations are imposed by the amendment must consent to it (Art. 49(3) sentence 2 EUIncR). If the amendment affects a specific class of shares, it shall not take effect 99

[141] See *supra* D.IV.1.
[142] On the meaning of "written" and "in writing" see *supra* I.IV.3.
[143] § 53(2) GmbHG.

without the approval of the holders of that class (Art. 51(1) EUIncR). Editorial amendments to the articles of association may be made by the board of directors without a decision of the general meeting (Art. 50(2) EUIncR).

J. Codetermination (Board Level Representation of Employees)

I. Determination of the Applicable Law

100 It's Groundhog Day again. The issue of employee codetermination resurfaces with every new proposal on European company law, and this is also true for the EU Inc. The reason lies in the diametrically opposed regulatory concepts of the Member States: Some legal systems grant employees the right to appoint a certain number of members to a corporate body[144], while others reserve this right exclusively for the shareholders.[145]

101 A common European solution is unattainable here, as demonstrated by the history of the SER. For the SE, a negotiation solution was created, which found its place in the SE Directive[146] and today also applies to cross-border operations.[147] It allows national codetermination models to be adapted to cross-border corporate structures. However, this negotiation procedure is not suitable for a newly formed company, simply because in such a case there are no employee representatives with whom negotiations could be conducted. The Commission therefore rightly decided not to provide for negotiations on codetermination when establishing an EU Inc.

102 The question of the applicable codetermination regime, however, needs to be decided for the EU Inc. as well, as soon as it exceeds the relevant thresholds in a particular Member State. This may well be years after the incorporation of the company, as codetermination usually only applies to larger companies. German rules on codetermination, for instance, are triggered by a threshold of 500 employees[148]. Other Member States have lower thresholds such as 25 employees in Sweden and 35 in Denmark; but in practice codetermination will not be introduced until the workforce has grown to several hundreds.[149]

103 Private international law usually assigns codetermination to the applicable company law.[150] It therefore appears consistent that Art. 12(1) EUIncR links codetermination to the registered

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[144] Sometimes referred to as "Board Level Employee Representation (BLER)" as opposed to "Workplace Employee Representation" which is attributed to the function of works councils.

[145] For an overview of the different national system in EU Member States see *Aline Conchon*, Workers' voice in corporate governance, ETUI/TUC, 2015.

[146] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22.

[147] For more details see *Joti Roest*, "Corporate Mobility – The Involvement of Employees", ECFR 2019, p. 74 et seq.

[148] Relevant legal sources: § 1 Drittelbeteiligungsgesetz (more than 500 employees); § 1 Mitbestimmungsgesetz (more than 2,000 employees).

[149] In this respect, the empirical results of an empirical study on the Nordic countries are worth being highlighted (*Krister Rasmussen*, Industrial Democracy Today: An Examination of European Codetermination, 2021, p. 19 et seq.): Only 11.8 % of those Swedish companies which are legally subject to codetermination really apply codetermination. The proportion becomes higher with growing workforce. But even amongst Swedish companies with more than 500 employees, less than 50 % apply codetermination. Similar results are reported for Danish companies.

[150] *Gerner-Beuerle/Mucciarelli/Schuster/Siems* (fn. 15), p. 96.

office of the company. Accordingly, an EU Inc. registered in Germany would be subject to German codetermination rules once it reaches a workforce of more than 500 employees.

II. Circumvention Potential

1. Registered Office and Workforce in Different Member States

For those businesses that do not like to apply codetermination, circumvention is an easy task.[151] Just register your company in a Member State that has no codetermination rules at all, while continuing your business activities in the country where codetermination exists. Under the presumption that codetermination is governed by the applicable company law, the law of the workplace no longer applies. A practical example that recently attracted media attention is *Meyer Werft*.[152] This company has been building ships in Papenburg, close to the German North Sea coast, since 1795 and employs around 3,000 people there. In recent years, the company moved its registered office to Luxembourg, a location better known for financial services than for shipbuilding. Two years ago, when the company ran into economic difficulties and required state support, the German federal state of Lower Saxony demanded that the registered office be moved back to Germany, which eventually occurred. 104

2. Application of Proportionate Restrictive Measures

It is well known that such a split between the place of activity and the registered office is protected by freedom of establishment, which may only be restricted subject to the famous *Gebhard*-test:[153] A national measure restricting this freedom needs to be justified by overriding reasons in the public interest, which actually could be the protection of workers.[154] But the measure must be appropriate for ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective.[155] In Germany, there has been a long academic debate as to how such a proportionate measure could look like in the case of codetermination.[156] If German law applied a solution similar to the negotiation procedure of the SE Directive, this might arguably be a proportionate restriction as it allows to adapt codetermination to the corporate governance structure of the company affected.[157] After all, EU law itself has decided that this procedure is an appropriate solution to the problem of applying codetermination to a cross-border business. For the time being, however, German law has not introduced such a procedure. 105

3. EUIncR Conclusively Deciding the Issue

One might argue that the EUIncR is neutral in this respect, treating the EU Inc. and national legal forms equally.[158] This is not entirely accurate, however. For a national legal form, a 106

[151] See *Teichmann* (fn. 4), p. 79, 90 et seq.
[152] DER SPIEGEL, 3.7.2024: "Für Hilfe soll Meyer-Werft Arbeitgeberparadies Luxemburg verlassen".
[153] Summarised by *Harm-Jan de Kluiver*, "Inspiring a New European Company Law?", ECFR 2004, 121, 127, following the ECJ's *Inspire Art* case.
[154] See only ECJ, 25 April 2024, *Edil Work 2*, C-276/22, ECLI:EU:C:2024:348, para. 39 with further references.
[155] See only ECJ, 25 April 2024, *Edil Work 2*, C-276/22, ECLI:EU:C:2024:348, para. 36 with further references.
[156] For a first assessment after *Inspire Art* see *Christian Kersting/Clemens Philipp Schindler*, "The ECJ's Inspire Art Decision of 30 September 2003 and its Effects on Practice", 4 German Law Journal (2003), p. 1277, 1286.
[157] *Christoph Teichmann*, "Mitbestimmungserstreckung auf Auslandsgesellschaften", Zeitschrift für Wirtschaftsrecht (ZIP) 2016, p. 899 et seq. (with further references).
[158] See Recital 16: "This ensures equal treatment between EU Inc. companies and comparable national company forms and safeguards existing national protection and acquired employee rights."

