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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on THE 28TH REGIME CORPORATE LEGAL FRAMEWORK - 'EU INC.'**

Agence Europe

## EXPLANATORY MEMORANDUM

To follow

Agence Europe

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on THE 28TH REGIME CORPORATE LEGAL FRAMEWORK - 'EU INC.'**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Commission Communication of 29 January 2025 entitled ‘A Competitiveness Compass for the EU’ proposed a 28<sup>th</sup> regime to make it possible for innovative companies to benefit from a single, harmonised set of rules wherever they invest and operate in the Single Market. The Commission Communications of 21 May 2025 entitled ‘The Single Market: our European home market in an uncertain world. A Strategy for making the Single Market simple, seamless and strong’ and of 28 May 2025 entitled ‘The EU Startup and Scaleup Strategy Choose Europe to start and scale’ further announced that the 28<sup>th</sup> regime would include an EU corporate legal framework based on digital-by-default solutions. The former also explained that the 28<sup>th</sup> regime would provide a single set of rules, potentially in a progressive and modular way.
- (2) The European Council called on the Commission, in March and October 2025, to in line with the respective competences under the Treaties propose without delay an optional 28<sup>th</sup> company law regime allowing innovative companies to scale up. The European Parliament resolution “The 28<sup>th</sup> regime: a new legal framework for innovative companies” of 20 January 2026 called for an ambitious proposal focusing on company law rules and introducing a new corporate form into national laws for limited liability companies not listed on the stock market. It also stressed the need for measures to facilitate employee stock ownership, ensure more efficient dispute resolution and for strong safeguards to protect employee participation rights.
- (3) The 27 national legal systems with distinct rules, procedures and national legal forms for limited liability companies create a fragmented and complicated corporate landscape, resulting in legal uncertainty and costs for founders, companies as well as EU and third country investors. Therefore, in order to boost the European competitiveness, it is necessary to simplify the regulatory framework and reduce fragmentation through the approximation of laws, in particular by introducing a

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

harmonised set of corporate rules, including a new harmonised national legal form covering the lifecycle of a company including liquidation and insolvency. Harmonised rules are also needed to enable companies to attract private investment through common fast, digital and cost-effective rules and procedures, which would make it easier for high-growth companies to scale up in the internal market and enable both the EU and third country investors to invest in EU Inc. companies as well as offer such investors with more flexible exit options to liquidate their investment.

- (4) This Regulation sets out a harmonised corporate framework for EU Inc. companies including harmonised rules that facilitate the investment by EU and third country investors in such companies. The framework includes a new harmonised company legal form to be introduced in the national legal orders of all Member States. The framework and the specific features of the new national legal form draw on the diversity of national rules and procedures and harmonise those rules and procedures in order to meet the needs of companies, in particular start-ups and scale-ups and their EU and third country investors. As other national legal forms, the EU Inc. would be incorporated in a Member State and governed by the law of the Member State of registration. At the same time, it would benefit from a harmonised set of rules introduced by this Regulation. Such harmonisation also facilitates cross-border business in the internal market and ensures that those rules and procedures would result in the administrative burden and cost reduction both for founders and companies as well as for investors.
- (5) The EU Inc. framework set out in this Regulation responds in particular to the needs of startup and scaleup companies but should be legally open to all founders and companies who see it fit for their business model. Both natural and legal persons should be able to form an EU Inc. company. It should be possible to create an EU Inc. *ex nihilo* and the existing companies should be also able to convert into EU Inc. companies. Furthermore, the existing EU Inc. companies should be also able to set up EU Inc. subsidiaries, making the EU Inc. company legal form available for groups of companies. In addition, in particular to ensure that scale-ups could benefit from the EU Inc. framework, it should be possible to create an EU Inc. company through a domestic division or merger, or by carrying cross-border operations in accordance with Directive (EU) 2017/1132.
- (6) In order to provide a common and unified corporate legal framework for EU Inc. companies regardless in which Member States they are incorporated, as many aspects relating to corporate matters as possible should be harmonised by this Regulation or by the articles of association of EU Inc. companies. National law should apply to all matters where provided by this Regulation and for matters not covered by the by this Regulation.
- (7) Limited liability companies formed and operating in compliance with this Regulation should be recognised in all Member States. To this end, these companies should add to their name a common, distinct and clear denomination 'EU Inc.' The EU Inc. denomination would increase transparency and strengthen trust by ensuring that business partners, investors, other stakeholders and consumers as well as public authorities know that they are dealing with an EU company with the same harmonised features across the EU.
- (8) The use of a common denomination EU Inc. across the internal market requires legal certainty that several companies do not operate under the same name. Therefore, the company name with the denomination EU Inc. should be subject to specific rules to

ensure that it is fit for its use and that it is unique for each company. Similarly, subsidiaries within a group should have distinguishable names, while branch names should include the unique name of the EU Inc. they are part of. Names which are misleading, for example where the company name refers to a public function or ownership that does not exist or suggests a purpose or object of the company that is not in accordance with its articles of association, should be prohibited. The automatic cross-checks based on data from the Business Register Interconnecting System (BRIS) and the European Union Intellectual Property Office (EUIPO) central database for registered trademarks should make it easier to check that the proposed name is not used in other Member States or that it will not violate a registered trademark.

- (9) The articles of association constitute the fundamental legal framework of a company, defining its internal organisation, financing structure and rules of representation. However, today Member States have divergent rules in that regard. In some Member States, companies need to have two separate documents, namely an instrument of constitution and statutes (articles of association) and in other Member States one document is necessary. Therefore, there is a need to harmonise those rules. Accordingly, the articles of association for the EU Inc. should be contained in one single document and include a list of minimum mandatory matters. Given the fundamental importance of the articles of association for business partners, public authorities, creditors and in particular for the EU and third country investors, they should exist both in the national language or languages of the Member State of registration of the EU Inc. company and in English. The availability of the English version of the articles of association would ensure that information about EU Inc. can be easily accessed and understood not only by stakeholders across the internal market, but also by third country investors.
- (10) While it should be possible for the founders to form an EU Inc. company with tailor-made articles of association, harmonised and multilingual EU templates for articles of association for EU Inc. companies should be established given that existence of 27 different national templates for articles of association would preserve the fragmentation and extra costs for founders and companies. The harmonised EU templates by providing model articles of association across the EU would enable quick centralised registration process and ensure that any formal requirements for articles of association are fulfilled.
- (11) The EU Inc. company shall be subject to the fundamental freedoms including the jurisprudence of the Court of Justice of the European Union like any other EU company. This means that the founders may choose in which Member State to incorporate an EU Inc. and that all Member States should recognise the legal capacity of an EU Inc. company lawfully incorporated in another Member State.
- (12) Fully digital procedures are necessary to enable a truly efficient and competitive company set-up, operations and investment procedures that can attract both founders and investors. Therefore, while considerable progress has already been made with digitalisation of the existing EU company law, including through Directives (EU) 2019/1151 and 2025/25, the corporate legal framework for EU Inc. should go further in harmonising rules and procedures and provide “digital-only” rules and processes applicable throughout the company lifecycle including investment related communications and procedures, without paper-based alternatives. Fully digital procedures should also apply where the completion of a procedure requires a payment and it should be possible to make such a payment by means of widely available cross-

border payment services, such as credit cards and bank transfers from and to a bank account in the European Union.

- (13) The European Business Wallet [PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets] will support companies in business-to-business and business-to-government communications. The EU Inc. and other companies, once formed and registered in the business register, may purchase it to securely authenticate, store and share documents. This Regulation ensures compatibility between the European Business Wallet and key digital tools, such as the EU Company Certificate and the EU digital power of attorney, for EU Inc. companies to take full advantage of the capabilities of the European Business Wallet. This Regulation also envisages the European Business Wallet as one of the options for EU Inc. companies, together with trust services, to sign forms when registering a branch or setting up a subsidiary.
- (14) It is important to ensure that the EU Inc. corporate legal framework provides an easily recognisable but also a reliable and trustworthy legal form for founders, companies, investors and other stakeholders and that this legal form cannot be used to circumvent any rights, including employees' rights to participation in company boards. Therefore, the EU Inc. companies should be subject to employee participation rules, where such rules exist, of the Member State where an EU Inc. company has its registered office and subject to rules on employee participation under Directive (EU) 2017/1132 in case an EU Inc. company is created by or carries out a cross-border conversion, merger or division. This would guarantee equal treatment of EU Inc. companies with existing national company forms and ensure that national safeguards and acquired employee rights are not undermined.
- (15) The formation of an EU Inc. and in particular the articles of association, and any amendments thereof, should be subject to preventive administrative judicial or notarial control and a legality check to ensure their reliability and facilitate their use in cross-border situations. The preventive control is essential for prevention of abusive or fraudulent letter-box companies linked to tax evasion or money laundering. It is also key to reducing administrative formalities in the use of company information by companies, as e.g. business partners, creditors and public authorities, and to ensuring mutual recognition, and therefore, the efficient application of the "once-only" principle.
- (16) In order to allow founders to set up an EU Inc. easily through an EU level centralised infrastructure regardless in which Member State they want to set up an EU Inc. company, the Commission should provide for a centralised, user-friendly "EU central interface" which should allow the completion of the relevant procedures without having to use 27 divergent ones. The EU central interface should be built as part of the business registers interconnections system (BRIS), which connects all Member States' business registers and provides means of cross-border secure exchanges between business registers via the platform. The EU central interface should securely transmit the information and documents to the business register of the Member State where the EU Inc. company is to be registered and the business registers should automatically exchange the relevant information with the preventive control authorities. The interface should also allow founders, or their authorised representatives, to track the status of the registration of the company in real time.
- (17) The EU central interface should provide for a "fast track" formation procedure including preventive control within 48 hours and with a maximum cost of EUR 100

where the EU Inc. is formed with the harmonised application form and EU templates for articles of association. The application form and EU templates should be made available in a machine-readable and searchable format to foster cross-border interoperability and facilitate the automatic exchange of data between authorities and should be available on the EU central interface. Similarly, existing companies, including EU Inc. companies, should be able to set up a subsidiary through the same procedure. In this context, the information about the company setting up the subsidiary should be automatically retrieved from BRIS by the business register in which the subsidiary is to be registered. In addition, founders and companies should also have the possibility to form a company with tailor made articles of association or set up a company directly with national business registers.

- (18) In the context of setting up a company, national law often requires founders to submit separately information about the company to several public authorities for tax, social security or anti-money laundering purposes. This leads to delays and extra costs to start running the new business. Therefore, in order to reduce administrative burden and ensure quick procedures, these rules and procedures should be harmonised by ensuring a “once-only” data exchange between the business register of registration of an EU Inc. and the relevant national authorities. The application of the once-only principle in relation to tax authorities, social security authorities and the beneficial ownership registers should also contribute to tackling possible abuses by ensuring that business registers share data with other authorities as well as with the beneficial ownership register, and all use the same company information.
- (19) In the context of such a once-only submission of information, the business register of registration of the EU Inc. should automatically transfer the relevant company data, including the EUID, to the authorities responsible for the issuance of the tax identification number (TIN) and the VAT identification number, to social security authorities, as well to the beneficial ownership register, without founders and companies having to resubmit the information to those authorities. The specific data needed for obtaining the TIN and the VAT identification number and required by the beneficial ownership register, submitted in the application form, should also be part of the automatic transfer. In addition, the EU Inc. should obtain the TIN and the VAT identification number through this digital exchange without needing to submit a separate application, except in case where the authorities in charge of issuing the VAT identification number require additional case-specific information.
- (20) In order to increase trust in and transparency about EU Inc. companies, provide third parties with reliable information and facilitate EU Inc. companies’ operations and activities in the internal market, it is crucial to ensure easy access to information about EU Inc. Such access to information is important not only for business partners, investors and creditors but also for public authorities and public at large. Therefore, a harmonised set of information about EU Inc. should be made available at EU level through BRIS at E-Justice portal through multilingual labels and also in the national business registers, as in case of information about other EU companies. In addition, to facilitate communication with stakeholders, EU Inc. companies should disclose their identity through their official business communications and electronic presence, thereby enabling stakeholders to easily identify and contact the company, and be informed of the most relevant information about EU Inc. companies, including their EUID.
- (21) All stakeholders, including companies, authorities and the public at large, need to be able to rely on company information for business purposes or in administrative

procedures or judicial proceedings. Therefore, it is important to ensure that information about EU Inc. publicly available through BRIS and in the national business registers is reliable and kept to up-to-date in line with the information about other EU companies. Trustworthy and up-to-date information also contributes to the fight against fraud and abuse and ensures its use without further formalities in cross-border situations.

- (22) The reliable and up-to date information about EU Inc. companies at EU level through BRIS and in the national business registers would cover the information throughout the lifecycle of the company including liquidation. The public authorities should thus take full benefit of this information and access and consult it without asking EU Inc. to separately provide information unless information and documents are needed to fulfil specific procedural requirements such as completing the relevant tax declaration or proving an offer in the context of public procurement procedure. To further facilitate access, the national authorities may be directly connected to BRIS through national optional access points. Similarly, the Commission may establish optional access points to systems developed and operated by the Commission or other Union institutions, bodies, offices or agencies to perform their administrative functions or to comply with provisions of Union law such as the optional access point opened by the European Banking Authority in the context of Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA).
- (23) In order to facilitate its cross-border activities in the internal market, EU Inc. should be able to prove that it is legally incorporated in a Member State through simple and reliable means, which are recognised by other Member States. Therefore, EU Inc. companies, as other EU companies, should be able to use a harmonised EU Company Certificate, introduced by Directive (EU) 2025/25, for different purposes, including in administrative procedures before national authorities or Union institutions and bodies and in judicial proceedings in other Member States. The EU Company Certificate includes essential company information about EU Inc and is issued and certified by national business registers and available in all official languages of the Union. In addition, EU Inc. should be able to use, as other EU companies, the digital EU power of attorney, also introduced by Directive (EU) 2025/25, in order to authorise a person to represent the company in specific procedures with a cross-border dimension. The digital EU power of attorney should be accepted as evidence of the authorised person's entitlement to represent the EU Inc.
- (24) In order to further facilitate cross-border procedures and reduce administrative burden, an EU Inc. should be able use its company information in cross-border situations, including when dealing with competent authorities or in judicial proceedings in another Member State without burdensome formalities. Therefore, no legalisation or similar formality, such as an apostille, should be required in respect of certified copies of documents and information related to EU Inc. obtained from business registers. Similarly, no legalisation or similar formality should be required for notarial acts or administrative documents and for documents and information exchanged through BRIS, such as pre-operation certificates. At the same time, in order to prevent fraud or forgery, the existing safeguards set out in Directive (EU) 2025/25 should apply, whereby it should be possible for the authorities of the Member State in which the company document or information is presented, where they have a reasonable doubt as to its origin or authenticity, to verify the document or information via the issuing register or via the register in their own Member State.

