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THE 28TH REGIME

AN EFFECTIVE LEGAL ARCHITECTURE FOR INNOVATION IN EUROPE?

WORKSHOP PROCEEDINGS

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The 28th Regime:

An Effective Legal Architecture for Innovation in Europe?

ABOUT THIS DOCUMENT

This executive summary draws on the proceedings of the 7th LawFin Workshop, co-organised by the DFG LawFin Center (Goethe University Frankfurt), the Department of Legal Studies at Bocconi University, and ECGI. Four research papers were presented and discussed, followed by a policy roundtable. Attributions in the summary report are made only where speakers presented on the record as named participants. This document was drafted with the assistance of AI.

Overview

On 7 May 2026, academics, policymakers, investors, and legal practitioners gathered online to examine the European Commission's March 2026 proposal for a pan-European corporate form — the EU Incorporated Company (or EU Inc. in the Commission's terminology) — as the cornerstone of what is being called the '28th regime.' The event combined four scholarly paper presentations with a wide-ranging policy roundtable, interrogating whether the proposal can deliver on its stated ambitions for Europe's innovation economy.

The discussion was notably substantive and, at times, bluntly critical. Participants broadly welcomed the political ambition behind the initiative — one roundtable participant described rarely witnessing such strong political support for a European legislative project — while expressing significant concern that the current proposal, as drafted, risks falling well short of what Europe's venture capital-backed ecosystem actually needs.

I. Background: Why the 28th Regime?

The 28th regime concept has circulated in European policy circles for over a decade, originally conceived as a tool to address capital market fragmentation. Its current

incarnation — the EU Inc. proposal — emerged from the Letta and Draghi reports, which identified legal fragmentation as a structural constraint on the financing and scaling of innovative firms across the EU. The Commission's proposal, unveiled on 18 March 2026, establishes a new supranational corporate form that companies can adopt on an opt-in basis alongside existing national forms.

The core premise is that fragmentation imposes real costs: investors must navigate up to 27 different corporate law systems; cross-border scaling requires repeated re-incorporation; and the contractual architecture used by venture capital (VC) firms — well-established in the United States and increasingly global in reach — struggles to function within the constraints of continental European corporate law. The result, workshop participants repeatedly noted, is that many of Europe's most ambitious startups 'flip' their legal domicile to the United States, particularly to Delaware, taking value and growth with them.

II. Key Themes from the Research Papers

Paper 1: The Design of Model Documents

"Blueprints, not Boilerplates: Designing Effective Model Documents for the 28th Regime" — *Casimiro A. Nigro (University of Leeds / Goethe University Frankfurt / LawFin), Luca Enriques (Bocconi University / ECGI / EBI) and Tobias H. Troger (Goethe University Frankfurt / LawFin / SAFE / ECGI / EBI). Discussant: Marco Da Rin (Tilburg University / CEPR / ECGI).*

This paper examined whether the model articles of association included in the EU Inc. proposal actually serve the venture capital-backed firms the proposal was designed to benefit. The short answer offered was: they do not. The authors identified four structural problems:

- **Scope:** The proposal provides only model articles of association. It excludes model shareholder agreements — a critical omission, since VC contracting depends on the mechanical and functional integration of both instruments. Shareholder agreements handle provisions requiring confidentiality or additional flexibility that articles of association cannot provide. Delivering only one half of this technology is, in the authors' words, 'incoherent on its face.'
- **Process:** Drafting authority has been moved away from dedicated expert groups — which earlier policy documents had proposed — to a generalised Commission

consultation process. The risk is that the resulting template will reflect political compromise rather than the specific needs of VC-backed firms.

- **Contractual Logic:** The proposal implicitly embeds a 'fairness' principle into the template design, through broader provisions on minority shareholder protection. This is structurally incompatible with VC contracting, which is deliberately asymmetric — disproportionate allocations of cash flow and control rights to investors are not pathological features but the value-generating design logic of the deal.
- **Safe Harbour:** The proposal grants a safe harbour for legal compliance — but only at the formation stage. It says nothing about how model document clauses will be interpreted or adjudicated over the life of the company. Courts and arbitrators could still re-characterise or invalidate provisions on fairness grounds, precisely the dynamic the authors' prior empirical work documented in Germany and Italy.

The authors proposed four correctives: restore model shareholder agreements; establish a specialist drafting body; remove the fairness orientation; and extend the safe harbour to cover the full lifecycle of the company, including meta-rules that direct adjudicators to interpret rights consistently with VC contracting logic.