Member State could think of introducing a rule under which the codetermination regime is linked to the place of employment rather than to the registered office. Such a national solution would, however, not be possible for the EU Inc., because here the link between codetermination and the registered office is fixed and immutable. The proposed EUIncR therefore restricts the room for maneuver of the Member States to counter abusive circumvention structures.

4. From a National to a European Label

107 The comparison between the EU Inc. and a purely national legal form is also flawed for a second reason. In essential respects, the EU Inc. is not intended to be perceived as a national legal form. It represents a 28th regime, presented to the legal and commercial community as genuinely "European". In the *Inspire Art* decision of the ECJ, however, the recognisability of a company's origin was a key argument for requiring Member States to tolerate the activities of foreign letterbox companies.[159] The EU Inc., however, is a harmonised legal form with a uniform company name. In its case, the market cannot initially tell which Member State it originates from. Circumvention strategies thus receive an "upgrade" by labelling them with a European denomination and are thereby made even more attractive than before.

III. Compromise Solution: Link to the Place of Employment

108 If the EU Inc. is indeed to become a genuinely harmonised European legal form, the EU legislator bears a particular responsibility to ensure that it is not used with the intention of undermining national standards of employee protection. The European Parliament recognised the problem and discussed it in depth. It proposes a special connecting factor for codetermination based on the place of work: In cases of "artificial" arrangements, where the registered office and the place of work of the workforce diverge, the company should be subject to codetermination rules in the Member State of employment.[160]

109 Such a connecting factor for the protection of third parties is not unknown in EU law. Insolvency law, for example, is linked to the centre of the company's main interests (COMI),[161] because that is where most creditors are typically located. As with the determination of the COMI, it will not always be easy to identify the relevant place of employment. Unlike insolvency, however, the occurrence of which cannot be legally ignored, codetermination could be accompanied by a procedural solution to ensure legal certainty: The link to the registered office would apply as long as the competent court has not determined otherwise. That decision should then only have effect for the future. In this way, the company would at all times enjoy legal certainty regarding the composition of its corporate bodies.

110 At the place of employment, an appropriate codetermination model could be designed through negotiations in accordance with the SE Directive. Alternatively, the company could follow the example of *Meyer Werft* and bring about unity between its registered office and its codetermination regime.[162] In light of the already mentioned principles of European case law, this would not constitute a disproportionate restriction on freedom of establishment. On the

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[159] Case C-167/01 (*Inspire Art*), 30 September 2003, para. 135: "It is clear that Inspire Art holds itself out as a company governed by the law of England and Wales and not as a Netherlands company."
[160] P10 TA(2026)0002, para. 24.
[161] Art. 3 EIR (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141, EU, 5.6. 2015, p. 19.
[162] In the same vein *Peter Hommelhoff/Victoria Goll/Alexander P. Stern*, "Die 28. Rechtsform", Neue Zeitschrift für Gesellschaftsrecht (NZG) 2025, p. 915, 921.

one hand, EU harmonisation measures are, for good reasons, subjected to less stringent scrutiny than national restrictions.[163] On the other hand, the described rule does not impede a company's access to the market, but rather relates—after a period of workforce growth—to its subsequent economic activity.[164]

K. Digital Shares and their Transfer

I. Digital Share Register

The EU Inc. is to have purely digital shares, which may also only be transferred in digital form. 111
At the heart of this regime is the establishment of a digital register of shares, which the EU Inc. must maintain itself (Art. 54 EUIncR). Registration is to have constitutive effect and evidence the ownership of the share (Art. 53(1) sentence 2 EUIncR). Upon request, a digital share certificate may be issued to a shareholder (Art. 54(3) EUIncR). The exercise of shareholder rights related to a share will also depend on the entry into the digital register of shares (Art. 56(1) EUIncR). All of this is to be welcomed, as it makes it easier for market participants to verify who currently holds a share.

II. Digital Share Transfer

The transfer of shares in an EU Inc. likewise takes place in purely digital form; the technical 112
details are regulated by Art. 59 EUIncR. The requirements for the electronic seal and the electronic signature are determined by the eIDAS Regulation (Art. 59(3) EUIncR). After the assignment, the transferor and the transferee must submit a digital notification to the company so that it can verify the transfer of rights and record it in the share register (Art. 59(6)-(8) EUIncR).

Member States are prohibited from imposing additional formalities, including a requirement 113
for notarial deed, for the transfer to be legally valid (Art. 59(5) EUIncR). This provision is directed against rules such as § 15(3) GmbHG (German Limited Liability Companies Act), under which the effectiveness of a share transfer requires notarisation. The authors of Art. 59(5) EUIncR, however, may have overlooked the fact that, under German law – and possibly under some other continental European legal systems as well[165] – the permanent and irrevocable transfer of a share of a GmbH requires two contracts: One contract establishing the obligation to transfer (typically a sales agreement), and a second contract by which the actual transfer is effected. Based on its current wording, one might interpret Art. 59(5) EUIncR to the effect that only the second contract must not be subject to notarisation and that for the first contract, national law could still require notarisation (as it is not strictly necessary for the effectiveness of the assignment). However, under German law, if the first contract is lacking, an unjust

[163] *Teichmann* (fn. 85), p. 153 et seq.
[164] It can be derived from European case law (in particular since the *Keck*-judgment) that the fundamental freedoms protect cross-border access to other markets but do not dispense of the application of the rules on activity in the host state (further elaborated by *Christoph Teichmann*, "Gesellschaftsrecht im System der Europäischen Niederlassungsfreiheit", Zeitschrift für Unternehmens- und Gesellschaftsrecht (ZGR) 2011, 639, 653 et seq.). For freedom of establishment this becomes quite clear in Art. 49 TFEU: "[…] to take up and pursue activities […] under the conditions laid down for its own nationals by the law of the country where such establishment is effected […]".
[165] Cf. *Kacper Wosiak*, "Bona Fide Acquisition of Securities Registered in Poland", ECFR 2025, 749, 759.

enrichment would arise and the transferor could therefore demand that the transferee re-transfers the share.