- (25) The existing EU company law acquis, and in particular Directive (EU) 2025/25, has already made significant advances in overcoming the language barriers in company law procedures and the EU Inc. companies should benefit from those. Following the calls from companies, and in particular the startup community, to make the procedures for setting up and investing into companies available in English as much as possible, this Regulation makes further progress by introducing bilingual application form and standardised articles of association, available in the official language or languages of a Member State of registration and in English. The public availability of both language versions of the articles of association in the business register and via BRIS will provide investors, creditors and public authorities with access to the most important company document in English. The use of English in this essential document also significantly reduces the need for translations and therefore, the administrative burden and costs for companies and stakeholders operating in the internal market.
- (26) Regulation (EU) 2018/1724 of the European Parliament and of the Council (5), which establishes the Single Digital Gateway, provides for general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market. The Single Digital Gateway Regulation covers a wide range of administrative procedures defined in Annex II of the Regulation, which the EU Inc. companies, as other companies, will be able to benefit from. At the same time, as specified in Annex II of that Regulation, the company law and insolvency procedures for all companies, thus including procedures for EU Inc. companies laid down in this Regulation, are excluded from its scope.
- (27) The Your Europe portal provides online access to information about rules and procedures stemming from the EU and national law for businesses and citizens, in the areas specified in the Single Digital Gateway Regulation, including information related to starting, running and closing a business. In this context, the links to information about the EU Inc. legal form and procedures provided by this Regulation, available on national registration websites would be also available through the Your Europe portal.
- (28) The EU Inc. should have the flexibility to organise and manage its business in accordance with the divergent needs of EU Inc. companies in terms of their size, activities or market needs. Therefore, shareholders should have freedom to determine the organisation of the EU Inc. in the articles of association as laid down in this Regulation. The EU Inc. should have one or more directors who are natural persons. At least one director must be resident in the Union. The EU Inc. may also have an additional body, such as a supervisory body.
- (29) In order the board of directors to be able to manage effectively the company, they should be granted all powers, except for those important issues where shareholders must be able to decide, such as approval of annual accounts or where shareholders themselves have decided to restrict the board of directors' powers in the articles of association. As a principle, each director should be able to individually represent the EU Inc., but shareholders could decide that directors jointly represent a company, as 'co-directors', which would need to be publicly disclosed for third parties to be aware of it.
- (30) While exercising their mandates, directors of the EU Inc. companies should act in good faith, with reasonable care, skill and diligence, which also includes ensuring that they have sufficient information so that their decisions serve the best interests of the company. Acting in the company's best interest should also include the duty to avoid

conflicts of interest whereby the directors should inform the board of directors or the general meeting about any conflicts of interest and should not be part of decisions involving any such conflicts.

- (31) In order to protect the interests of all shareholders, an EU Inc. company should be able to stipulate in the articles of association that certain transactions directly or indirectly concluded with certain related parties, such as directors and shareholders, need to be submitted to the general meeting for approval or brought to its attention. Related party transactions that are necessary for the ordinary course of business and concluded on normal market terms could be excluded. Shareholders should be able to adapt the required form of approval or information procedures in the articles of association to best fit on the company size and corporate structure.
- (32) In order to facilitate and speed up the decision-making and to ensure that both EU and third country shareholders (investors) are able to participate in general meetings, such meetings may be held fully online or in hybrid form. It should be ensured that all shareholders can be reliably identified, participate and vote. Similarly, in order to render the decision making more efficient, in certain situations, it should be possible to take decisions through written resolutions which could also be adopted by electronic means. Decisions should be adopted according to simple quorum and based on majority requirements, while the shareholders have the flexibility to amend those in the articles of association. However, due to the significant importance of the articles of association for the company, amendments to them should be adopted under qualified majority to ensure and thus providing protection to minority shareholders. In case an EU Inc. is a single-member company, it should follow the rules in Directive 2009/102/EC.
- (33) In order to balance the significant influence of the board of directors and the important autonomy granted by the articles of association of EU Inc., the rights of minority shareholders should be enforced through a right of withdrawal in exceptional cases. Reasons for withdrawal may include for example cases where the company has been deprived of a significant proportion of its assets, where shareholders have instructed directors to miss a significant business opportunity without the consent of the withdrawing shareholder, where the company's activities have changed substantially, or where no dividend has been distributed for at least three years, despite the company's financial position permitting such a distribution.
- (34) Each EU Inc. company should be responsible for establishing and updating its digital share register. It should also be possible to delegate it to a third party who will be in charge of it on behalf of the company. The companies should have a flexibility how to establish the digital share register including whether to use of distributed ledger technology. Keeping the digital register updated also entails that every share transfer is recorded following the completion of a valid share transfer and that the shareholder receives a share certificate authentically establishing his or her status as a shareholder.
- (35) To guarantee that companies have the necessary freedom to scale up and attract new investors, share transfers should occur without restriction, unless otherwise provided in the articles of association. Share transfers are understood to encompass both acquisitions and transfers free of charge (such as donations and inheritance) and they may pertain to either complete ownership or a fraction of the property.
- (36) While all shares should have the equal rights and obligations, the EU Inc. should also be allowed to decide that classes of shares have different economic or voting rights to adapt to the requirements of certain shareholders.

- (37) To provide an EU Inc. company with a wide spectrum of financing options and investors with credible exit opportunities, the trading of its securities should not be limited to debt instruments. An EU Inc. should have the possibility to access multilateral trading facilities such as SME growth markets for the trading of its shares and Member States should not prohibit such access. Where an EU Inc. seeks the admission of its shares to trading on such markets, it should comply with all applicable requirements under Union and national laws, such as those set out in Regulation (EU) No 596/2014 on market abuse and Directive (EU) 2024//2810 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility.
- (38) To further support scale-ups and other more mature EU Inc. companies in meeting their equity financing needs, Member States may allow an EU Inc. company to seek admission to trading of its shares on a regulated market. Such access should equally require compliance with all applicable Union and national laws, for example the requirements set out in Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
- (39) Fragmentation in the laws of Member States concerning the financing of EU businesses constrains them in their ability to attract investors, in particular those from other Member States and third countries. Investors such as third-country venture capitalists and cross-border angel investors are deterred by high transaction costs, complex cross-border due diligence, and unfamiliar national corporate structures. To overcome these barriers and align with the objectives of the Savings and Investments Union, the EU Inc. should be subject to a harmonised financing framework. This framework should be specifically designed to attract cross-border equity investment by providing highly flexible and legally certain funding mechanisms. It should also balance and accommodate the needs of founders and of early-stage and growth investors to ensure that EU Inc. companies are highly attractive when competing for venture capital and other investments on a global scale.
- (40) In order to provide flexible conditions for investment, the shares of an EU Inc. should not be required to have a nominal value. By default, the shares should also not represent a fraction of the company's capital. The economic and control rights attached to a share should accordingly also not depend on a contribution made to capital. The EU Inc. should have the possibility to offer the appropriate rights and ask for the consideration for shares that is in the interest of the company and that best attracts equity investment in it, not being constraint by a mandatory link between its capital and shares.
- (41) Enabling shares without a nominal value is particularly important to accommodate common arrangements for venture capital and early-stage financing. In traditional par-value systems, shares cannot be issued below their nominal value, which creates structural obstacles during critical situations where a company's valuation has decreased and new shares must be issued in a 'down round' at a lower price to raise new equity. Furthermore, non-par value shares facilitate the seamless operation of convertible instruments such as Simple Agreements for Future Equity (SAFE) and Keep It Simple Securities (KISS). Where such instruments require a conversion at a fluctuating, discounted price, the rigid application of the par value principle could

legally prevent their execution. By removing the mandatory requirement for a par value of shares, the EU Inc. is equipped to price its equity dynamically, absorb valuation fluctuations, and enter into investment arrangements with terms in accordance with global market standards.

- (42) An EU Inc. should be able to raise equity in a flexible way and founders and shareholders should be free to choose the appropriate financing options without facing unnecessary legal constraints. The amount of capital of the EU Inc. should therefore not be required by law and may be 0 EUR throughout the company's lifetime. In the absence of capital, modern and highly effective, safeguards for creditors should be achieved through other means, notably through balance sheet and solvency tests governing distributions to shareholders. Only where founders and shareholders choose to build up capital, such capital should be subject to conventional maintenance rules.
- (43) The financing framework of the EU Inc. allows for a highly flexible allocation of equity investments. When issuing new shares, the company may require a consideration for shares in the form of a capital contribution or raise equity that is not part of the company's legal capital. This structure ensures that bespoke classes of shares, share buybacks, redemptions, and complex funding mechanisms can operate without creating frictions with conventional capital maintenance rules..
- (44) To facilitate all types of equity investment in an EU Inc., any transfer of economic value should be permitted as a consideration for a share in the company. Unless shares are issued for consideration in the form of a capital contribution, an EU Inc. should not have to require immediate payment of a consideration for shares. In particular, to avoid delays in registration caused by the requirement to open a corporate bank account for the consideration for the first shares, such consideration should not have to be paid before registration. In-kind considerations should also be possible in the form of work and services, but should always have their value determined. Where the value of an in-kind consideration is overstated, shareholders should have to compensate the company for the shortfall in value provided.
- (45) While the first shares of an EU Inc. are subscribed immediately at the time of formation, the issuance of further shares should be generally subject to a decision of the general meeting. To facilitate the swift execution of financing rounds, an EU Inc. should also be able to have its board of directors authorised to decide on the issuance of such new shares. Such authorisation should only be required to set out the maximum number of authorised shares, but may be subject to any further limitations deemed appropriate by the shareholders. To ensure a low level of transaction costs and remove barriers to cross-border investment, subscriptions for new shares should be made by electronic means and should not be subject to additional formalities imposed by Member States.
- (46) Existing shareholders should generally have pre-emptive rights in new shares issued for cash consideration to enable them to maintain their stake in the company. However, to facilitate the entry of new investors, the general meeting or, where authorised to do so, the board of directors should have the possibility to modify or exclude such rights.
- (47) To facilitate particularly early-stage investments such as Simple Agreements for Future Equity (SAFE) and Keep It Simple Security (KISS) convertible notes as well as employee stock ownership in an EU Inc., the company should have broad flexibility in issuing instruments that entitle their holders to new shares. As is the case for the issuance of new shares, the swift issuance of such instruments should be facilitated by providing for the possibility to authorise the board of directors to decide on the

issuance of the instruments. Since such instruments ultimately lead to the issuance of new shares, existing shareholders should generally have pre-emptive rights in them. As regards the issuance of new shares to satisfy claims from the instruments, the general rules on the issuance of new shares should apply, with the provision that the board of directors should not need further authorisation for such issuance and that existing shareholders should not have pre-emptive rights in the new shares.

- (48) While an EU Inc. should not be required to have a capital greater than EUR 0, it should have the possibility to increase its capital not only by issuing new shares against capital contributions but also by converting other parts of equity to capital, unless such conversion is incompatible with their purpose.
- (49) Distributions to shareholders should be subject to a balance sheet and solvency test, ensuring that an EU Inc. remains viable and meets its obligations towards creditors following a distribution. To ensure the credibility of the balance sheet and solvency test, all directors should be required to sign off the result of the two tests, and they should be personally liable where the tests are not performed or not performed with due care. Shareholders should furthermore be required to return unlawful distributions where they knew or should have been aware of the irregularities.
- (50) An EU Inc. should not be able to subscribe its own shares. To facilitate a flexible financing structure, it should however be able to purchase its own shares upon a decision of the general meeting or, where authorised, the board of directors. To ensure the viability of the company, the safeguards for distributions should also apply to purchases of own shares. Where own shares have been purchased, the company should have full flexibility to hold them in treasury for later use, transfer them further or cancel them. Cancellation should be subject to a decision of the general meeting or, where it is authorised, the board of directors.
- (51) To further facilitate investment in an EU Inc., including from investors that wish to have a predetermined exit option, the EU Inc. should also be able to issue redeemable shares. Upon redemption, such shares should be cancelled and the redemption price be paid to the investor. However, to ensure the viability of the company, the EU Inc. should only be required to pay the redemption price where such payment complies with the safeguards for distributions.
- (52) Where the company has built up capital, any reduction of it should generally be subject to a balance sheet and solvency test similar to the one required for distributions. To protect creditors which may rely on the stated capital providing them additional security against default, such test should be accompanied by a report of an independent expert certifying that the expert has inquired in to the company's state of affairs and is not aware of any matters that would indicate that the balance sheet and solvency test is unreasonable. Where capital is only reduced to cover losses or where it is increased at the same time by at least the amount of the reduction, no additional protection is warranted and the reduction should therefore not be subject to these safeguards.
- (53) Providing employees with equity and facilitating investment in their company is an important part of attracting and retaining talent, and a preferred means of providing them with a stake in the company's growth. EU Inc. companies should benefit from a simple employee stock ownership plan which they can establish for their staff throughout the internal market. Such plan, the EU-ESOP, should enable an EU Inc. company to issue warrants to a broad group of eligible persons covering not only members of the board and employees of the EU Inc. but also of its subsidiaries. In line with the purposes of talent attraction, retention and incentivising the participation in

the scaleup of the EU Inc., the warrants should be subject to a vesting period and should not be issued to persons who already hold a significant stake in the EU Inc. Where an EU-ESOP is established, the board of directors should be authorised to issue warrants and satisfy the claims arising from the warrants either by issuing new shares or transferring own shares held in treasury, within the limits of the plan.