DISCUSSANT VIEW

The discussant broadly endorsed the paper's diagnosis while encouraging the authors to think beyond the current proposal — asking what an alternative regulatory architecture might look like, rather than only refining the one on the table. A provocative suggestion was offered: rather than a pan-EU template, could a single jurisdiction (the Netherlands was floated) act as a seed for deeper regulatory experimentation, in the way that the 1996 US Blue Sky Law reforms catalysed a national venture capital market?

Paper 2: Insolvency Law and the 28th Regime

"One Size Fails All? EU Insolvency Law between Harmonisation and the 28th Regime" — Wolf-Georg Ringe (Hamburg University / ECGI). Discussant: Irit Mevorach (University of Warwick).

This paper examined one of the most consequential and underexamined aspects of the EU Inc. proposal: its insolvency provisions. The proposal introduces an accelerated winding-up procedure available to EU Inc. companies — but notably, this does not extend to restructuring.

- The paper argued that for startup ecosystems, the ability to wind up quickly is less important than the availability of credible, accessible restructuring tools. Early financial distress — not outright failure — is the critical juncture.
- The accelerated winding-up procedure may inadvertently create a 'liquidation bias,' steering companies toward dissolution when restructuring might have preserved value. The discussant described this as a 'road not taken problem' that is inherently difficult to observe or measure.
- A further concern is that EU Inc. companies will continue to operate under their member state's national insolvency framework alongside the EU-level procedure — sustaining the very heterogeneity the proposal aims to reduce.
- The restriction of the simplified winding-up procedure to 'innovative startups' (a defined and narrow subcategory of EU Inc. companies) raises definitional uncertainty and is likely to generate litigation. Why, one speaker asked, should this procedure not be available to all EU Inc. companies — or indeed to all European firms?

DISCUSSANT VIEW

The discussant concluded that EU Inc. insolvency provisions represent only a first, incremental step. A single-gateway procedure combining liquidation and restructuring in a modular form was identified as the ideal — but acknowledged as unlikely in the current proposal.

Paper 3: Political Economy and the Path to Adoption

"Designing for Adoption: The EU's 28th Regime" *— Maria Gutierrez Urtiaga (Universidad Carlos III de Madrid / ECGI) and Maribel Saez Lacave (Universidad Autonoma de Madrid / ECGI). Discussant: Cornelia Woll (Hertie School Berlin).*

This paper applied a formal lobbying model to assess the political feasibility of the 28th regime. The central finding was sobering: path dependence is most likely when the regime is designed primarily for startups, because startups are poorly positioned to drive the political process.

- Established firms are larger, more taxable, more politically proximate, and better resourced for lobbying. Startups are small, mobile (making them harder to tax), often not present in Brussels, and largely unconvinced of their own pivotality in regulatory processes.

- The 'bureaucrat' interest group — notaries, legal registrars, trade associations, and others who benefit from the status quo — is better organised than the startup ecosystem and has strong incentives to resist change.
- Large VC investors may partially compensate for startups' lobbying deficit, but this is uncertain.
- The model suggests the proposal is most likely to succeed if it can attract broader coalitions — including established firms, which currently have limited stake in a startup-oriented regime.

DISCUSSANT VIEW

The discussant challenged the paper to engage more directly with the specific dynamics of EU-level lobbying — which differs markedly from national political processes — and to address the role of foreign firms and large incumbents as potential forces for or against the regime. She noted that the concentrated interests of incumbents against any structural reform are not specific to this proposal; path dependence is endemic to all major regulatory change.

Paper 4: The False Promise of a European Delaware?

"The 28th Regime: Targeted Harmonisation and the Limits of a Pan-European Corporate Form" *— Paul Oudin (ESSEC Paris). Discussant: Maribel Saez Lacave (Universidad Autonoma de Madrid / ECGI).*

This paper questions the fundamental purpose of EU Inc.: what are the benefits of corporate law harmonisation, and to what extent does the EU need a new corporate form? The author argued that, aside from the benefits derived from improved substantive corporate rules, harmonisation in and of itself primarily benefits (venture capital) investors, rather than companies directly.

- Companies remain subject to a single set of corporate rules throughout their existence, irrespective of where their operations are carried out. Corporate law fragmentation thus does not directly affect them.
- On the other hand, cross-border investors bear the costs of fragmentation whenever they invest in companies from multiple jurisdictions, as they need each time to deal with a different set of corporate rules. This indirectly increases European companies' cost of capital.
- The author proposed that the most valuable contribution of the proposal would be facilitating the harmonisation of contracting practices across Europe and reducing the

due diligence burden for cross-border investors even if other corporate law mechanisms remain varied.