114 Art. 59(5) EUIncR must be understood, in particular, against the background that the EU Inc. is intended to be suitable for capital markets (→ M.VIII); a requirement of notarisation would be difficult to reconcile with this objective, even if it only concerned the underlying sales agreement. Moreover, if the acquisition were not legally secure, this would undermine the *effet utile* of EU law—especially since the European legislator does not think in terms of the German approach of treating the two contracts separately (so-called "*Trennungs- und Abstraktionsprinzip*"). Hence, the *effet utile* mandates a broad interpretation of Art. 59(5) EUIncR, covering not only the contract actually transferring the share, but also the contract establishing the obligation to transfer it. A clarification in the text of the EUIncR would, however, be helpful.

III. Involvement of Notaries or Other Service Providers

115 At any rate, Art. 59 EUIncR as it currently stands begs the question whether it does not actually leave the management of an EU Inc. between a rock and a hard place.[166] The digital share register plays a central role in determining the legal effectiveness of shareholders' rights. Since each entry recording a share transfer has a constitutive effect, the company must, pursuant to Art. 59(7) EUIncR, always verify the legal title of the transferor to transfer the share and compliance with the company's articles of association. Such a legal assessment, on which a great deal depends for the shareholders concerned, is likely to make more than one director break out in a cold sweat. In addition, it must always be examined whether the share transfer entails a change in the beneficial owner within the meaning of anti-money laundering law, which would have to be reported to the relevant register.[167] Finally, the tax authorities must be informed of the transaction. In Germany, all of these tasks are performed by the notary as a "one-stop shop". This model cannot, of course, be transferred to all EU Member States. At the very least, however, the EU Inc. should be granted the possibility to delegate the legally relevant activities associated with the digital share register to service providers (such as private companies or notaries) who would then assume the corresponding liability. This is standard practice, for instance, in case of the share register of German AG[168] or share registers in other legal systems.

L. Shareholders' Right of Withdrawal

116 Art. 52 EUIncR stipulates a right of withdrawal for shareholders where the company's affairs are being or have been conducted in a manner oppressive to a shareholder (Art. 52(1) EUIncR). The drafters deliberately restricted this withdrawal right to "exceptional cases of flagrant prejudice" in order to strike a fair balance between the significant influence of majority shareholders and the board of directors, the important autonomy granted by the articles of association of the EU Inc. and the need for minority shareholder protection.[169]

[166] Cf. also *Heckschen* (fn. 55), 1057; *Johannes Scheller,* "Das digitale Anteilsregister in privater Hand der EU Inc. – eine haftungsträchtige Fehlkonzeption", GmbHR 2026, 462 para. 17; *Wicke/Leverenz* (fn. 55), V.2.
[167] See on anti-money laundering risks generally *Oriana Casasola/Ilaria Zavoli,* "'The Business Must Go On'? The EU Inc Proposal and Its Money Laundering Risks", Oxford Business Law Blog, 14 April 2026.
[168] See *Walter Bayer,* in: Münchener Kommentar zum Aktiengesetz, 6th ed. 2024, § 67 mn. 17.
[169] Cf. recital 37 sentence 1 EUIncR.

Recital 37 sentence 3 EUIncR emphasises that the assessment of whether the company's affairs are being conducted in an oppressive manner should be based on all relevant circumstances of the individual cases. Nonetheless, recital 37 sentence 2 EUIncR provides three examples: cases where the company has been deprived of a significant proportion of its assets, where the general meeting has instructed directors to miss a significant business opportunity without the consent of the withdrawing shareholder or where the company's activities have changed substantially.

While Art. 52 EUIncR is obviously inspired by Irish law[170], many other jurisdictions provide a similar right of withdrawal for good cause (either in a statutory provision or on the basis of case law[171]). This is indeed an essential instrument of minority shareholder protection, and it is laudable that there is a harmonised provision on this. It might even be worth considering allowing an exit right at will, since a prolonged dispute over the grounds for withdrawal is usually a significant burden for a company. In such a case, however, certain safeguards would be necessary to ensure that the company's economic stability is not jeopardised by payment claims.[172] 117

Importantly, Art. 52 EUIncR does not stop short at stipulating the right to withdraw in case of oppressive conduct but also lays down rules on the procedure and the further consequences. The shareholder shall file an application against the EU Inc. and all other shareholders with the competent court (Art. 52(2) EUIncR). If the court holds that there has indeed been oppressive conduct, the EU Inc. must purchase the shares held by the applicant at a price corresponding to the fair value on the date of service of the application (Art. 52(3) EUIncR). Notably, Art. 52(4) EUIncR imposes a rather extensive liability on the other shareholders: They are liable for the purchase price jointly and severally with the EU Inc. (not only subsidiarily and not only pro rata). 118

M. Financing and Capital Markets Access

The legal framework for the EU Inc's financing is based on the guiding principle that an EU Inc. should have highly flexible and at the same time legally certain financing mechanisms as well as a wide spectrum of financing options.[173] This is intended to accommodate the needs of founders, but also to make the EU Inc. attractive for investors.[174] 119

I. True Non-par Value Shares by Default

In a significant deviation from the traditional continental European system, an EU Inc. has by default real non-par value shares, i.e. the shares have no nominal value and do not represent a fraction of the company's capital (Art. 61(1) EUIncR). However, nominal value shares are possible if the articles of association so provide (Art. 61(2) EUIncR). 120

[170] Cf. s. 212 Companies Act 2014.
[171] In Germany, for example, although the GmbHG does not explicitly regulate a right of withdrawal for cause, this right is generally recogised (see *Walter Bayer* in Lutter/Hommelhoff, GmbH-Gesetz, 21st ed. 2023, § 34 GmbHG mn. 144 with further references).
[172] Cf. the analysis – based on empirical findings – by *Mette Neville*, "Shareholder Conflicts in the European Private Company (SPE)", in: Hirte/Teichmann (fn. 5), p. 193, 233 et seq.
[173] Cf. recitals 41 sentence 1, 43 sentence 5 EUIncR.
[174] Cf. recital 43 sentence 6 EUIncR.