- (54) Currently, under Member States' national laws, warrants granted to employees may be taxed more than once, and at different points in time. This situation makes the warrants unattractive, especially in cross-border cases, as it leads to complexity and may result in taxation of unrealised income, which gives rise to cash-flow disadvantages for employees. To address these issues and ensure that taxation takes place at the same time in all Member States, the income derived from the warrant granted under the EU-ESOP should be taxed only once, when the shares obtained by exercising the warrant are disposed of. No taxable income should be deemed to arise at the time of granting, vesting, or exercising of the warrant. Member States should remain free to determine how the income derived from the disposal of the shares obtained by exercising the warrant is characterised for tax purposes and the rate(s) at which it should be taxed. However, to avoid double taxation or disputes between Member States in cross-border situations, it is crucial that the taxable income is calculated in the same way by all Member States. Therefore, taxation should take place on an amount equal to the difference between the fair market value of the shares at the date of their disposal and their acquisition price. Many Member States have already introduced preferential tax regimes for employee stock options or similar instruments. To the extent the EU-ESOP meets the relevant criteria of such instruments, the taxation of shares issued by exercising warrants under EU-ESOP should be granted the same favourable tax treatment as provided under Member States' national law. [As warrants are particularly relevant for startups and scaleups, which especially at the beginning of their life cannot afford to pay high salaries and therefore have to rely on employee stock option plans to compete for the best talent, the scope of application the tax provision related to the EU-ESOP should be limited to startups and scaleups as defined in Recommendation ].
- (55) Digital solutions are also important at the end of the company lifecycle, both for solvent companies being wound up and for companies undergoing insolvency proceedings as they contribute to a more efficient closure procedure. This, in turn, allows companies to direct their human and financial resources into new entrepreneurial projects and therefore, diminishes the cost of failure. This is important for small companies, with less resources and in particular for startups, which failure rate tends to be higher than for larger companies.
- (56) Therefore, the digital only approach should also cover the dissolution and liquidation of solvent EU Inc. companies, meaning that the EU Inc. company or the liquidator, who may be a director or an external person appointed according to national legislation, should be able to submit all information or documents related to dissolution and liquidation to the business register fully online, and creditors of an EU Inc. company should be able to submit their claims fully digitally to the company or to the liquidator. As in the context of setting up, a seamless "once-only" data exchange should be also ensured between the business register of registration of an EU Inc. company and other competent national authorities relevant for its liquidation in the same Member State, such as tax, social security or other competent authorities monitoring, for instance, employment legislations. This would mean that the EU Inc. company would not need to submit again to the other authorities the information it had already submitted to the business register, which should reduce the delays and costs

caused by separate submissions in the context of a dissolution procedure that should be swift in the interest of all stakeholders. Since the relevant national authorities involved in the liquidation of a company might differ across Member States, each Member State should decide to which national authorities this “once-only” data exchange with the business register should apply.

- (57) While increasing the efficiency of the procedure thanks to digital tools, it is also important to ensure that transparent information about liquidation of and EU Inc. company is easily available to creditors and other third parties – in business registers and through BRIS – by harmonised obligations on companies and business registers. In case a liquidation of a solvent EU Inc. company is due to nullity, the conditions and consequences should be harmonised to ensure legal certainty and the nullity should only be ordered by a court decision and on the basis of an exhaustive list of grounds.
- (58) Simplified rules are in particular needed in simple liquidation cases, for instance, where solvent companies have ceased their economic activity and do not have liabilities, to allow such companies to complete the procedure and be removed or struck off from the business register within a maximum of around three months. Such fast-track liquidation should be available for the EU Inc. companies with no pending administrative or judicial proceedings, no assets available for economic use, which should in any case be distributed at the latest at the time of the filing for liquidation, and no debts. The fast-track procedure should also cover simple cases where some creditors still remain but could only be launched if those creditors gave their consent.
- (59) The fast-track procedure, while allowing companies to close within a short period of time, should also ensure that creditors are protected and provide for transparent information to third parties concerned. This should be ensured by disclosure of information that the EU Inc. company is in the fast-track liquidation procedure and of the relevant documents submitted by the EU Inc. company to the business register where it is registered, including the statement by all directors confirming that the conditions are met to undergo this procedure. Given that the fast-track procedure is limited to simple liquidation cases, the EU Inc. can be represented by a director or another person authorised to represent the company, without a need to appoint a liquidator.
- (60) Furthermore, creditors of the EU Inc. company should have a possibility to oppose the fast-track procedure within 30 days following the publication of the information about its launch in the business register. This safeguard particularly aims at protecting creditors whose claims have not been reflected in the statement of directors of the EU Inc. and in the financial statement. Those creditors who already consented to the launch of the procedure should only be able to oppose it in case of well justified reasons such as a defect or error in their consent or a serious change of circumstances. To enable the business register to disregard manifestly unsubstantiated objections, creditors should state the reasons for their claims against the EU Inc. company when submitting the objections to the business register. In case the business register receives well founded objections from creditors, it should inform the EU Inc. company of the particulars of creditors and the reasons for their claims.
- (61) In order to ensure that the EU Inc. company undergoing the fast-track liquidation procedure does not have any tax debts or has not failed to comply with any tax related obligations, the national tax authority in the Member State of registration of the EU Inc. company shall have 30 days to issue a tax clearance or submits its opposition to the fast-track liquidation. A prolongation of a maximum of 30 days would be possible

in case additional information was needed or additional activity had to be carried out by the tax authority. In order to limit administrative delays, the approval of the tax authority is assumed if the tax authority does not oppose the fast-track procedure within the initial or prolonged deadline.

- (62) After the expiry of the deadlines, both for creditors and for the tax authority, and if no objections have been received by either, the business register should remove the registration of the EU Inc. company from its records without delay. In case the business register receives reasoned objections from creditors after the 30-day deadline has expired but before it has removed the EU Inc. from the register, it may take those objections into consideration and decide not to remove the company from the register, to ensure that those claims are safeguarded. In order to ensure that potential assets, liabilities or administrative or judicial proceedings are handled smoothly after the EU Inc. company is removed from the business register, its books and records should be kept for a period of six years by a person appointed by the general meeting or by the court. The directors of the EU Inc. company which was removed from the business register shall remain jointly and severally liable for any claims of creditors that were not satisfied or disclosed.
- (63) Insolvency - Option 1: Microenterprises
- (64) National insolvency rules are not always fit to treat insolvent EU Inc. companies that are microenterprises properly and in a proportionate manner. Microenterprises heavily depend on payments from their clients, they often face cash-flow problems and higher default risks that follow from the loss of a significant business partner or from late payments by their clients. In addition, microenterprises also face scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult, if not impossible. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler and affordable procedures should be acknowledged, when microenterprises get insolvent, they should have access to simplified winding-up procedures that are adapted to these specific needs.
- (65) The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. The balance sheet test may however be unfeasible for microenterprise's debtors. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings for microenterprises. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the microenterprise concerned.
- (66) In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises, it shall be ensured that the procedure is conducted and concluded quickly, possibly within six months as of the submission of the request to open simplified winding-up proceedings. Similarly, formalities for the major procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims or the realisation of the assets should be minimised. Microenterprises should be able to commence simplified winding-up proceedings without the representation by a lawyer or another legal professional by using a standard form developed for that purpose.
- (67) To further reduce the cost and length of procedures, Member States should put in place provisions enabling debtors, creditors, practitioners and judicial and administrative

authorities to use electronic means of communication for all procedural steps in insolvency proceedings.

- (68) A debtor of a microenterprise should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings.
- (69) Member States should ensure that the assets of the insolvency estate in insolvency proceedings can be realised through online judicial auction, unless the competent authority considers this means of realisation of assets inappropriate. For this reason, Member States should ensure that one or more electronic auction systems are maintained in their territory for that purpose. This obligation should be without prejudice to the multiple platforms that exist in some Member States for online judicial auctions of specific types of assets. The auction systems operated for the purposes of realising the assets of debtors in insolvency proceedings should be interconnected via the European e-Justice Portal. The e-Justice Portal should serve as a central electronic access point to the online judicial auction processes run in the national system or systems, provide a search functionality for users and guide them to the relevant national online platforms if they intend to participate in the bidding.
- (70) Insolvency - Option 2 : innovative start-ups and scale-ups
- (71) National insolvency rules are not always fit to treat insolvent EU Inc. companies that are innovative startups and scaleups properly and in a proportionate manner. In addition, innovative startups and scaleups also face scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult, if not impossible. Taking into account the unique characteristics of innovative startups and scaleups and their specific needs in financial distress, in particular the need for faster, simpler and affordable procedures should be acknowledged, when innovative startups and scaleups get insolvent, they should have access to simplified winding-up procedures that are adapted to these specific needs.
- (72) The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings for innovative startups and scaleups. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the startup or scaleup concerned.
- (73) In order to establish cost-effective and expeditious simplified winding-up proceedings for innovative startups and scaleups, it shall be ensured that the procedure is conducted and concluded quickly, possibly within six months as of the submission of the request to open simplified winding-up proceedings. Similarly, formalities for the major procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims or the realisation of the assets should be minimised. Innovative startups and scaleups should be able to commence simplified winding-up proceedings without the representation by a lawyer or another legal professional by using a standard form developed for that purpose.
- (74) To further reduce the cost and length of procedures, Member States should put in place provisions enabling debtors, creditors, practitioners and judicial and administrative

authorities to use electronic means of communication for all procedural steps in insolvency proceedings.

- (75) A debtor of an innovative startup or scaleup should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings.
- (76) Member States should ensure that the assets of the insolvency estate in insolvency proceedings can be realised through online judicial auction, unless the competent authority considers this means of realisation of assets inappropriate. For this reason, Member States should ensure that one or more electronic auction systems are maintained in their territory for that purpose. This obligation should be without prejudice to the multiple platforms that exist in some Member States for online judicial auctions of specific types of assets. The auction systems operated for the purposes of realising the assets of debtors in insolvency proceedings should be interconnected via the European e-Justice Portal. The e-Justice Portal should serve as a central electronic access point to the online judicial auction processes run in the national system or systems, provide a search functionality for users and guide them to the relevant national online platforms if they intend to participate in the bidding.
- (77) Business registers and authorities in charge of issuing TIN and the VAT identification numbers, social security authorities and beneficial ownership registers should process any personal data of legal representatives and other persons that can lawfully represent a company, and of single shareholders, including personal data which are to be made publicly available in the registers, in accordance with Regulation (EU) 2016/679. The Commission should process personal data in the context of this Directive in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.
- (78) EU Inc. companies should process personal data in the share register in accordance with Regulation (EU) 2016/679. To facilitate compliance with data protection rules and ensure the implementation of proportionate data protection measures, the minimum content of the articles of association set in the Annex I to this Regulation contains provisions on data protection related to the share register. The articles of association should stipulate at least the core elements of data protection regarding the share register but may delegate further technical details to separate documents which may be amended without formally amending the articles of association.
- (79) This Regulation does not affect the power of Member States to reject applications for the formation of companies and registration of branches in the event of fraud or abuse, and Member States' investigation and enforcement actions, including by the police or other competent authorities. Other obligations under Union and national law, including those arising from anti-money laundering and counter terrorist financing should also remain unaffected.
- (80) [This Regulation does not affect xxx]. As for other limited liability companies, the EU legal framework regarding the information and consultation of employees, including Directive 2002/14/EC, Directive 2009/38/EC, Council Directive 2001/23/EC and Council Directive 98/59/EC, should also apply to EU Inc. companies where appropriate. National laws should also apply to matters outside the scope of this Regulation such as tax or social security.

*[Final recitals to be added]*

HAVE ADOPTED THIS REGULATION:

## **Article 1**

### ***Objective***

This Regulation aims at improving the functioning of the internal market and at creating an efficient corporate legal framework for companies and investors by:

- (1) creating a new legal form of a European limited liability company ('EU Inc.') applicable in the legal order of each Member State;
- (2) removing obstacles with respect to financing of EU Inc. companies and investment in such companies,
- (3) creating an EU central interface, based on the Business Registers Interconnection System (BRIS), for the purposes of the registration of companies taking the EU Inc. legal form, as well as for filings by EU Inc. companies;
- (4) introducing measures to reduce administrative burden in procedures covered by this Regulation throughout the lifecycle of EU Inc. companies including the application of once-only principle ;
- (5) introducing measures to improve the administrative cooperation in certain matters covered by this Regulation;
- (6) harmonizing certain aspects of insolvency procedures applicable to specific categories of undertakings taking the legal form of EU Inc.

## **Article 2**

### ***Definitions***

For the purposes of this Regulation, the following definitions shall apply: [*still to be put in alphabetical order*]

- (1) Articles of association means both the instrument of constitution and the statutes in one single document;
- (2) Branch means a fixed establishment, which is not a separate legal person but may have separate management, through which an economic activity of a company is carried out;
- (3) Business register means a central, commercial or companies register referred to in Article 16(1) of Directive (EU) 2017/1132;
- (4) Business Registers Interconnection System ('BRIS') means the digital infrastructure operating at the Union level, composed by the business registers of Member States, the platform and the E-Justice portal as defined in Articles 17 and 22 of Directive (EU) 2017/1132;
- (5) Cross-border operations mean cross-border conversions, divisions and mergers as regulated by Directive (EU) 2017/1132.