A pointed question raised in discussion asked: if the Netherlands already offers a relatively enabling corporate law environment through its BV structure, what does EU Inc. add? The answer offered was that the value of EU Inc. lies not in any single jurisdiction being superior, but in creating a recognisable, partly harmonised standard that cross-border investors across Europe can rely on — reducing the information costs of investing across member states.

The fiduciary duty question generated one of the sharpest exchanges of the day. One view held that harmonisation of fiduciary duties is unnecessary at the investment stage — that investors can form a sufficient working understanding through basic research, and that what matters is contractual flexibility rather than uniform duties. The opposing view, backed by theoretical and empirical work cited in the chat by participants, held that this understates the problem: if European mandatory corporate law rules on fiduciary duties apply, many standard cash-flow arrangements in VC contracts are simply unenforceable, regardless of what the contracts say. A constructive suggestion from the floor proposed a practical resolution: a general interpretive provision requiring courts to fill gaps and resolve ambiguities by reference to the economic rationale of the transaction — a form of contractual salvatory clause that would protect the internal logic of VC deals without requiring full harmonisation of substantive fiduciary duty rules.

DISCUSSANT VIEW

The discussant was more optimistic than most, arguing that political conditions for the proposal's success are more favourable than at any previous moment in EU corporate law history. The convergence of interests around innovation policy, combined with external competitive pressure from the United States and China, creates a window that earlier attempts at harmonisation lacked.

III. Policy Roundtable: Corporate Law as a Tool of Innovation

The roundtable — chaired by a journalist and policy analyst, with participants drawn from academia, the IMF, a startup advocacy organisation, and think-tanks — addressed a deliberately open question: can corporate law realistically form part of Europe's innovation architecture, and how should success be measured? Rebecca Christie, Senior Fellow at Bruegel and host of The Sound of Economics podcast, joined from the policy and financial journalism perspective.

What Problem Is EU Inc. Actually Solving?

This question, posed at the outset, proved surprisingly difficult to answer with consensus. Three distinct framings emerged:

- **Paperwork and formation:** For some, the core value proposition is administrative simplification — faster incorporation, reduced compliance costs, a digital-first approach. This is valuable but, as one participant put it, 'not the right problem.' The friction of starting a company is real but not the primary barrier to European innovation.
- **Capital market fragmentation:** Several participants — particularly those with financial market backgrounds — argued that the deeper problem is the inability to move capital efficiently across borders, and that EU Inc. addresses this only tangentially. The UVeCA framework was cited as a more direct (if also imperfect) attempt to address this.
- **Scaling and cross-border growth:** The most widely shared diagnosis, particularly from the startup ecosystem representative, was that the critical moment is not formation but scaling. Every time a European startup enters a new member state, it faces distinct corporate law, compliance requirements, and investor expectations. EU Inc. could, if designed well, create a standard platform that reduces this friction.

What Would Success Look Like?

Participants offered strikingly different metrics for success:

- Volume of incorporations — though several participants cautioned against this as the primary measure, noting that a modest number of high-quality adoptions by growth-stage companies would be more meaningful.
- Reduction in 'Delaware flips' — the proportion of European startups that currently redomicile to the US to access VC financing. One participant noted that more than 40% of European unicorns have made this move.
- Emergence of larger, faster-scaling European technology firms — the absence of European companies in the trillion-dollar range (compared to US and Chinese peers) was cited as the deepest measure of the problem.
- Catalytic effect on national laws — several participants, including an academic organiser, suggested that even low take-up of EU Inc. could constitute success if it pressures national legislatures to modernise their own corporate laws in ways more hospitable to VC-backed firms. The proposal was compared to a 'cornerstone' that enables construction above it — less visible than the cathedral's windows, but foundational.

Structural Tensions in the Proposal

The roundtable surfaced several structural tensions that were not resolved but reflect genuinely competing policy objectives:

- Innovation vs. breadth of application: Restricting EU Inc. to innovative startups maximises the political case for the initiative, but creates definitional uncertainty and potentially limits network effects.
- Speed vs. quality: The legislative calendar creates pressure to move quickly, but rushing to adoption risks locking in a compromised design that serves neither startups nor investors well.
- Harmonisation vs. flexibility: Harmonised rules reduce information costs for investors but may not be well-calibrated to any specific jurisdiction's most innovative firms.