121 Real non-par value shares are, for example, very common in the USA. Whether they are compatible with Title I Chapter IV CLD is highly controversial.[175] They are intended to make the EU Inc. attractive in particular for venture capital and early-stage financing.[176] Non-par value shares can facilitate the seamless operation of convertible instruments such as SAFE[177] and KISS[178], which are internationally widely used and of high importance in the venture capital sector.[179] In addition, the prohibition on issuing shares below par value in the traditional par value system is considered problematic if a company wants to issue new shares at a lower price in a "down round" in order to raise new equity during critical situations.[180]

122 It should be noted that there are ways to implement "down rounds" and convertible instruments also within the framework of the traditional par value system. However, considering that true non-par value shares work very well in many jurisdictions[181] and have therefore also been included in the EMCA[182], there is much to be said for giving EU Inc. a choice between par value shares and real non-par value shares in the interest of the greatest possible flexibility.

II. No Minimum Capital

123 The EU Inc. does not have to have a minimum capital (Art. 62(1) EUIncR). This is in line with the trend that has been observed throughout Europe in recent years towards the abolition of minimum capital requirements.[183] It is true that the signalling effect ("sign of seriousness") and the selection effect in the sense of an increase in the reputation of the legal form may speak in favour of a minimum capital.[184] On the other hand, even a comparatively low minimum capital (e.g. EUR 1,000) would make the EU Inc. less attractive in comparison with many Member State and third-country legal forms. Moreover, where no minimum capital must be paid up at incorporation, the practical difficulties companies often face in opening a bank account lose much of their urgency.[185] Besides, in terms of creditor protection, the distribution scheme (→ M.IV) is much more important.

124 Depending on whether an EU Inc. opts for true non-par value shares or par value shares and for or against share capital, different requirements apply to consideration for shares, distributions, issuance of new shares, etc.

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[175] For more details, see *Lutter/Bayer/J. Schmidt* (fn. 2), 14.58 with further references.
[176] Cf. recital 45 sentence 2 EUIncR.
[177] SAFE was introduced by Y Combinator in 2013 (https://www.ycombinator.com).
[178] KISS was introduced in 2014 by 500 startups (now 500 Global) (https://500.co).
[179] Cf. recital 45 sentence 3 EUIncR.
[180] Cf. recital 45 sentence 2 EUIncR.
[181] On this, for example, *Hans de Wulf,* "Shares in the EMCA", ECFR 2026, 215, 246 ff.
[182] See section 5.05 EMCA.
[183] Cf. *Alessio Bartolacelli*, "Almost Capital-less Companies in Europe: Trends, Variations, Competition", ECFR 2017, p. 187 et seq.
[184] See only *Wilhelm Niemeier*, "What Kinds of Companies will a 'One-Euro-EPC' generate?, in: Hirte/Teichmann (fn. 5), p. 293 et seq.. See in the context of the EU Inc. also *Joachim Jahn,* "Die EU Inc.: Große Chancen – viele Bedenken", NZG 2026, 481; *Wicke/Leverenz* (fn. 55), VI.
[185] *Bochmann/Bochmann* (fn. 46), p. 172.

III. Consideration for Shares

Shares may be issued against consideration to be contributed to capital or not, or a combination of both (Art. 64(3) EUIncR). Depending on whether the consideration is contributed to capital or not, there are different deadlines for providing the consideration (Art. 64(4)-(5) EUIncR). These deadlines deviate from the deadlines set out in Art. 48 CLD for public limited liability companies and do not differentiate between cash and non-cash contributions. 125

The consideration for shares may take the form of any transfer of economic value (Art. 64(2) EUIncR). Although the phrase "any transfer of economic value" differs from the phrase "assets capable of economic assessment" used in Art. 46 sentence 1 CLD, it presumably means the same. Nonetheless, in the interest of systematic coherence, it would be desirable to use the same wording here as in Art. 46 sentence 1 CLD. However, contributions in kind which are contributed to the share capital shall not take the form of an undertaking to perform work or supply services (Art. 65(1) EUIncR). This corresponds with the traditional rule for public limited liability companies laid down in Art. 46 sentence 2 CLD. 126

In case of contributions in kind, Art. 65(3)-(4) EUIncR generally require an examination and report by one or more independent experts (just like Art. 49 CLD for public limited liability companies). However, if contributions in kind are not to be contributed to capital, this requirement can be waived in the articles of association or by a decision of the general meeting adopted with the same majority as required for amendments to the articles of association (Art. 65(5) EUIncR). Where a contribution in kind has been significantly overvalued, the shareholder who has provided such consideration shall compensate the company for the shortfall ("difference liability", Art. 65(6) EUIncR). 127

IV. Distributions and Own Shares

If EU Inc. has a share capital, the assets required to maintain it shall not be distributed to the shareholders except in the case of a capital reduction in accordance with Art. 77 EUIncR (Art. 63(1) EUIncR). 128

In addition, for all EU Inc., distributions are tied to a combination of a balance sheet test <u>and</u> a solvency test (forecast horizon: 12 months) (Art. 72(3) EUIncR). This "double test" is intended to ensure that the EU Inc. remains viable and can meet its obligations towards creditors following a distribution.[186] The regulatory concept reflects the creditor protection discussion of the past decades[187] and sets a comparatively high standard[188]. 129

To ensure the effectiveness of the distribution rules, Art. 72(4) EUIncR imposes a joint and several liability of the directors where the EU Inc. carries out a distribution in violation of them and the directors knew or should have known this when signing the solvency statement (Art. 72(4) EUIncR). In addition, shareholders in bad faith are required to return the distribution (Art. 72(5) EUIncR). 130

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[186] Cf. recital 53 sentence 1 EUIncR.