- (6) Digital EU Power of Attorney means a standardised, electronically authenticated document that authorises a person to represent a company in cross-border company law procedures within the EU and is accepted as evidence of the authorised person's entitlement to act on behalf of the company, referred to in Article 16b of Directive (EU) 2017/1132;
- (7) Digital register of shares means the record of shares maintained in a digital format by the company or by a third party, which contains information on the ownership of the shares at any time by identifying the holder of each share, as well as the history of all share transfers;
- (8) Digital share certificate means a legal document issued by the company specifying the shares held by a shareholder that confirms the entitlement of ownership of the shares specified therein;
- (9) Director means any member of the board of directors;
- (10) Dissolution means the decision or event [including a decision of the general meeting, the expiry of a term or occurrence of an event specified in the articles of association, or a judicial order] that marks the end of the company's normal business operations and, except in cases of restructuring or rescue as provided by insolvency law, initiates the liquidation process.
- (11) Distribution refers to any direct or indirect transfer of economic value to a shareholder without due consideration and in the absence of a genuine commercial purpose, with the exception of capital reductions, the acquisition of own shares by the company and the redemption of shares;
- (12) EU Company Certificate means an authenticated document issued by a Member State's business register containing key information on a company registered in that business register, which is accepted in all EU Member States, referred to in Article 16b of Directive (EU) 2017/1132;
- (13) EU central interface means a digital user interface established, operated and maintained by the European Commission, based on BRIS and its European electronic access point, as referred to in Article 22 of Directive (EU) 2017/1132;
- (14) EU template means a model articles of association that may be used for the formation of an EU Inc.;
- (15) Extinction means the completion of the liquidation and the resulting loss of legal personality evidenced by the de-registration, removal or striking off of the company from the business register.
- (16) Filing means the submission of information or documents to a business register, either directly or through the EU central interface.
- (17) Formation means the whole process of establishing an EU Inc. including all the necessary steps for its entry in the business register;

- (18) Fully online procedure means a procedure that can be carried out fully online without the necessity to appear in person before any authority or person or body mandated under national law to deal with any aspect of the procedure;
- (19) Legalisation means the formality for certifying the authenticity of a public office holder's signature on a document, the capacity in which the person signing that document has acted and, where appropriate, the identity of the seal or stamp which that document bears;
- (20) Liquidation means the procedure of the winding up the dissolved company's affairs.
- (21) Object of the company describes the main activity or activities of the company, expressed using the relevant Statistical Classification of Economic Activities in the European Community (NACE) code;
- (22) Pre-emption right refers to the preferential right held by existing shareholders to acquire new shares or instruments entitling to shares.
- (23) Related party has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.
- (24) Shareholder means the founding shareholders and any other legal or natural person who holds one or more shares and is entered into the digital register of shares;
- (25) Similar formality means the addition of the certificate provided for by the Apostille Convention;
- (26) Single-member company means a company the shares of which are held by a single shareholder;
- (27) Share transfer means any change in share ownership, regardless whether the transaction is carried out for consideration or for free.
- (28) Solvent liquidation means a liquidation initiated by the company when it is able to pay its debts in full within a determined period.
- (29) For the purpose of Chapter X:

[OPTION 1]: "microenterprise" means an EU Inc. company that, in each of the three financial years preceding the date of filing of the application for the opening of judicial liquidation or from the start of the activity if of shorter duration, jointly meets the following requirements:

- (1) a number of employees not exceeding 4;
- (2) assets of a total annual amount not exceeding € 300,000;
- (3) revenues, in whatever way they may be, for a total annual amount not exceeding € 200,000.

The aforementioned values may be updated every three years by decision of the European Commission

To determine the eligibility of the microenterprise to simplified winding-up proceedings, Member States may take into account the amount of debts, even if not expired, ascertainable at the time of the decision on the application to open the procedure.]

[OPTION 2]: ‘an innovative startup or scaleup’ means an EU Inc. company that fulfils the criteria set out in Commission Recommendation xxx [Recommendation due to be adopted in parallel to the proposed EU Inc instrument]]

### **Article 3**

#### ***Legal form and general principles***

1. EU Inc. shall be a legal form applicable in the legal order of each Member State, which shall comply with the following:
  - (a) a shareholder shall not be liable for the obligations of the company;
  - (b) it shall have legal personality upon its registration in a Member State and recognised by other Member States;
  - (c) it may be formed by one or more natural or legal persons;
  - (d) it may be formed from scratch in accordance with Articles xx – xx or through domestic or cross-border operations in accordance with Article 19;
  - (e) it shall be allocated a European Unique Identifier in accordance with Article 16(1) of Directive (EU) 2017/1132;
  - (f) it shall be set up for an unlimited period of time, unless provided otherwise in the articles of association.

### **Article 4**

#### ***Rules applicable to EU Inc.***

1. EU Inc. shall be governed by this Regulation and by its articles of association which shall not contradict this Regulation.
2. Where a matter is covered neither by the Articles of this Regulation nor by the articles of association, that matter shall be governed by national law, including the provisions implementing EU law, which applies to relevant national legal forms in the Member State in which the EU Inc. has its registered office.
3. Member States shall designate the relevant national legal form referred to under paragraph 2

### **Article 5**

#### ***Legal personality***

1. An EU Inc. company shall be registered in the business register of the Member State where it is to have its registered office.
2. An EU Inc. company formed in accordance with chapter II of this Regulation shall acquire legal personality on the date on which it is registered in the business register.

If acts have been performed in the name of an EU Inc. company before its registration in accordance with Chapter II and it does not assume the obligations arising out of such acts after its registration, the natural and legal persons which performed those acts shall be jointly and severally liable therefor.

## Article 6

### *Name of the EU Inc. company and of its branch*

1. The name of the company shall:
  - a. be followed by the mention “EU Inc.”;
  - b. fulfil the function of a name;
  - c. not mislead the public, in particular as to the nature of its business activities;
  - d. not be contrary to public policy or to accepted principles of morality; and
  - e. be sufficiently different from names of companies registered in any Member State as an EU Inc. and from names of any other companies available via the Business Registers Interconnection System (‘BRIS’).
2. Registering a company name shall not affect any claim another person may have regarding the improper use of a name contrary to European or national law.
3. A branch of an EU Inc. shall have the name of the company which may be completed by the branch indication.

## Article 7

### *Articles of association*

1. An EU Inc. shall have articles of association.
2. The articles of association shall cover at least the matters laid down in this Regulation, as specified in Annex I.
3. The articles of association shall be machine-readable and shall store information in structured data.
4. The articles of association shall be drawn up in the official language or languages of the Member State of the registration and in English and shall be made publicly available in accordance with Article 25(1).
5. Where an EU Inc. adopts the standardised articles of association, both the English version and the national language version shall have equal legal value.

Where an EU Inc. adopts non-standardised articles of association, the official language or languages of the Member state of registration shall prevail in the event of a discrepancy between the language versions.

Notwithstanding the second sub-paragraph, the EU Inc. shall be liable for any damages caused to third parties acting in good faith who relied on an inaccurate, incomplete, or misleading English version of the articles of association.

## **Article 8**

### ***EU templates for standard articles of association***

1. The EU templates for the standard articles of association ('EU templates') may be used as part of the formation procedure through the EU central interface or with the business register.
2. Where the EU templates are used, any requirement to have the company articles of association drawn up and certified in due legal form in accordance with national laws shall be deemed to have been fulfilled.
3. The Commission shall, by means of implementing acts, establish the multilingual EU templates for the standard articles of association.

## **Article 9**

### ***Seat of the company***

1. An EU Inc. shall have its registered office and its central administration or principal place of business in the Union.
2. Paragraph 1 shall also apply when the EU Inc. is created through a cross-border conversion, divisions or mergers in accordance with Directive (EU) 2017/1132.

## **Article 10**

### ***Principle of digital-only procedures***

1. The EU Inc. company may carry out all procedures within the scope of this Regulation exclusively fully online without requiring physical presence.
2. The communications between the EU Inc. company and its shareholders shall be carried out fully online unless the articles of association or any agreement between EU Inc. and shareholder choose otherwise. The communications between EU Inc. companies and creditors or other private parties shall also be carried out fully online unless parties agree otherwise.
3. In exceptional circumstances, where justified by reason of the public interest in preventing identity misuse or alteration, or in ensuring compliance with the rules on legal capacity and on the public authority of applicants to represent a company, any authority or person or body mandated under national law to deal with any aspect of

the procedures referred to in paragraph 1, may request the physical presence of the person carrying out the procedure in accordance with this Regulation.

Such requirement may only be required on a case-by-case basis where there are reasons to suspect identity falsification or insufficient legal capacity and authority to represent the company of the person referred to in the preceding subparagraph. Any other steps of the procedure shall be completed online.

## **Article 11**

### **Payments**

1. Where a procedure requires a payment, that payment can be made by means of a widely available online payment service that can be used for cross-border payments, that permits identification of the person that made the payment and is provided by a financial institution or payment service provider established in a Member State.
2. Payments can be made online to a bank account of a bank operating in the Union. In addition, proof of such payments can also be provided online.

## **Article 12**

### ***Employee participation in company board***

1. An EU Inc. formed in accordance with this chapter II of this shall be subject to the employee participation rules applicable in the Member State in which it has registered office.
2. Where an EU Inc. is created through a cross-border conversion, division or merger in accordance with Chapters -I, II and IV of Directive (EU) 2017/1132 the rules on employee participation rules under that Directive shall apply.
3. Where an EU Inc. carries out a cross-border conversion, division or merger in accordance with Chapters -I, II and IV of Directive (EU) 2017/1132 the rules on the employee participation rules under that Directive shall apply.

## **CHAPTER II- EU CENTRAL INTERFACE, FORMATION AND FILING**

## **Article 13**

### ***Company application form***

1. A harmonised application form shall be used for all cases of formation of an EU Inc. It shall be fully digital and shall collect information as structured data.
2. The prospective members of the board of directors, identified through electronic identification means in accordance with Regulation (EU) No 910/2014, shall fill in the company application form and sign it by means of trust services referred to in Regulation (EU) No 910/2014.

3. The application form shall include the information needed by the relevant national authorities for the purposes of:
  - a. company formation in the national business register;
  - b. issuing the tax identification number(TIN);
  - c. issuing the VAT identification number;
  - d. registering beneficial ownership information in the beneficial ownership register.
4. The application form shall be accompanied by the EU template or as tailor-made articles of association. The founding shareholders shall sign the articles of association by means of trust services referred to in Regulation (EU) No 910/2014.
5. The application form shall require that persons applying to become directors declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned.
6. The fast-track procedure referred to in Article 16 shall not apply if any of the persons applying to become directors declare that any such circumstances exist, or if their existence is ascertained during preventive controls.
7. The Commission shall, by means of implementing acts, establish the multilingual application form.
8. The company application form shall provide its users, both on the EU central interface and in national business registers, with an automatic check of whether the proposed company name matches or is similar to an European Union trade mark, as referred to in Regulation (EU) 2017/1001, or a national trade mark of an EU Member State, as referred to in Directive (EU) 2015/2436. This automated check shall be provided by interconnecting BRIS with the TMview trademark search tool developed by the European Union Intellectual Property Office (EUIPO) in accordance with Regulation (EU) 2017/1001.

#### **Article 14**

##### ***Preventive control***

1. The articles of association at the time of the formation of the EU Inc. company and any amendments to the articles of association shall be subject to preventive administrative, judicial or notarial control, or any combination thereof.
2. Through the legality check it shall be verified that:
  - a. the formal requirements for the articles of association are fulfilled and, where EU templates referred to in Article 8 are used, that they are used correctly;
  - b. the mandatory minimum content is included as specified in Annex I to this Regulation;

- c. the name and the object of the EU Inc. are in accordance with this Regulation;
- d. the applicants have the necessary legal capacity and have authority to represent the company;
- e. in case of amendments to the articles of association any considerations contributed to capital have been paid in accordance with Article 64(4), and, where applicable, that the additional requirements for considerations in kind have been met in accordance with Article 65.

## **Article 15**

### ***EU central interface***

1. The EU central interface shall be established as part of the European electronic access point to BRIS as referred to in Article 22 of Directive (EU) 2017/1132.
2. The Commission shall make available electronically the EU templates referred to in Article 8, the application form referred to in Article 13 and relevant detailed guidance for the registration of and filing by an EU Inc. on the EU central interface in all EU languages.
3. Where an EU Inc. is formed through the EU central interface in accordance with Articles 16 and 17, the interface shall transmit to the business register of the Member State of registration the application form and the articles of association. The business register shall share such data with national preventive control authorities.
4. The decision to register an EU Inc. in the national business register shall remain the responsibility of the competent national authority in accordance with national law.
5. The EU central interface shall enable real-time tracking of the registration status of a company.
6. The EU central interface shall provide information about the registration of intellectual property rights, including trademarks and designs.
7. Upon registration, an EU Inc. shall be allocated a European unique identifier ('EUID'), referred to in point (8) of the Annex to Commission Implementing Regulation (EU) 2021/1042, allowing it to be unequivocally identified.
8. EU Inc. companies shall be able to file documents and information in accordance with Article 25(1) and Article 27(1) through the EU central interface.

## **Article 16**

### ***Fast-track formation through the EU central interface***

1. Where an EU Inc. is formed through the EU central interface the prospective directors shall submit the application form referred to in Article 13 together with the articles of association in accordance with an EU template referred to in Article 8.
2. The preventive control carried out in accordance with Article 14 and the registration of the EU Inc. shall be completed within 48 hours from the submission of the documents referred to in paragraph 1 through the EU central interface and with a maximum cost of EUR 100 or equivalent sum in the currency applicable in the Member State of registration.

[The Commission shall, in an implementing act, adopt the procedure and details related to EU currencies other than the EURO and an automatic adjustment mechanism.]

#### **Article 17**

##### ***Formation through the EU central interface without using EU templates***

1. Where an EU Inc. is formed through the EU central interface without using the EU templates, the prospective directors shall submit the application form referred to in Article 13 accompanied by the tailor-made articles of association.
2. The preventive control carried out in accordance with Article 14 and the registration of the EU Inc. shall be completed within the deadlines set by Article 13g(7) of Directive (EU) 2017/1132.

#### **Article 18**

##### ***Fully online formation with the business register***

1. Where an EU Inc. is formed fully online with the business register, the formation shall be carried out by using the application form in accordance with Article 13 and either with EU template or tailor-made articles of association.
2. The preventive control shall be carried out in accordance with Article 14. The deadlines set out in Article 13g(7) of Directive (EU) 2017/1132 shall apply *mutatis mutandis*.

#### **Article 19**

##### ***Formation of EU Inc. subsidiaries***

1. A company listed in Annex II or IIB of the Directive (EU) 2017/1132 or an existing EU Inc. may form an EU Inc. as a subsidiary either through the EU central interface or fully online with the business register in accordance with Articles 16, 17 and 18.
2. Where a company listed in Annex II or IIB of the Directive (EU) 2017/1132 or an existing EU Inc. forms an EU Inc. subsidiary, that company or EU Inc. shall not be requested to provide any documents or information that are available in BRIS.
3. In case of registering a subsidiary in another Member State, the business register registering the subsidiary shall automatically retrieve from BRIS and on the basis

of the EUID the information and documents about the company forming the subsidiary.