ARTICLE 103 — A STRIKING CONCESSION

Participants drew attention to Article 103 of the proposal, which permits member states to treat EU Inc. companies less favourably than national limited liability companies, provided this is 'objectively justified and proportionate.' One speaker described this as 'surprising' — a carve-out that significantly limits the mutual recognition that would otherwise follow from adoption of a supranational form. The consensus view was that this provision reflects political realism (it was needed to secure member state support) but represents a meaningful limitation on the regime's potential.

IV. Areas of Broad Consensus

Notwithstanding lively disagreements, several points of broad agreement emerged across the workshop:

- The diagnosis is correct. Legal fragmentation is a genuine constraint on the scaling of European innovative firms, and corporate law plays a role in this — not as the only factor, but as a foundational one.
- The current proposal is insufficiently calibrated to VC contracting needs. Its template architecture, insolvency provisions, and approach to private ordering all fall short of what the firms the proposal was designed to serve actually require.
- The proposal is politically timely. Participants with policy experience observed that conditions for a European corporate law initiative have rarely been more favourable, and that failure to capitalise on this window would be a significant missed opportunity.

- EU Inc. should be understood as one layer of a larger architecture. Capital markets integration, insolvency harmonisation, employment law, and tax policy are all as — or more — important than corporate form. EU Inc. is a necessary but far from sufficient condition for European innovation to compete globally.
- The model documents are a critical design choice. How the Commission drafts the implementing acts that will produce the actual template for EU Inc. articles of association will determine much of the regime's practical utility. Participants urged that this process be handled by specialists in VC contracting, not through a generalised consultation.

V. Open Questions and Unresolved Debates

- Can EU Inc. compete with existing enabling jurisdictions? If Dutch BV law already offers substantial flexibility, what incremental value does EU Inc. provide — and is that increment sufficient to overcome the switching costs of adopting a new form?
- Will it lower the cost of capital? One participant put it bluntly in written exchanges during the event: the present version of the proposal contains nothing that could lower the cost of capital or facilitate VC funding. Whether subsequent implementing measures can address this was left open, but it is a serious challenge to the proposal's stated rationale.
- Will VC investors adopt it? The proposal's success ultimately depends on investor acceptance. Investors care about predictability, enforceability, and contractual flexibility — not speed of formation. Whether EU Inc. delivers on these dimensions remains to be demonstrated.
- Is the safe harbour design adequate? Without lifecycle protection for key contractual provisions, the safe harbour may be largely cosmetic, and the friction it was designed to eliminate will persist.
- How will Article 103 be applied? The scope for member states to treat EU Inc. companies less favourably than national forms introduces a significant unpredictability that could undermine the regime's appeal.
- What comes next? The Commission has indicated that EU Inc. is only the first element of a broader 28th regime that will eventually address insolvency, B2B contracts, and other transactional layers. The timeline and ambition of these subsequent elements will substantially affect the regime's overall impact.
- How will success be measured — and by whom? The Commission's own impact assessment was described as conservative. A more ambitious, independently verified

set of metrics — focused on quality of companies and investment flows rather than volume of incorporations — was called for.

VI. Conclusion

The 7th LawFin Workshop concluded with the organisers observing that 'corporate law has a self-esteem problem' — oscillating between underselling its importance relative to tax, employment, and capital markets policy, and overstating what a corporate form alone can achieve. The resolution, reflected in the day's discussion, is that corporate law is not the decisive variable in European innovation performance — but it is foundational, and getting it wrong matters.

One participant captured the central design challenge with particular precision: the 28th regime has to persuade firms that it is different enough to matter, but stable enough to trust. That tension — between innovation and predictability, between ambition and political feasibility — runs through every dimension of the proposal and will determine whether EU Inc. becomes a genuine platform for European innovation or another well-intentioned initiative that fails to move the dial.

The 28th regime represents the most significant attempt in a generation to address legal fragmentation as a structural barrier to European innovation. The proposal is imperfect in important ways, and several participants expressed concern that, absent significant improvements in the legislative process, it risks becoming a procedural fix for a heterogeneous population of companies rather than a genuinely enabling platform for the VC-backed firms that motivated it. At the same time, its catalytic potential — in both the direct sense (companies adopt EU Inc.) and the indirect sense (it prompts national legislative reform) — was widely acknowledged.

The organising institutions will publish video recordings of the proceedings on the ECGI website. This workshop is part of an ongoing series on the law and finance of private equity and venture capital; subsequent events will address private equity and VC funds globally, and legal culture and private ordering in VC contracting.

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