[187] For a summary, see *Clemens Maschke*, Gläubigerschutz im Recht der Societas Privata Europaea, 2011, p. 108 et seq. and *Alexander Schall*, Kapitalgesellschaftsrechtlicher Gläubigerschutz, 2009, p. 37 et seq. The different national approaches to distributions are elaborated in a comparative case study by *Michał Żurek/Kamil Szmid* in: Siems/Cabrelli (fn. 132), p. 191 et seq.

[188] Nonetheless critical e.g. *Heckschen* (fn. 55), 1062; *Wicke/Leverenz* (fn. 55), VI.

131 In practice, however, it would be important to also address the problem of cash pooling as this is of paramount importance for groups of companies.[189]

132 The restrictions on own shares in Art. 73-75 EUIncR adopt essential key points from Art. 59-67 CLD – yet they are nowhere nearly as complex.

V. Issuance of New Shares and Instruments Entitling to New Shares

133 The issuance of new shares can be decided on either by the general meeting (Art. 67(1) EUIncR) or – offering more flexibility – by the board of directors or another company body on the basis of an authorisation in the articles of association (Art. 67(2) EUIncR). In contrast to Art. 68(2) CLD, there is no maximum duration for such an authorisation.

134 In line with EU Inc.'s fully digital ecosystem, subscriptions for new shares may be concluded fully online; details are regulated by Art. 67(4)-(6) EUIncR.

135 If the new shares are issued against a cash consideration, the existing shareholders have a pre-emption right (Art. 69(1) sentence 1 EUIncR). This follows the tradition of the pre-emption right pursuant to Art. 72(1) CLD. However, in case of an EU Inc., the pre-emption right can be excluded or modified in the articles of association, the general meeting or the board of directors when it decides on the issuance of new shares on the basis of an authorisation (Art. 69(1) sentence 1, (3) EUIncR). Oddly, the other corporate body that may decide on the issuance of new shares is not mentioned here; this is probably an editorial error. Unlike Art. 72(4)-(5) CLD, the EUIncR does not lay down any special formal (let alone substantive[190]) requirements for such an exclusion of pre-emption rights. This is intended to facilitate the entry of new investors.[191]

136 If the EU Inc. has a share capital, the capital may be increased either by issuing new shares against a consideration in the form of contributions to the share capital pursuant to Art. 64 EUIncR or by converting reserves to capital pursuant to Art. 71 EUIncR (Art. 70(1) EUIncR).

137 According to Art. 68 EUIncR, the EU Inc. also offers wide flexibility regarding the issuance of instruments entitling to new shares (e.g. convertible instruments or warrants). This is intended to facilitate particularly early-stage financing such as SAFE or KISS as well as employee stock ownership.[192] Such instruments can also be issued by a decision of the general meeting or on the basis of an authorisation in the articles of association (Art. 68(1)-(2) EUIncR). Existing shareholders also have a pre-emption right which can be excluded or modified (Art. 69 EUIncR). The board of directors shall decide on the issuance of new shares for the purpose of satisfying claims arising from such instruments without further authorisation (Art. 68(4) sentence 1 EUIncR). As regards these new shares, corresponding with Art. 72(6) CLD, the existing shareholders consequently have no pre-emption rights (Art. 69(1) sentence2 EUIncR); after all, they already had the opportunity to maintain their proportional participation by exercising their pre-emption right when the instrument itself was issued.

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189 See also *Hommelhoff/Goll/Stern* (fn. 162), 920.

190 Art. 72(4)-(5) CLD also do not impose any substantive requirements, but some Member States (e.g. Germany) go beyond the minimum standard of the CLD and do; see *Lutter/Bayer/J. Schmidt* (fn. 2), 14.313 et seq. with further references.

191 Cf. recital 50 sentence 2 EUIncR.

192 Cf. recital 51 sentence 2 EUIncR.

VI. Types of Shares

1. Different Classes of Shares

The EU Inc. also offers wide flexibility as regards classes of shares. Whereas the default rule is that all shares carry equal rights and obligations (Art. 55(1) sentence 1 EUIncR), the articles of association may provide for multiple classes of shares with different rights and obligations (Art. 55(2) sentence 1 EUIncR). Art. 55(3) EUIncR sets out a non-exhaustive list of potential options: preferences in the distributions or liquidation proceeds, veto rights, multiple voting rights, exclusion of voting rights, other specific governance rights for certain classes of shares, and obligations or rights related to the transfer of shares (e.g. approval clauses, drag-along rights or tag-along rights). This flexibility is a great plus as it allows to tailor the share structure to the specific characteristics and needs of the individual EU Inc. 138

2. Redeemable Shares

An EU Inc. can also issue redeemable shares; the shares may be redeemable at the option of the company, of the shareholder, or of both (Art. 76(1) EUIncR). Redeemable shares can not only create more flexibility for EU Inc., they can also be particularly attractive for investors wishing to have a predetermined exit option[193]. Moreover, they can also secure vesting agreements that tie the long-term preservation of company shares to the continued participation of a founder or director.[194] However, in the interest of creditor protection[195], the redemption price shall only be paid if the requirements for distributions under Art. 72 EUIncR[196] are met (Art. 76(6) EUIncR). 139