4. In the case of formation of a subsidiary in the same Member States, the documents or information about the company will also be available in the business register of the company setting the subsidiary.

## **Article 20**

### ***Once-only submission for authorities***

1. The information about the EU Inc., including the EUID, as well as the specific data for the purposes of tax identification (TIN) and VAT number and for beneficial ownership register submitted as part of the application form referred to in Article 13 shall be electronically exchanged by that business register with the authorities in charge of issuing the TIN and the VAT identification number, social security authorities and the beneficial ownership register in the Member State of registration, referred to in paragraph 3 of Article 13.
2. The EU Inc. shall not be requested to provide the information referred to in paragraph 1 to the authorities referred to in paragraph 1 and the beneficial ownership register.
3. EU Inc. shall obtain the TIN and the VAT identification number from the authorities in charge of issuing those identification numbers as part of the electronic exchange referred to in paragraph 1, without being requested to submit a separate application to those authorities or provide additional information unless additional case-specific information is needed for the purpose of issuing the VAT identification number.
4. The business register referred to in paragraph 1 shall transmit to the authorities mentioned in paragraph 1, automatically and digitally, any changes to the information about an EU Inc. that it has received in accordance with paragraph 1.

## **Article 21**

### ***Formation through domestic and cross-border operations***

1. An EU Inc. may be also formed by any of the following methods:
  - a. the *domestic* conversion of an existing company;
  - b. the *domestic* merger of existing companies;
  - c. the *domestic* division of an existing company;
  - d. the *cross-border* conversion, division or merger of limited liability company or companies.
2. Formation of an EU Inc. by a *domestic* conversion shall be governed by the national law applicable to the converting company.

3. Formation of an EU Inc. by a *domestic* merger or division of existing companies shall be governed by the national law applicable to each of the merging companies or to the dividing company and in accordance with the rules laid down in Directive (EU) 2017/1132 where applicable.
4. A company or companies can only be involved in such a domestic conversion, merger or division provided that two years have elapsed since their registration or the first two sets of annual accounts have been already approved for any such company.
5. Formation through a *cross-border* conversion, division or merger shall be carried out in accordance with rules laid down in Directive (EU) 2017/1132.
6. An EU Inc. may change into a national limited liability company legal form in the Member State where it is registered, in accordance with methods set out in paragraph 1. In case of domestic operations, no decision on such an operation can be taken before two years have elapsed since its registration or before the first two sets of its annual accounts have been approved. [to be adapted]

## **Article 22**

### ***Disqualified directors***

1. Persons applying to become directors of an EU Inc. shall declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned both in case of formation of an EU Inc and in case of filing information about the appointment of a new director.
2. refuse the appointment of a person as a director of an EU Inc. A person currently disqualified from acting as a director in another Member State may not become a director of an EU Inc.
3. The paragraphs 1, 3, 4, 6-7 of Article 13i of Directive (EU) 2017/1132 shall apply *mutatis mutandis* to the persons applying to become directors of an EU Inc.

## **Article 23**

### ***Signature of digital filing via EU central interface***

1. Any documents and information filed via the EU central interface shall be signed by means of trust services referred to in Regulation (EU) No 910/2014 or using the signing function of the European Business Wallet referred to in [PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets], if applicable.
2. Filings referred to in paragraph 1 include:
  - a. Any forms for the filings by or on behalf of the company;
  - b. Any resolutions of the general meeting;

- c. Any resolutions of other company bodies;
- d. Any personal declarations by the persons concerned or on behalf of them.

#### **Article 24**

##### ***Electronic filing agent***

1. Using the Digital EU Power of Attorney referred to in Article 31, an EU Inc. may authorise a person (the “electronic filing agent”) to sign documents and submit forms through the EU central interface in accordance with this Regulation.
2. The EU central interface shall verify automatically the EU Digital Power of Attorney.

### **CHAPTER III - ACCESSIBILITY AND CROSS-BORDER USE OF EU INC. INFORMATION**

#### **Article 25**

##### ***Documents and information to be made available in the business register***

1. The following documents and information and any changes to them filed by the EU Inc. in accordance with Article 27 shall be publicly accessible in the business register of registration:
  - a. the name and legal form of the EU Inc.;
  - b. the registered office of the EU Inc., composed of street name, street number, postal code and Member State where it is registered;
  - c. where available, details of the electronic presence of the EU Inc.;
  - d. the object of the EU Inc., describing its main activity or activities, expressed using the relevant Statistical Classification of Economic Activities in the European Community (NACE) code and, if any, further details on the object or purpose of the EU Inc.
  - e. the articles of association and a consolidated version after any amendment in all language versions referred to in Article 7;
  - f. the appointment, termination of office and information of the persons who either as a body constituted pursuant to law, including the board of directors, or as members of any such body:
    - i. are authorised to represent the EU Inc. in dealings with third parties and in legal proceedings; it shall be apparent from the disclosure whether the persons authorised to represent the EU Inc. may do so individually or are required to act jointly;

- ii. take part in the administration, supervision or control of the company;
    - g. any decision to waive the experts' report as referred in Article 65(5);
    - h. the accounting documents for each financial year which are required to be published in accordance with Council Directives 86/635/EEC and 91/674/EEC and Directive 2013/34/EU of the European Parliament and of the Council;
    - i. where an EU Inc is a single member company, the identity of the sole member in accordance with Article 3 of Directive 2009/102/EC;
    - j. the winding up of the EU Inc.;
    - k. the appointment of liquidators, their information and their respective powers, unless such powers are expressly and exclusively derived from law or from the articles of association;
    - l. any termination of a liquidation.
2. The following documents and information shall be filed by competent courts and other relevant public authorities directly to the business register of registration and shall be publicly accessible in the business register:
  - a. any declaration of nullity of the EU Inc.;
  - b. any other decision related to the EU Inc. with universal effect which is changing the documents or information under paragraph 1.
3. The following documents and information provided by the business register of registration shall be publicly accessible therein:
  - a. the registration number of the EU Inc. and its EUID;
  - b. the status of the EU Inc., such as when it is closed, struck off the register, wound up, dissolved or inactive;
  - c. information on any branches opened by the EU Inc. in another Member State including the name, registration number, EUID and the Member State where the branch is registered, as resulting from the exchanges of information between business registers through BRIS, the EU Company Certificate referred to in Article 29.
4. Paragraphs 5 and 6 of Article 16, on reliability by third parties and machine readability, and paragraphs 3 and 4 of Article 16a, on true copies and the use of trust services, of Directive (EU) 2017/1132 shall apply.

## Article 26

### *Documents and information to be made available through BRIS*

1. The documents and information referred to in Article 25 shall be publicly through BRIS.
2. The following documents and information shall also be made publicly available through BRIS;
3. The following information shall be publicly available through BRIS:
  - a. the average number of employees of the EU Inc. during the financial year, where national law requires such information to be made available in the company's financial statements and from the moment such information is extractable as data.
  - b. for the groups for which parent companies that are EU Inc, or a company listed in Annex II or IIB OF Directive 2017/1132, are required to prepare and publish consolidated financial statements in accordance with Articles 21 to 29 of Directive 2013/34/EU, the group information listed in Article 19b of Directive (EU) 2017/1132, as resulting from the exchanges of information between business registers through BRIS.
4. At least the information and documents listed in Article 25, paragraph 1, letters a), b), c), d), e), f) and j), and paragraph 3 letters a), b) and c) shall be publicly available free of charge on the business register and on BRIS. The price of obtaining a copy of the other documents and information listed in Article 25 shall not exceed the administrative costs thereof, including the costs of development and maintenance of business registers.
5. Paragraph 3 of Article 19 of Directive (EU) 217/1132 shall apply on the exchange of information free of charge through BRIS

## **Article 27**

### ***Filing and up-to-date register documents and information***

1. EU Inc. companies shall file all documents and information referred to in Article 25(1) either through the EU central interface or directly with the business register. Any other information and documents beyond the scope of Article 25(1) required by national law shall be submitted directly to the business register.
2. EU Inc. companies shall keep up to date their documents and information stored in the business register. The changes shall be filed in accordance with Article 15 of Directive (EU) 2017/1132. The preventive control shall be carried out in accordance with Article 14 of this Regulation.
3. Notwithstanding paragraph 2, an EU Inc. shall file amendments to the articles of association within 5 days after the amendment resolution has been made. The consolidated version of the articles of association shall be automatically created if an EU template is amended. Where amendments are filed to tailor made articles of association, the consolidated articles of association shall also be filed. For

amendments within the EU template structure filed through the EU central interface the deadlines and cost limit for the fast-track registration in Article 16(2) shall apply.

4. All documents and information under Article 25(2) shall be submitted by the competent court or the deciding authority directly with the business register, including any changes to such documents and information within the deadlines laid down in Article 15 of Directive (EU) 2017/1132.
5. The filing of documents and information with the business register shall be fully online. The EU Inc. shall be identified through electronic identification means in accordance with Regulation (EU) No 910/2014 or comparable national electronic identification instruments.

#### **Article 28**

##### ***Once-only principle of company data during the lifecycle of the EU Inc.***

1. Where in the context of an administrative or judicial procedure, authorities need to consult specific information about the EU inc. which is publicly available at the EU level through BRIS and in the business register of its registration, the EU Inc. shall not be requested to submit such information.
2. The paragraph 1 is without prejudice to the obligation laid down in Union or national law where information or documents are required for the purposes of fulfilment of specific procedure or in case specific and serious indications that the information is incorrect. For the purposes of paragraph 1, the authorities may have access to BRIS through EU-Justice portal or through optional access point in accordance with paragraph 5 of Article 22(5) of Directive (EU) 2017/1132. The access conditions specified under paragraph 3 of Article 19 of the Directive (EU) 1132/2017 shall apply *mutatis mutandis*.

#### **Article 29**

##### ***Duty to disclose the company's identity and the branch identity***

1. The EU Inc.'s business related communication, regardless if in electronic or paper form, shall state the following information:
  - a. company name;
  - b. EUID;
  - c. address of the EU Inc.'s registered office;
  - d. electronic correspondence address of the EU Inc.;
  - e. address of the EU Inc.'s electronic presence, for example its website.
2. The EU Inc.'s electronic presence shall contain at least the information mentioned in the first paragraph.
3. The paragraphs 1 and 2 shall also apply to the business related communication of a branch of an EU Inc registered in another Member State. In addition, that

communication shall include the Member State in which the branch is registered together with the EUID of that branch.

### **Article 30**

#### ***EU Company Certificate***

1. Business registers shall issue the EU Company Certificate to the EU Inc. in accordance with paragraphs 1, 2 and 4 to 7 of Article 16b of Directive (EU) 2017/1132.
2. EU Company Certificate shall be compatible with the European Digital Identity Wallets referred to in [Regulation \(EU\) No 910/2014](#) and the European Business Wallets referred to in [*PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets*], where available.

### **Article 31**

#### ***Digital EU power of attorney***

1. The EU Inc. shall be able to use the digital EU power of attorney in accordance with paragraphs 1 to 3 of Article 16c of Directive (EU)2017/1132, to authorise a person to represent the company.
2. The digital EU power of attorney shall be compatible for use with the European Digital Identity Wallets referred to in [Regulation \(EU\) No 910/2014](#) and the European Business Wallets referred to in [*PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets*] where available.

### **Article 32**

#### ***Exemption from legalisation and any similar formality and related safeguards***

1. Where electronic copies and extracts of documents and information about an EU Inc., provided and certified as true copies by a business register, including certified translations, and authenticated by means of trust services referred to in Regulation (EU) No 910/2014 or by means of the European Business Wallets referred to in [*PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets*], where available, are to be presented in another Member State, they should be exempted from legalisation and any similar formality in accordance with paragraphs 1 of Article 16d of Directive (EU) 2017/1132.

2. Where electronic notarial acts, administrative documents, their certified copies and translations issued in a Member State related to an EU Inc. and authenticated by means of trust services as referred to in Regulation (EU) No 910/2014 or by means of the European Business Wallets referred to in [PO: Reference to Proposal for a Regulation of the European Parliament and of the Council on the establishment of European Business Wallets], where available, are to be presented in another Member State, they should be exempted from all forms of legalisation and any similar formality in accordance with paragraph 3 of Article 16d of Directive (EU) 2017/1132.
3. Paragraph 3 of Article 16d of Directive (EU) 2017/1132 shall apply *mutatis mutandis* to the EU Company Certificate referred to in Article 30 and the digital EU power of attorney referred to in Article 31 and to the pre-conversion, pre-merger and pre-division certificates transmitted in accordance with Articles 86n, 127a and 160n of Directive (EU) 2017/1132.
4. The Article 16e of Directive (EU) 2017/1132 shall apply *mutatis mutandis* in case of authorities in other Member States have reasonable doubt as to origin or authenticity, including the identity of the seal or stamp, or have reason to consider that a document has been forged or tampered.

### **Article 33**

#### ***Exemption of translation***

1. Translation of copies or extracts of documents related to EU Inc. provided by the business register shall not be required when the specific information needed about EU Inc. can be accessed and consulted:
  - a. in the articles of association of an EU Inc.; or
  - b. in the EU Company Certificate referred to in Article 30; or
  - c. through the system of interconnection of registers and is identifiable through the explanatory labels referred to in Article 18 of Directive (EU) 2017/1132.
2. Without prejudice to paragraph 1, where the articles of association and other documents related to EU Inc. provided by a business register, are to be presented in another Member State, a certified translation can be required only when justified by the purpose for which the document is to be used, such as to meet a mandatory public disclosure requirement or to be presented in judicial proceedings, and it is strictly necessary.

### **Article 34**

#### ***Information available through the Single Digital Gateway***

1. Member States shall make information about procedures and requirements relating to formation of EU Inc. companies available, free of charge and at least in English,

on national registration portals or websites that are accessible by means of the Single Digital Gateway to ensure wide access to this information.

## **Article 35**

### ***BRIS related provisions***

1. Documents and information about EU Inc. companies referred to in Articles 25 shall be available and searchable through BRIS in all the official languages of the Union in line with Article 18 paragraphs 2 and 3 of Directive (EU) 2017/1132.
2. The Commission shall provide a search service in all the official languages of the Union in respect of EU Inc. companies registered in business registers, in order to make available through the European e-Justice Portal the relevant documents and information, as well as explanatory labels listing those particulars.
3. The exchanges of information through BRIS shall apply to EU Inc. companies. The Commission shall amend the Commission Implementing Regulation (EU) 2021/1042 accordingly. In addition, it shall adopt implementing acts setting out the following: (a) the technical specification defining the methods of communication by electronic means and the communication protocols; (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information; (c) the technical specification defining the structure of the standard message format for the purpose of the exchange of information between the registers, the platform and the portal.

## **CHAPTER IV - CROSS-BORDER BRANCHES**

### **Article 36**

#### ***General principles***

1. An EU Inc. that is registered in a Member State may open a branch in another Member State.
2. Each branch of an EU Inc. company shall be registered with the business register of the Member State in which that branch is to be opened.

### **Article 37**

#### ***Branch registration***

1. An EU Inc. may register a branch in another Member State through the EU central interface by using the application form referred to in Article 38 and within the deadlines and cost ceiling in accordance with Article 16(2).
2. An EU Inc. may register a branch in another Member State fully online with the national business register of that other Member State, using the application form referred to in Article 38, in accordance with Article 28a (6) of Directive (EU) 2017/1132.

3. Upon registration, the branch shall be allocated a European unique identifier ('EUID'), referred to in point (8) of the Annex to Commission Implementing Regulation (EU) 2021/1042, allowing it to be unequivocally identified.
4. The exchange of information about the registered branch between the business register of the branch and the business register of the EU Inc. shall be carried out in accordance with Article 28a (7) of Directive (EU) 2017/1132.

### **Article 38**

#### ***Branch application form***

1. The application form shall be used for the registration of a branch of an EU Inc. in another Member State through the EU central interface and with the national business register. It shall be fully digital and shall collect information as structured data.
2. The application form shall be electronically signed by a director of the EU Inc. identified through electronic identification means in accordance with Regulation (EU) 910/2014.
3. The application form shall include the information referred to in point a) of paragraph 2 of Article 40.
4. Business register registering the branch shall automatically retrieve from BRIS and on the basis of the EUID the information about the EU Inc. referred to in point b) of paragraph 2 of Article 40.
5. The EU Inc. registering the branch shall not be requested to provide information and documents relevant for the branch registration procedure that are available in BRIS.
6. The application form shall also include specific information needed for:
  - a. issuing the tax identification number, TIN for the branch;
  - b. issuing the VAT identification number for the branch.

### **Article 39**

#### ***Once-only submission of branch and company data to authorities***

1. The information about the EU Inc. and the branch submitted as part of the application form referred to in Article 38, and other relevant information available in that business register and through BRIS, such as the EUID allocated in accordance with Article 38 paragraph 4, shall be electronically exchanged by that business register with the authorities in charge of issuing the TIN and the VAT identification number, social security authorities and the beneficial ownership register.

2. The EU Inc. and its branch shall not be requested to provide any information available in the business register of the branch, available through BRIS or included in the application form referred to in Article 38, to the authorities referred to in paragraph 1 and the beneficial ownership register.
3. The cross-border branch of the EU Inc. shall obtain the TIN and the VAT identification number from the authorities in charge of issuing those identification numbers as part of the electronic exchange referred to in paragraph 1, without being requested to submit a separate application to those authorities or to provide additional information than what electronically exchanged in accordance with paragraph 1, except where additional case-specific information is needed for the purposes of issuing VAT identification number.
4. The business register referred to in paragraph 1 shall transmit the authorities mentioned in paragraph 1, automatically and digitally, any changes to the information about an EU Inc. that those authorities have received in accordance with paragraph 1.

#### **Article 40**

##### **Availability of documents and information regarding branches**

1. Information and documents about a branch registered by an EU Inc. which is governed by the law of another Member State shall be publicly available in the business register of the branch in accordance with Article 16 paragraphs 3 to 6 of Directive (EU) 2017/1132.
2. The compulsory disclosure shall cover the following information only:
  - a. about the branch:
    - i. the name of the branch;
    - ii. the address of the branch;
    - iii. the activities of the branch;
    - iv. the appointment and information about the persons who are authorised to represent the company in dealings with third parties and in legal proceedings as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;
  - b. about the EU Inc.
    - i. the business register of the EU Inc.;
    - ii. the name of the EU Inc.;
    - iii. the legal form of the EU Inc.;
    - iv. the registered office of the EU Inc.;
    - v. the registration number of the EU Inc.;

- vi. the EUID of the EU Inc.;
  - vii. the appointment and information about the persons who are authorised to represent the company in dealings with third parties and in legal proceedings as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 25;
  - viii. the winding-up of the EU Inc., the appointment of liquidators, information concerning them and their powers and the termination of the liquidation in accordance with disclosure by the EU Inc. as provided for in Article 25;
  - ix. insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the EU Inc. is subject;
  - x. the closure of the branch.
3. The automatic exchange of information between the business register where the company is registered and the register of the branch under Article 30a of Directive (EU) 2017/1132 shall apply to the changes of information about the EU Inc.
  4. The automatic exchanges of information between the business register where the company is registered and the register of the branch shall Articles 20, 28c and 34 of Directive (EU) 2017/1132 shall apply *mutatis mutandis*.

#### **Article 41**

##### ***Cross-border mobility***

An EU Inc. may carry out cross-border conversions, divisions and mergers in accordance with Chapters I, II and IV of Directive (EU) 2017/1132.

### **CHAPTER V – ORGANISATION**

#### **Article 42**

##### ***Company bodies***

1. The articles of association shall lay down the organisation of the EU Inc. and the conditions under which the EU Inc. company is managed.
2. The company shall have a board of directors, which shall be responsible for the management of the company (board of directors). The board of directors shall consist of one or more natural persons (directors). At least one of the directors shall be resident in the Union.
3. The board of directors may exercise all the powers of the company that are not required, by this Regulation or by the articles of association, to be exercised by the general meeting or by another statutory body.
4. The general meeting shall have power to appoint directors, approve the annual accounts and to exercise other matters specified in this Regulation and in the articles

of association. The general meeting may give instructions to the board of directors. These instructions shall be binding on the board of directors, unless they are contrary to this Regulation or the articles of association.

#### **Article 43**

##### ***Representation of the company***

1. The directors shall represent the EU Inc. In the case of several directors, each director shall represent the EU Inc. individually.
2. The articles of association or shareholders/general meeting may provide that all directors represent the company jointly, in which case such directors shall be referred to as ‘co-directors’. Such limitation of the power of representation may only be relied upon against third parties where it is disclosed in accordance with Article 25 and 27.
3. Other limitations on the powers of the directors arising from the articles of association or from a decision of a statutory body may not be relied upon against third parties.
4. The directors may delegate any of their powers to individuals who, in exercising the delegated powers, must adhere to any legal obligations imposed on directors.

#### **Article 44**

##### ***Directors’ duties***

1. A director shall have the duty to always act:
  - (a) in accordance with the company’s articles of association;
  - (b) in good faith and in the best interests of the company;
  - (c) with reasonable care, skill and diligence; and
  - (d) in accordance with Art. 45 regarding conflicts of interest.
2. A director shall be liable to the company for any act or omission in breach of a duty deriving from this Regulation, the articles of association or a resolution of the general meeting which causes loss or damage to the company.
3. A director shall not be liable to the company:
  - (a) for any damage or loss incurred by the company resulting from a business decision provided that he acted in good faith, exercised the care that a reasonably prudent person would use, and had the reasonable belief that he was acting in the best interests of the company;
  - (b) for any damage or loss incurred by the company resulting from an action taken based on a lawful resolution of the general meeting.

Without prejudice to the provisions of this Regulation, the liability of directors shall be governed by the applicable national law.

#### **Article 45**

##### ***Directors’ conflicts of interest***

1. Unless otherwise provided in the articles of association, a director shall inform the board of directors or, in the event of a sole director that is not at the same time the only shareholder, the general meeting, of any matter that may involve a conflict of interest between the director's own and the company's interest.
2. A director shall refrain from taking part in a decision relative to a matter in which he or she has a conflict of interest.
3. The general meeting or the articles of association may authorise a director to take part in decisions in which the director has a conflict of interest.

## **Article 46**

### ***Related party transactions***

1. The articles of association may:
  - (a) require that certain or all transactions between the EU Inc. and all or certain directors, shareholders or related parties are approved by or brought to the attention of the board of directors, the general meeting or of the directors or shareholders not involved in those transactions; and
  - (b) specify related party transactions that are, due to their purpose, price or any other feature of the transaction, deemed to conflict with the EU Inc. company's best interests and may not be concluded;

The articles of association may exclude transactions entered into in the ordinary course of business and concluded on normal market terms from the requirements set out in the first subparagraph.

2. When a transaction is concluded with a director or a shareholder in violation of the relevant provisions of the articles of association adopted pursuant to points a or b of paragraph 1, the director or shareholder concerned shall be liable for any damage caused to the EU Inc. company as a result of this transaction.
3. In case an EU Inc. is a single-member company, contracts between the sole member and the company as represented by that sole member shall be drawn up in writing, except for the contracts concluded for current operations under normal conditions, in accordance with Article 5 of Directive 2009/102/EC.

## **Article 47**

### ***Meetings and voting by electronic means***

1. The general meetings of shareholders and meetings of the board of directors may be held fully online or in hybrid form.

The board of directors shall determine the electronic communication means to be used.

2. In case of online and hybrid general meetings, the company shall ensure that shareholders are able to:
  - (a) attend and participate in the meeting in real-time;
  - (b) exercise their voting rights; and
  - (c) be identified by electronic means considered valid by the board of directors to ensure the authenticity of the participation.

## **Article 48**

### ***Written resolutions***

1. Decisions of shareholders shall be adopted at the general meeting.
2. Notwithstanding paragraph 1, decisions may be adopted without a meeting by means of written resolutions where provided by the articles of association or under the condition that all shareholders agree in writing to cast votes in writing.
3. A written resolution is passed when the required majority of shareholders holding eligible votes has signed it. The majority required shall be the same as that required for a decision adopted at a meeting.
4. Written resolutions may be adopted by electronic means and shall be valid provided that:
  - (a) the text of the proposed resolution is sent or made available electronically/digitally to all shareholders;
  - (b) their consent is expressed in a durable and verifiable manner (including simple electronic exchange); and
  - (c) the identity of the persons expressing consent can be reliably established.
5. Written resolutions adopted in accordance with this Article shall have the same legal effect as decisions adopted at a meeting.
6. In case an EU Inc. is a single-member company, decisions adopted by the sole shareholder exercising the powers of the general meeting shall be drawn up in writing in accordance with Article 4 of Directive 2009/102/EC.

## **Article 49**

### ***Quorum and majorities***

1. The quorum for shareholders' decisions shall be constituted by the holders of a simple majority of the shares entitled to vote, present or represented at the meeting.
2. Shareholders' decisions shall be adopted by a simple majority.
3. Amendments to the articles of association shall be adopted by a qualified majority of two-thirds of the votes cast.
4. Notwithstanding paragraphs 1 and 2, shareholders may freely determine in the articles of association:
  - (a) quorum requirements or dispense with them entirely;
  - (b) voting majorities, including simple or qualified majorities,
  - (c) matters requiring the consent of specific shareholders.

## **Article 50**

### ***Amendment of the articles of association***

1. The articles of association of the EU Inc. may be amended by a decision of the general meeting adopted in accordance with the quorum and majority requirements laid down in Article 49
2. The articles of association may authorise the board of directors to amend the articles of association for specific purposes. The board of directors may make editorial changes to the articles of association without such authorisation.
3. Notwithstanding paragraphs 1 and 2, any amendment that increases the financial commitments or liability of a shareholder shall require the express consent of that shareholder.

## **Article 51**

### ***Protection of class rights***

1. Where a decision of the general meeting or of the board of directors would modify or alter the specific rights, preferences, or privileges attached to a class of shares, such decision shall not take effect without the approval of the holders of that class.
2. Unless otherwise provided in the articles of association, the following events shall be particularly deemed to modify or alter the rights of a class:
  - (a) reducing the nominal value (if any) or the dividend rights of that class;
  - (b) altering the order of priority for distribution of profits or liquidation proceeds;
  - (c) creating a new class of shares having rights superior to the rights attached to an existing class.
3. Unless the articles of association provide otherwise, the approval referred to in paragraph 1 shall require the qualified majority of two-thirds of the votes cast within the impacted class of shares.

## **Article 52**

### ***Withdrawal of a shareholder***

1. At the request of a shareholder, the court may order the acquisition of their shares if satisfied that the interests of the shareholder have suffered serious harm in consequence of a flagrant prejudice to the outgoing shareholder.
2. An application to the court for the withdrawal of a shareholder from the company shall be brought against the EU Inc. and all other shareholders.
3. The shares held by the outgoing shareholder must be purchased at a price corresponding to the fair value determined by the court on the date of service of the application. When deciding on the shareholder's withdrawal, the court shall also specify the period within which the share price is to be paid to the outgoing shareholder, together with interest from the date of service of the application.
4. The EU Inc. and the shareholders against whom the action is brought are jointly and severally liable for the payment of the purchase price. To be added

## **CHAPTER VI – DIGITAL REGISTRY, SHARES AND SHARE TRANSFERS**

## Article 53

### *Registered shares*

1. The shares of the EU Inc. shall be dematerialised and entered into a digital register of shares.
2. The articles of association may provide that shares are issued, recorded and transferred using distributed ledger technology or equivalent technological solutions.