VII. Capital Reduction

Capital reductions require a resolution of the general meeting (Art. 77(1) EUIncR). In accordance with the requirements for distributions[197], they are, in principle, tied to a combination of a balance sheet test and a solvency test (Art. 77(3) subparagraph 1 EUIncR); in addition, to protect creditors, in principle, the opinion of an independent expert is required (Art. 77(3) subparagraph 2 EUIncR). By contrast, unlike under Art. 75 CLD, creditors do not have a right to apply for adequate safeguards. Moreover, neither the "double test" nor the expert's opinion is necessary 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 at least by the amount of the reduction (Art. 77(3) subparagraph 3 sentence 1 EUIncR). 140

VIII. Capital Markets Access

The wide range of financing options is completed by access to the capital markets – not only for bonds, but also for shares. The shares of an EU Inc. can be admitted to trading on an MTF (in particular also an SME growth market) (Art. 60(1) EUIncR). If this is possible for the national legal form of reference, the shares of EU Inc. can also be admitted to trading on a regulated 141

[193] Cf. recital 55 sentence 1 EUIncR.
[194] On these, see *Michael Denga*, "Handelsbräuche bei Wagniskapitalfinanzierungen", ZGR 2021, 725, 734 et seq.
[195] See also recital 55 sentence 3 EUIncR, which, however, primarily emphasises the viability of the EU Inc.
[196] See above M.IV.
[197] See *supra* M.IV.

market (Art. 60(2) EUIncR). This enables an EU Inc. to scale-up from a small start-up to an IPO on the capital market without having to change its legal form.[198]

142 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[199] 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.[200]

143 The EUIncR thus follows a Europe-wide trend of explicitly allowing private companies to trade their shares on the capital markets[201]; this is, for example, allowed for the shares of Dutch BV, Belgian BV and Italian PMI-SRL.[202] At the EU level, the Crowdfunding Regulation (ECSPR) adopted in 2020[203] also allows shares of private companies as admitted instruments for crowdfunding purposes (Art. 2(1)(n) ECSPR)[204] and the MVSD, adopted in 2024[205], applies not only to public companies, but also to private companies whose shares can be admitted to trading on an MTF under national law (Art. 2(1) MVSD)[206]. In addition, the Commission is currently considering enabling multilateral intermittent trading of shares of private companies in the context of the Savings and Investment Union (SIU).[207]

144 Against this background, if the EU Inc. were prohibited from accessing the capital markets, its attractiveness would suffer considerably in an international context.[208] The path now chosen in the EUIncR – an EU Inc. has always access to MTFs, but to regulated markets only if this is also the case for the relevant national legal form of reference – is a Solomonic decision.[209]

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[198] See SWD(2026) 321, p. 24.
[199] Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, OJ L 26, 31.1.1977, p. 1.
[200] *Lutter/Bayer/J. Schmidt* (fn. 2), 14.25. For Germany, there is also the standardization of the share through the "Satzungsstrenge" (strictness of the articles of association) (§ 23(5) AktG).
[201] *Lutter/Bayer/J. Schmidt* (fn. 2), 14.32, 14.38.
[202] See *Lutter/Bayer/J. Schmidt* (fn. 2), 14.32 with further references.
[203] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, OJ L 347, 20.10.2020, p. 1.
[204] See *Lutter/Bayer/J. Schmidt* (fn. 2), 14.30 with further references.
[205] Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility, OJ L 2024, 2024/2810, 14.11.2024.
[206] See *Lutter/Bayer/J. Schmidt* (fn. 2), 17.13 with further references.
[207] COM(2025) 124, p. 12. See *Lutter/Bayer/J. Schmidt* (fn. 2), 14.39; *Jessica Schmidt*, "BB-Gesetzgebungs- und Rechtsprechungsreport zum Europäischen Unternehmensrecht 2024/2025", BB 2025, 1795, 1801. A consultation on this is currently underway: https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-private-equity-exits-2026_en.
[208] Nonetheless, despite the the strong calls from the business community, some commentators outright reject any need for the EU Inc. to access capital markets (to e.g. *Scheller* (fn. 166), para. 19; *Wicke/Leverenz* (fn. 55), V.1.).
[209] Also generally welcoming the facilitation of capital market access but calling for an "IPO-on-ramp-mechanism": *Veil* (fn. 84), V.2.

N. Employee Stock Option Plan (EU-ESO)

Employee participation plans are an important tool for attracting and retaining the best talent, as well as incentivising employees' participation, especially for start-ups and scale-ups.[210] However, the divergent company law and tax frameworks in the individual Member States often pose hurdles in practice.[211] This topic has already been on the EU agenda several times[212], but is now to be tackled, at least for the EU Inc. 145

An EU Inc. may, by a resolution of the general meeting, establish an EU employee stock option plan (EU-ESO) under which it issues warrants to members of the board of directors, its own employees and employees of subsidiaries (Art. 78(1), (2) sentence 1, (3) EUIncR). However, in line with the EU-ESO's purposes of attracting and retaining new talent and incentivising employees' participation in the scale-up of the EU Inc.[213], warrants under an EU-ESO shall not be issued to persons who, directly or indirectly, hold shares in the company corresponding to more than 25% of the voting rights or rights in the proceeds of the company or have held such shares in the 24 months preceding the issuance. 146

The board of directors shall be authorised to issue warrants under the EU-ESO and new shares to satisfy the claims arising from these warrants (Art. 78(6) sentence 1 EUIncR). The warrants issued under the EU-ESO are issued for no consideration and are – in accordance with their function – non-transferable (Art. 78(4) EUIncR). To ensure that the warrants issued under an EU-ESO can fulfil their incentive function[214], Art. 78(3)(c) EUIncR mandates a minimum vesting period of 24 months. When the warrants are exercised, the contribution must be paid in full and in cash (Art. 78(5) EUIncR). 147

In practice, the real crux with employees' stock option schemes often lies in the "dry tax charge", when the instrument is taxed before the employee has actually received liquid funds.[215] This problem is resolved by Art. 79(2) EUIncR: In case of an EU Inc., taxation takes place only once: not at the time of the grant of the warrant, at vesting, nor when the warrant is exercised, but only when the shares obtained by exercising the warrant are disposed of. The calculation of the taxable income is also harmonised: (only) the difference between the fair market value of the shares at the date of disposal and their acquisition price is taxable as income (Art. 79(3) 1 EUIncR). This avoids double taxation.[216] However, the taxation itself (in 148

[210] Cf. recital 57 sentence 1 EUIncR; *Victoria Goll/Alexander P. Stern*, "Mitarbeiterbeteiligung in der "28. Rechtsform" (SPEU)", GmbHR 2026, 126 et seq.; Inter-University Centre, The promotion of employee ownership and participation, 2014, https://data.europa.eu/doi/10.2780/1538, p. 92; Lowitzsch (Hrsg.), Verbreitung der Mitarbeiterbeteiligung in Deutschland und Europa – Entwicklungsperspektiven, 2020, p. 7; BegrRegE ZuFinG, BT-Drs. 20/8292, p. 59.

[211] Cf. recital 57 sentence 2 EUIncR; Inter-University Centre, The promotion of employee ownership and participation, 2014, https://data.europa.eu/doi/10.2780/1538, p. 92.

[212] Cf. COM(2012) 740, 3.5; COM(2017) 292, Annex; Inter-University Centre, The promotion of employee ownership and participation, 2014, https://data.europa.eu/doi/10.2780/1538; see on this also *Lutter/Bayer/J. Schmidt* (fn. 2), 18.112 with further references.

[213] Cf. recital 57 sentence 5 EUIncR.

[214] Cf. recital 57 sentence 5 EUIncR.

[215] Cf. COM(2026) 321, p. 13; SWD(2026) 321, p. 18, 33. In Germany, this problem is addressed by § 19a EStG (Einkommenssteuergesetz – Income Tax Act), which has been expanded by the ZuFinG. See on this *Michael Denga/Julius Grottke*, "Das Standortfördergesetz im Kontext europäischer Wettbewerbspolitik", Zeitschrift für Wirtschafts- und Bankrecht (WM) 2026, 417, 422; *Katharina Weißenbacher*, "Mehr Rechtssicherheit für Mitarbeiterbeteiligungsprogramme", Betriebs-Berater 2024, 1435, 1436.

[216] Cf. recital 58 sentences 6-7 EUIncR.

particular the tax rate[217]) is to be carried out in accordance with national law (Art. 79(3) 2 EUIncR). Yet, Member States must ensure that warrants issued under EU-ESO and the resulting underlying shares are subject to a tax treatment that is not less favourable than that applicable to other employee stock options or similar instruments under national law (Art. 79(4) EUIncR).

O. Conversions, Mergers and Divisions

149 Art. 41 EUIncR expressly stipulates that an EU Inc. shall carry out cross-border conversions, mergers and divisions "in accordance with Chapter I, II and IV of Directive (EU) 2017/1132". In general, this already follows from Art. 4(2) EUIncR, provided that a legal form listed in Annex II CLD is designated as the national legal form of reference. Although a clarification is harmless, the provision is somewhat flawed in terms of legal drafting, because it uses "I" instead of "-I" and reference should actually be made to the national implementing provisions and not directly to Title II Chapters -I, II, IV CLD; moreover, the location in the chapter on branches is inappropriate.

150 In addition, as EU Inc. enjoys freedom of establishment under Art. 49, 54 TFEU, it can also carry out other cross-border transformations, e.g. transformations involving partnerships or as cross-border divisions by acquisition.[218] Furthermore, it can participate in national transformations on the basis of the national provisions applicable by virtue of Art. 4(2) EUIncR.

151 Finally, an EU Inc. can also participate in the formation of an SE to the same extent as the relevant national legal form of reference.

P. Liquidation, Nullity and Insolvency

I. Nullity

152 In accordance with Art. 11 CLD (but not completely congruent), Art. 81 EUIncR stipulates that an EU Inc. can only be declared null and void by a court decision and lays down an exhaustive list of grounds for nullity.

II. Liquidation of Solvent EU Inc.

153 The guiding principles "digital-only" and "once-only" also apply to the liquidation of EU Inc. (cf. Art. 80(1), 82 EUIncR).

154 Similar to the incorporation, there is also a "fast-track" liquidation, which allows solvent EU Inc. to liquidate quickly, following the example of similar procedures in some Member States[219] (Art. 83-87 EUIncR). The prerequisites are that the EU Inc. (a) has ceased its economic activity, (b) has no or no non-distributable assets, (c) has no liabilities or all known creditors have agreed, and (d) it is not subject to pending administrative or judicial proceedings (Art. 83(1), (2) EUIncR). The "fast-track" liquidation is thus only possible if there is no risk of creditors being disadvantaged. However, after the application for a "fast-track" liquidation

[217] Cf. recital 58 sentence 5 EUIncR.
[218] See on their protection by the freedom of establishment: *Lutter/Bayer/J. Schmidt* (fn. 2), 5.69 et seq.
[219] For example, in the Netherlands (https://www.kvk.nl/en/ending-and-deregistration/ending-a-legal-entity-through-fast-track-liquidation/).

has been disclosed, creditors (including those who had initially consented) have 30 days to oppose it; if the opposition is well-founded, the register shall refuse the opening of the fast-track procedure (Art. 85 EUIncR). If national law requires tax clearance, the national tax authority shall provide such clearance also within 30 days (Art. 86 EUIncR). Only after these deadlines have expired and no objections have been received, the EU Inc. is removed from the register (Art. 87 EUIncR).