## Article 54

### *Digital register of shares*

1. Every EU Inc. shall create upon registration and maintain an up-to-date digital register of shares, which shall contain at least the following information:
  - (a) the identity and address of all the shareholders,
  - (b) the identifier assigned for each share,
  - (c) if shares have a nominal value, their nominal value,
  - (d) the date of subscription of each share,
  - (e) if applicable, that the share is redeemable,
  - (f) the amount of each consideration in cash, if any, paid or to be paid, by the shareholder concerned,
  - (g) the value and nature of each consideration in kind, if any, provided or to be provided by the shareholder concerned,
  - (h) the date of acquisition of transferred shares,
  - (i) the sequence number assigned to each share transfer,
  - (j) where there are multiple classes of shares, the class of each share,
  - (k) where a share is owned by more than one shareholder, identity and address of a common representative,
  - (l) if any, the information about encumbrances, pledges, or restrictions on the shares and the name of their beneficiaries.
2. The digital register of shares shall be accessible to any shareholder and any other interested party with a legitimate interest, in accordance with Regulation (EU) 2016/679.
3. At the request of a shareholder and after each transfer of shares, the company shall deliver, without undue delay, a digital share certificate to the new shareholder. The digital share certificate shall confirm the entitlement of that person to the status of a shareholder.
4. The digital share certificate shall contain:
  - (a) an excerpt from the digital share register regarding all the information specified in paragraph 1 concerning the ownership of the shareholder who has requested this certificate,
  - (b) the main legal information concerning the EU Inc., including at least its registered office, its EUID and the total number of its shares,
  - (c) a digital timestamp providing a date certain for the entry in the register,

- (d) a statement regarding any recorded encumbrances, pledges, or restrictions on the shares.
5. The digital share certificate shall be dated using a qualified electronic time stamp, and sealed using a Qualified Electronic Seal or signed using Qualified Electronic Signature by the company or a member of the board, or a person authorised by the board, in accordance with Regulation (EU) No 910/2014.

## **Article 55**

### ***Equality of shares and classes of shares***

1. All shares shall carry equal rights and obligations in the EU Inc. unless otherwise provided in accordance with paragraph 2. Shareholders who are in the same position shall be afforded equal treatment by the company.
2. The articles of association may provide for multiple classes of shares with non-identical rights and obligations attached to them. Shares carrying the same rights and obligations shall constitute one class.

The rights and obligations referred to under the first subparagraph may particularly include preferences in the distribution of profits or liquidation proceeds, veto rights, multiple voting rights, the exclusion of voting rights, other specific governance rights for certain classes of shares, and obligations or rights related to the transfer of shares.

## **Article 56**

### ***Exercise of shareholder rights***

1. Shareholder rights related to a share shall take effect against the company and third parties upon entry of the information listed in paragraph 1 of Article 54 into the digital register of shares.
2. Every shareholder shall be entitled to be informed of the progress of corporate affairs by examining the financial books of the company.
3. The company must provide shareholders with the necessary information regarding the items on the agenda of the general meeting prior to that meeting.
4. Shareholders holding one-tenth (1/10) of the number of shares are entitled at any time to request the competent court or administrative authority to appoint an independent expert to investigate suspicions of a material breach of law or of the articles of association by the company. The request shall state the specific grounds for suspicion and the purpose of the investigation.

The articles of association may grant the right set out in subparagraph 1 to individual shareholders or to shareholders holding less than one-tenth of the number of shares.

The competent court or administrative authority shall determine the scope of the investigation. The expert shall be allowed access to the documents and records of the company and to require information from the board of directors for the purpose of the investigation. The expert shall submit a report regarding the result of the investigation which shall be made available to all shareholders, excluding any potential trade secret or sensitive commercial information.

The remuneration of the independent expert shall be paid by the company. The articles of association may provide that shareholders requesting an investigation shall reimburse the

company for the remuneration where the report does not establish any material breach of law or of the articles of association.

5. If several persons own a share jointly, they shall appoint a common representative to exercise shareholder rights in the company. The co-holders of a share continue to be jointly and severally liable for the commitments attached to this share.

## **Article 57**

### ***Voting rights***

1. One share shall always carry one vote unless otherwise provided in the articles of association.
2. A shareholder may not vote differently on different shares, unless otherwise provided in the articles of association.
3. The articles of association may provide that a share carries no voting rights or that a share does not carry a vote in given matters dealt with by the general meeting and through written resolutions.
4. In a matter where a share referred to in paragraph 3 does not carry a vote, that share shall not be taken into account when calculating the quorum and majority required for a decision of the general meeting and of written resolutions.

## **Article 58**

### ***Transfer of shares***

1. Shares in the EU Inc. shall be freely transferable unless otherwise provided by the articles of association.
2. Shares may not be transferred before the consideration for them has been fully paid.

## **Article 59**

### ***Digital procedure for the transfer of shares***

1. The transfer of shares can be concluded fully online without any physical presence, including the registration in the digital register of shares in accordance with this Article.
2. The transfer of shares shall be deemed to be valid through an agreement sealed using a Qualified Electronic Seal or signed using Qualified Electronic Signature within the meaning of Regulation (EU) No 910/2014 (eIDAS).
3. Where a party is unable to provide a Qualified Electronic Seal or a Qualified Electronic Signature, the transfer may be concluded via an Advanced Electronic Signature or Advanced Electronic Seal, provided it is accompanied by evidence of identity verified through a qualified trust service provider or a professional intermediary
4. Additional formalities, including a requirement for a notarial deed, shall not be required for the transfer to be legally valid.
5. Any of the parties to the share transfer shall notify the company in writing through electronic means when submitting the signed agreement along with the information specified in paragraph 1 of Article 54.

6. Upon receipt of a complete notification of a share transfer, the EU Inc. company shall review the documentation to verify the legal title of the transferor to transfer the share and compliance with the company's articles of association.
7. The EU Inc. company shall register the transfer in its digital register of shares or inform the parties to the agreement on the grounds for refusing the registration within three working days of receiving the notification.
8. The EU Inc. company shall issue a digital share certificate to the new shareholder immediately upon registering the transfer in the digital register of shares.
9. Any rectification of the data recorded in a digital register of shares in cases of manifest errors, technical errors, fraud, or where the company fails to record a validly executed transfer shall be carried out in accordance with national law.

#### **Article 60**

##### ***Access to public markets for shares***

1. Member States shall not prohibit an EU Inc. company from seeking admission to trading of its shares on a multilateral trading facility, provided that the company complies with the applicable requirements under Union and national laws.
2. An EU Inc. company may seek admission to trading of its shares on a regulated market where Member States provide for that possibility in their national legislation and subject to compliance with the applicable requirements under Union and national laws.

### **CHAPTER VII – FINANCING**

#### **Article 61**

##### ***Non-par value of shares***

1. Unless otherwise provided in the articles of association, the shares of the EU Inc. shall have no nominal value and shall not represent a fraction of the company's capital (non-par value shares).
2. Where the articles of association provide for a nominal value of shares (par value shares), the nominal value represents the fractional value of the company's capital. All shares in the company shall have the same nominal value.
3. An EU Inc. may not have both shares with and without a nominal value.

#### **Article 62**

##### ***Optional amount of capital***

1. The company is not required to have a minimum amount of capital nor is it required to build up capital or legal reserves over time.
2. The capital of the company shall be expressed in euro or in the official currency in the Member State of registration.
3. Where the company issues shares with a nominal value, the contribution to capital for each share shall be equal to its nominal value. The capital shall be fully subscribed.

## **Article 63**

### ***Maintenance of equity***

1. Subject to Article 77, the assets of the company required to maintain the capital may not be distributed to the shareholders.
2. Any consideration or part of a consideration for shares that is not contributed to capital shall not be subject to the restriction under paragraph 1 and shall be freely distributable in accordance with Article 72, unless otherwise provided in the articles of associations or a decision to issue new shares.

## **Article 64**

### **Consideration for shares**

1. Shareholders shall pay the agreed consideration for shares in accordance with the articles of association or the decision to issue new shares.
2. The consideration for shares may take the form of any transfer of economic value, including cash payments and, subject to Article 65, payments in kind.
3. Shares may be issued against consideration to be contributed to capital or consideration not to be contributed to capital, or a combination of both.
4. Notwithstanding paragraph 1, any part of the consideration that is to be contributed to capital shall be fully paid upon issue of the shares.
5. For any part of the consideration that is not a contribution to capital, the articles of association or the decision to issue new shares may provide that the consideration has to be paid within a specified time period or upon request by the company. In any case, the consideration shall be paid in full at the latest five years from the date of the issuance of the shares.

## **Article 65**

### **Additional requirements for in-kind considerations**

1. Considerations in kind may be contributed to capital, unless they take the form of an undertaking to perform work or supply services.
2. All in-kind considerations for shares shall have a determinable value. The value of in-kind considerations for the first shares shall be specified in the articles of association. Where new shares are issued against a consideration in kind, the value of the consideration shall be specified in the decision on the issuance of the shares.
3. A report by one or more independent experts appointed or approved by an administrative or judicial authority shall be drawn up before the issuance of shares against a consideration in kind.
4. The experts' report referred to in paragraph 3 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of those methods correspond at least to the amount specified in accordance with paragraph 2. The report is to be filed and disclosed in the business register.

5. The articles of association or the general meeting deciding with the same majority as for amendments to the articles of association may waive the requirement for the experts' report referred to in paragraph 3. A decision to waive the experts' report shall be filed and disclosed in the business register. The requirement for an experts' report may not be waived for any part of an in-kind consideration that is to be contributed to capital.
6. Where an in-kind consideration has been significantly overvalued in relation to its fair value on the date on which the shares were subscribed, the shareholder who has provided such consideration is required to compensate the company for the shortfall.

## **Article 66**

### ***Issuance of first shares***

1. The subscriptions for the first shares shall be declared in the articles of association.
2. The first shares shall be registered in the share register at the time of formation.

## **Article 67**

### ***Issuance of new shares***

1. The general meeting shall decide on the issuance of new shares.
2. The articles of association may authorise the board of directors or another company body to decide on the issuance of new shares up to a specified maximum number of shares. The authorisation may empower the board of directors or another company body to restrict or exclude pre-emption rights on new shares issued against cash consideration.
3. The decision on the issuance of new shares shall at least set out the number of shares to be issued, the consideration for a share and if any part of the consideration is to be contributed to capital.
4. Subscriptions for new shares shall be made by electronic means. A subscription for new shares shall indicate the subscriber, the share issue decision on which the subscription is based, the shares that are being subscribed for, any consideration to be paid and if any part of the consideration is to be contributed to capital.
5. Member States shall not require any additional formalities for the validity of the subscription, including a requirement for a notarial or lawyer's deed.
6. The board of directors shall register newly subscribed shares without undue delay once any consideration immediately due upon subscription has been fully paid for and any terms of subscription have been met.
7. The board of directors shall update the number of shares and, where a contribution to capital is made, the amount of capital indicated in the articles of association.

## **Article 68**

### ***Pre-emption rights on new shares issued against cash consideration***

1. Unless otherwise specified in the articles of association, new shares issued against a consideration in cash shall be offered on a pre-emptive basis to the shareholders in proportion to their shareholding.
2. Shareholders may exercise their pre-emptive right within 14 days of the offer.
3. When deciding on an issuance of new shares, the general meeting or the board of directors where it is authorised in accordance with Article 67(2) may modify or exclude the pre-emptive rights for that issuance.

## **Article 69**

### ***Instruments entitling to new shares***

1. The general meeting shall decide on the issuance of instruments which give the holder, in whole or in part, a right or duty to exchange their claim against the company for new shares in the company (convertible instruments), instruments which entitle the owner to subscribe for new shares in the company for a consideration (warrants) or other instruments entitling to new shares.
2. Shareholders shall have pre-emptive rights to the issuance of such instruments. Article 68 shall apply mutatis mutandis.
3. Shareholders shall have no pre-emptive rights on new shares issued to satisfy claims arising from instruments entitling to new shares.
4. The articles of association may authorise the board of directors or another company body to decide on the issuance of instruments entitling to new shares up to a specified number of new shares to satisfy claims arising from instruments entitling to new shares. The authorisation may empower the board of directors or other company body to restrict or exclude pre-emption rights on instruments entitling to new shares.
5. The decision on the issuance of instruments entitling to new shares shall at least set out the purpose of the issuance, the persons or group of persons to whom the instruments are offered, the number of instruments to be issued, any consideration to be paid for the instruments, if any part of the consideration is to be contributed to capital and the terms for the exchange for or subscription for new shares.
6. The board of directors shall be deemed authorised to issue new shares for the purpose of satisfying claims arising from instruments entitling to new shares. Article 64, Article 65 and Article 67(4), (5), (6) and (7) shall apply mutatis mutandis on new shares issued to satisfy such claims. With regard to convertible instruments, an exchange of claims for new shares shall be deemed a consideration in cash. Where the company's shares have a nominal value, any difference between the nominal share value and a lower issue price of a convertible instrument may be covered by funds that are determined by the board of directors to be available for distribution in accordance with Article 72.

## **Article 70**

### ***Capital increase***

1. The capital may be increased:
  - (a) by issuing new shares against consideration in the form of contributions to capital, as provided in Article 64; or

- (b) by converting reserves to capital (increase from reserves).
2. The capital is considered to have been increased once the increase has been disclosed in the business register

## **Article 71**

### ***Capital increase from reserves***

1. The general meeting shall decide on a capital increase from reserves.
2. The articles of association may authorise the board of directors or another company body to decide on the increase from reserves.
3. The decision on the increase from reserves shall indicate the amount of the increase and the reserves to be converted to capital. Reserves earmarked for a specific purpose may only be converted where a conversion to capital is compatible with their purpose.
4. The board of directors shall update the amount of capital and, where the shares of the company have a nominal value, the nominal value indicated in the articles of association.

## **Article 72**

### ***Distributions***

1. The general meeting shall decide on distributions.
2. The decision on a distribution shall only take effect if the board of directors certifies in a statement signed by all directors that, based on the most recent financial statements and after thoroughly examining the company's current and future affairs, it has formed the reasonable opinion that following the distribution,
  - (a) the net assets as set out in the most recent balance sheet would remain greater than the total amount of liabilities and capital (balance sheet test), and
  - (b) the company will be able to pay its debts as they fall due in the normal course of business in the 12 months following the date of the distribution (solvency test).
3. Where the company carries out a distribution in violation of paragraphs 1 or 2 or where the directors signing the statement referred to in paragraph 2 knew or, in view of the circumstances, should have known at the time of the statement that, following the distribution, the net assets of the company would not remain greater than the total amount of liabilities and capital or that the company would no longer be able to pay its debts in the 12 months following the date of distribution, they shall be jointly and severally liable to the company for all damages resulting from the distribution.
4. Where a shareholder has received a distribution carried out in violation of paragraphs 1 or 2 or where the shareholder knew or, in view of the circumstances, should have known at the time of the distribution that, following the distribution, the net assets of the company would not remain greater than the total amount of liabilities and capital or that the company would no longer be able to pay its debts in the 12 months following the date of distribution, the shareholder shall be required to return the distribution to the company to the extent that commitments entered into with creditors so require.