III. Simplified Winding-up of Insolvent EU Inc.

Finally, there is also a simplified winding-up procedure for insolvent EU Inc. (Art. 82-102 EUIncR) – yet not for all EU Inc., but only for “innovative start-ups”. The goal is to ensure that these companies can be wound up in an orderly manner, using a swift and cost-efficient proceeding that is tailored to their specific needs.[220] 155

Since it has fortunately been decided not to limit the scope of application of the EUIncR to “innovative companies” or “start-ups”,[221] it comes somewhat as a surprise that this term appears here again. One might argue that insolvency is a special situation and that, in contrast to the time of formation, at the time of the opening of insolvency proceedings there is usually at least key business data available for assessment. Yet, the crucial problem of defining the terms “innovative” and “start-up” remains. The Commission has issued a new recommendation[222] which defines these terms based on criteria like investments in innovation activities, age, size and growth. However, the details of this recommendation raise a myriad of tricky questions. Apart from that, it is generally doubtful whether innovation can or should be defined at all based on strict criteria. 156

A similar simplified winding-up procedure for certain small companies was already found in the Commission’s draft Directive on the harmonisation of certain aspects of insolvency law (Insolvency III-draft).[223] However, it was not only rightfully heavily criticised in literature and practice, but also met with great concern from many Member States and the European Parliament.[224] Hence, a consensus on Insolvency III[225] was only possible after the simplified winding-up proceedings were deleted. In light of this, it remains unclear why this concept has now been rehashed for the EU Inc., as Art. 88-102 EUIncR – despite some modifications – largely correspond (to some extent even verbatim) to Art. 41-55 Insolvency III-draft. 157

In simplified winding-up proceedings, all communication between the court/authority, the insolvency practitioner and other parties involved is carried out by digital means (Art. 91 EUIncR, which corresponds to Art. 40 Insolvency III-draft). This is consistent with the EU Inc guiding principle of “digital-only” and trailblazing. Pursuant to Art. 92 EUIncR, the request for opening simplified winding-up proceedings can be submitted by the EU Inc. or any creditor using a multilingual standard form (there are some modifications compared to Art. 41 Insolvency III-draft). 158

A sensitive point, however, is the appointment of an insolvency practitioner. Art. 39 Insolvency III-draft stipulated the debtor-in-possession as default and the appointment of an 159

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[220] Cf. COM(2026) 321, p. 21; recital 67 EUIncR.
[221] Cf. recital 5 sentence 1 EUIncR.
[222] C(2026) 1800.
[223] COM(2022)702.
[224] For more details, see *J. Schmidt* (fn. 207), 1803 with further references.
[225] Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law, OJ L, 2026/799, 1.4.2026.

insolvency practitioner only as an exception. However, many small companies will hardly be able to conduct insolvency proceedings properly and efficiently without an insolvency administrator or trustee.[226] According to Art. 90 EUIncR, the appointment of an insolvency practitioner is the rule, but the EU Inc. and any creditor (or a group of creditors) may request that none is appointed, provided that the EU Inc. has an up-to-date current balance sheet and has submitted its most recent required annual statements to the relevant national authorities.

160 Other key points of the simplified winding-up proceedings are that the EU Inc. shall be deemed insolvent when it is generally unable to pay its debts as they mature as well as special rules for the lodgement and admission of claims (Art. 89(2), 95 EUIncR, which adopt Art. 38(2), 46 Insolvency III-draft – albeit in a modified form); moreover there is an electronic auction system for the sale of the debtor's assets (Art. 97-101 EUIncR, cf. Art. 50-54 Insolvency III-draft). All these points were also discussed extremely controversially during the legislative process on Insolvency III.[227]

161 Finally, it should be noted that the simplified winding-up proceedings are apparently only intended for liquidation – not for rescue of distressed but viable businesses. However, restructuring of EU Inc. is possible based on the national provisions implementing the Restructuring Directive[228].[229]

Q. Conclusion

162 With the "EU Inc.", the European Commission presents a harmonised legal form to be integrated into the legal systems of the Member States. Although it does not provide a completely autonomous EU framework – which one may regret –, the EU Inc. is much more "European" than all existing supranational legal forms (SE, SCE and EEIG).

163 It would be desirable, though, to enhance the harmonising effect of the Regulation by clarifying the scope of the autonomy of the shareholders and by establishing institutional arrangements which ensure that a coherent body of case law on the EU Inc. develops across the European Union. Several additional proposals for improving the wording of the text, in particular with regard to directors' liability and to shareholder meetings, were identified in the course of the preceding analysis.

164 The particular appeal of the EU Inc. lies in the guiding principles of "digital-only" and "once-only", which apply throughout the entire company life cycle – from the fully regulated formation to liquidation and winding-up.

165 The start-up community has welcomed this. Its needs are also met by the flexible rules on organisation and financing of EU Inc. and, as a special advantage, the EU employee stock option plan (EU-ESO). Established companies will appreciate that – using the EU template for

[226] Bundesrat, BR-Drs. 25/23(B), p. 5; *Jessica Schmidt*, "BB-Gesetzgebungs- und Rechtsprechungsreport zum Europäischen Unternehmensrecht 2022/2023", BB 2023, 1859, 1871 with further references.
[227] See, for example, the comments of various Member States in ST 7163/25.
[228] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172, 26.6.2019, p. 18.
[229] COM(2026) 321, p. 3 emphasises that the EUIncR is without prejudice to the Restructuring Directive.

the articles of association – they can set up a subsidiary in the form of an EU Inc. in any Member State digitally within 48 hours.

Group management is made possible by the explicitly regulated right to give instructions, although rules on group interest and cash pooling would be more than welcome to offer clear guidance in cross-border settings. 166

Employee codetermination remains a politically challenging issue. A link to the workplace of employees in cases where the registered office and the place of business are artificially separated could offer an acceptable solution. After all, codetermination seems to be a problem that is not really a problem. The typical EU Inc. – whether as a start-up or EU subsidiary – will usually operate well below the thresholds triggering co-determination. 167

Notably, the EUIncR goes significantly further than the *EU acquis* in several respects— particularly compared to the CLD—by adopting a range of modern and innovative approaches. However, especially in relation to the capital regime, the EUIncR takes a considerably more liberal stance. Against this background, the ongoing legislative process concerning the EUIncR offers a valuable opportunity to undertake a systematic re-evaluation of the *EU acquis*, with the objective of promoting coherence and consistency between the established body of EU company law and the emerging EU Inc. framework, insofar as such alignment is normatively justified. 168

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