## **Article 73**

### ***Subscription of own shares***

1. The shares of a company may not be subscribed for by the company itself. Shares subscribed for in the company's name in contravention of this paragraph are deemed to be subscribed for by the founders or, in case of an issuance of new shares, by all directors, who shall be jointly and severally liable for the consideration for the shares.
2. If the shares of a company have been subscribed for by a person acting in his or her own name, but on behalf of the company, the person shall be deemed to have subscribed for them for his or her own account.

### **Article 74**

#### ***Acquisition of own shares***

1. The general meeting shall decide on the acquisition of the company's own shares for consideration or on the acceptance of own shares as security.
2. The articles of association may authorise the board of directors or another company body to decide on the acquisition of own shares for consideration or on the acceptance of own shares as security up to a specified maximum number of shares.
3. The company may only acquire its own shares for consideration out of funds that are determined by the board of directors to be available for distribution in accordance with Article 72.
4. The company may only accept its own shares as security if the amount of the claims to be secured or, where the value of the shares taken as security is lower than the amount of claims to be secured, that value does not exceed the amount of funds available for distribution.

### **Article 75**

#### ***Treatment of own shares***

1. The company may hold its own shares in treasury, transfer them in accordance with Article 59 or cancel them.
2. The company is not entitled to any rights attached to own shares held in treasury.
3. The general meeting decides on the cancellation of own shares.
4. The articles of association may authorise the board of directors or another company body to decide on the cancellation of own shares.
5. Where the company's shares have a nominal value, the amount of the company's capital is reduced accordingly by the nominal amount of the shares cancelled. Upon cancellation of own shares, the company shall transfer an amount in the aggregate nominal value of the cancelled shares to a reserve, which shall be treated as if it were part of the company's capital.
6. Upon cancellation of own shares, the board of directors shall update the number of shares and, where the company's shares have a nominal value, the amount of capital indicated in the articles of association.

### **Article 76**

### ***Redeemable shares***

1. The company may issue new shares that can be redeemed against the company (redeemable shares). The shares may be redeemable at the option of the company, of the shareholder, or by both, according to the decision on the issuance of the redeemable shares.
2. Redeemable shares shall be issued in accordance with Article 67. In addition to the items referred to under paragraph 3 and 4 of Article 67, the decision on the issuance of redeemable shares and the subscription for such shares shall set out the conditions and manner of redemption, the redemption price or the basis for its determination.
3. Redeemable shares may only be issued as long as the company has also non-redeemable shares. Non-redeemable shares may not be turned into redeemable shares after their issuance.
4. Redeemable shares may only be redeemed if they have been fully paid up.
5. Upon redemption, redeemable shares are cancelled and the redemption price becomes payable to the shareholder.
6. The redemption price may only be paid out of funds that are determined by the board of directors to be available for distribution in accordance with Article 72.
7. Redeemed shares shall be cancelled in accordance with paragraph 5 and 6 of Article 75. The board of directors shall be deemed authorised to cancel redeemed shares.

### **Article 77**

#### ***Capital reduction***

1. The general meeting shall decide on a capital reduction.
2. The decision on the capital reduction shall be made on the basis of a balance sheet and solvency test, certified by the board of directors. Article 72 applies *mutatis mutandis*, with the provision that the net assets under the balance sheet test must remain greater than the total of liabilities after the capital reduction. The statement of the board of directors on the balance sheet and solvency test shall be accompanied by a report of an independent expert appointed or approved by an administrative or judicial authority, stating that the expert has inquired into the company's state of affairs and is not aware of anything to indicate that the statement is unreasonable.

Sub-paragraph 1 shall not apply 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. The articles of association may authorise the board of directors or another company body to decide on a capital reduction for these purposes.

3. The decision on the capital reduction shall indicate the purpose, the way in which the reduction is to be carried out and the amount of the reduction.
4. The board of directors shall update the amount of capital and, if applicable, the nominal value of shares in the articles of association. The capital is considered to have been reduced once the reduction has been disclosed in the business register.

## CHAPTER VIII – EU EMPLOYEE STOCK OWNERSHIP PLAN

### Article 78

#### *EU-ESOP*

1. The company may establish an EU employee stock ownership plan (EU-ESOP) under which it issues warrants to eligible persons.
2. Eligibility for warrants issued under the EU-ESOP is restricted to members of the board and employees of the company and its subsidiaries. Warrants under the EU-ESOP shall not be issued to persons who, acting alone or together with other persons, directly or indirectly, hold shares in the company corresponding to more than 25 per cent of the voting rights or rights in the proceeds of the company or have held such shares in the 24 months preceding the issuance.
3. The general meeting shall decide on the establishment of the EU-ESOP. The resolution shall at least sets out:
  - (a) the group of eligible persons;
  - (b) the maximum number of warrants to be issued under the EU-ESOP and the shares to which the holder of a warrant shall be entitled upon exercise of it;
  - (c) a mandatory waiting period before which the warrants issued under the EU-ESOP may not be exercised, which shall be at least 24 months from the issuance of a warrant.
4. Warrants issued under the EU-ESOP shall be non-transferable and issued for no consideration.
5. The consideration for new shares issued upon exercise of warrants under the EU-ESOP shall be paid in cash and shall be fully paid up on issue of the shares.
6. The board of directors shall be deemed authorised to issue warrants under the EU-ESOP and issue new shares to satisfy claims arising from the warrants. The board of directors may also satisfy claims arising from warrants issued under the EU-ESOP by transferring own shares held in treasury.

Existing shareholders shall have no pre-emptive rights on warrants issued under the EU-ESOP and on new shares issued to satisfy claims arising from the warrants.

### Article 79

#### *Taxation of warrants under the EU-ESOP*

1. The provisions of this Article shall apply to warrants issued by the EU Inc. under the EU-ESOP as defined in Article 78] OR [The provisions of this Article shall apply to warrants issued by the EU Inc. under the EU-ESOP as defined in Article 78, provided that the EU Inc., at the moment of issuance of the warrants, qualifies as Startup or Scaleup as defined in [Recommendation...]].
2. The income derived from the warrant shall be deemed not to have accrued at the time of grant of the warrant, at vesting, nor when the holder of the warrant exercises his/her right for the acquisition of shares.
3. Any income derived from the warrant shall be deemed to arise and thus be subject to tax only at the time when the shares obtained by exercising the warrant are disposed of.

4. The income described in paragraph 3 shall be equal to the difference between the fair market value of the shares at the date of disposal and their acquisition price. It shall be subject to taxation in accordance with Member States' national law.
5. Member States shall ensure that the warrants issued under EU-ESOP 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 their national law, provided all necessary requirements are met.

## **CHAPTER IX – CLOSURE OF SOLVENT EU INC. COMPANIES**

### **Article 80**

#### ***Dissolution***

1. Where an EU Inc. company is dissolved in view of a solvent liquidation, it shall submit the information about dissolution fully online to the business register in the Member State of registration of the EU Inc. company in accordance with Article 27.
2. Upon receipt of the submission, the business register referred to in paragraph 1 shall immediately update the EU Inc. company's status to reflect that it is undergoing liquidation and make this information available in accordance with Article 25.

### **Article 81**

#### ***Nullity***

1. The nullity of an EU Inc. company resulting in its liquidation shall be ordered only by a decision of a court of law on the following grounds:
  - (a) that the EU Inc. company has no valid articles of association in accordance with Articles 7 and 8, including that the articles of association do not state the name or the object of the company, or the subscription for the first shares.
  - (b) that the activities of the EU Inc. company are unlawful or contrary to public policy;
  - (c) the lack of legal capacity of all the founder members at the time of the company's formation.

Apart from the grounds of nullity referred to in this paragraph, an EU Inc. shall not be subject to any cause of non-existence, absolute nullity, relative nullity, or declaration of nullity.

2. The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 25(2). Third parties may challenge the decision within six months of public notice of the court's decision.
3. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, which shall remain enforceable notwithstanding the liquidation.
4. Relations between the shareholders of the EU Inc. company declared null shall be governed by the law of the Member State of registration.
5. Shareholders of the EU Inc. company declared null shall remain obliged to provide the consideration contributed to capital to the extent that commitments entered into with creditors so require.

## Article 82

### *Once-only submission of data and digital communication during liquidation*

1. Following the submission to the business register where the company is registered of documents and information related to the solvent liquidation of an EU Inc. company, including the information and documents needed in accordance with Article 27, that business register shall, without delay, inform the relevant national authorities of the same Member State about the change of the status of the company in accordance with Article 20.

An EU Inc. company shall not be requested to provide the information referred to in paragraph 1 to another authority of the Member State of registration in the context of its liquidation. The business register shall electronically exchange this information, without delay, with those relevant national authorities in accordance with Article 20.

2. The filing to the business may be completed fully online in accordance with Chapter III.
3. The documents and information related to liquidation shall be made available by the business register in accordance with Article 25.
4. Upon the filing of the dissolution, creditors shall be entitled to submit their claims to the company or the liquidator fully online in accordance with paragraph 2 of Article 10. Digital submission of claims shall not be obstructed by national requirements for physical form or notarial authentication.

## Article 83

### *Fast-track liquidation*

1. A solvent EU Inc. company may benefit from a fast-track liquidation procedure provided that, at the date of the resolution or event triggering its dissolution referred to in Article 80, the company:
  - (a) has ceased its economic activity;
  - (b) has no assets or all such assets have given rise to distributions to the shareholders in accordance with Article 72 prior to or simultaneously with the filing of the notification of dissolution;
  - (c) has no liabilities; and
  - (d) is not subject to any pending administrative or judicial proceedings.
2. In case an EU Inc. company can provide evidence of the consent of all known creditors for launching the fast-track procedure, the condition under subpoint (c) in paragraph 1 is considered to be met.
3. Directors shall be personally, and where applicable, jointly and severally liable to creditors for any damage resulting from a false or fraudulent declaration of consent under this Article.
4. In the case of a court-ordered dissolution, the court may authorise the fast-track liquidation procedure if it is satisfied that the conditions in paragraph 1 are met, unless the grounds for dissolution involve unlawful activity or public policy concerns.

5. The books and records of the EU Inc. shall be kept for a period of six years by the person appointed to that effect by the general meeting or by the court.

## **Article 84**

### ***Fast-track liquidation procedure***

1. An EU Inc. may initiate the fast-track liquidation procedure by filing the notification of dissolution referred to in Article 80 simultaneously with an application for removal from the business register in which it is registered.

The application shall specify the name of the director or directors representing the company for the purpose of the fast-track procedure.

2. The filing shall be accompanied by:
  - (a) a declaration by all directors of the EU Inc., authenticated using qualified electronic signatures, stating that the conditions outlined in paragraph 1 of Article 83 are met;
  - (b) the financial statement of liquidation;
  - (c) the evidence of consent of creditors in case liabilities exist; and
  - (d) the declaration by the appointed person referred to in paragraph 5 of Article 83, authenticated using qualified electronic signatures, who undertakes to keep the books and records for a period of six years following the removal of the company from the business register.
3. The filing may be completed fully online in accordance with Chapter III.
4. The documents and information referred to in paragraph 2 shall be made available in accordance with Article 25.

## **Article 85**

### ***Opposition of creditors***

1. Creditors of the EU Inc. company undergoing the fast-track liquidation procedure may oppose it and require the opening of the ordinary liquidation procedure within 30 days following the disclosure of documents and information referred to in paragraph 4 of Article 84.

Creditors who had initially consented to the fast-track procedure may also oppose it if they can provide strong grounds to justify their change of position.

2. Creditors shall submit their objection to the business register where the EU Inc. company is registered, stating the reason of their claim against the EU Inc. This submission may be carried out fully online.
3. In case the claims are well founded, the business register shall refuse the opening of the fast-track procedure and inform the EU Inc. company of the reasons for its decision, including the particulars of the opposing creditors and reasons of their claims.

4. The business register may also take into consideration the objections of creditors which have been submitted after the deadline referred to in paragraph 1 but before the company is removed from the register.
5. The removal of the company from the business register shall not affect the rights of creditors whose claims were still under consideration after submission or were not yet submitted during the fast-track procedure. Such creditors may:
  - (a) exercise their rights against the members of the management body, who shall be personally, and where applicable, jointly and severally liable for any undisclosed or unsatisfied liabilities; and
  - (b) access the books and records of the company through the appointed person referred to in Article 84(2)(d).

## **Article 86**

### ***Deadlines for the closure of the procedure***

1. If a tax clearance is required by national law, the tax authority in the Member State of registration of the EU Inc. company shall provide it within 30 days following the disclosure of documents and information referred to in paragraph 4 of Article 84. The tax authority may oppose the fast-track procedure within the same period.
2. Where it is necessary for the tax authority to take into account additional information or perform additional activities before completing its task under paragraph 1, it shall notify the business register of the need for a prolongation of the deadline, which may be extended by a maximum of another 30 days.
3. If the tax authority does not submit its opposition to the fast-track procedure before the end of the deadline, the approval of the tax authority is deemed to have been granted.

## **Article 87**

### ***Removal from the business register***

1. Upon the expiry of the deadlines referred to in Articles 85 and 86, the business register shall change the status and strike off or remove the registration of the EU Inc. company provided that:
  - (a) no objections by creditors have been submitted pursuant to Article 85; and
  - (b) a tax clearance or no objections have been received from the national tax authority pursuant to Article 86.
2. The removal of the EU Inc. company from the business register shall result in the loss of its legal personality.
3. The removal of the EU Inc. company from the business register shall be disclosed in accordance with Article 25(3) lit. b).

## **CHAPTER X – INSOLVENCY PROCEEDINGS**

## **Option 1: WINDING-UP OF INSOLVENT EU INC. COMPANIES THAT ARE MICROENTERPRISES**

## **Option 2: WINDING-UP OF INSOLVENT EU INC. COMPANIES THAT ARE INNOVATIVE STARTUPS AND SCALEUPS**

### **Article 88**

#### ***Scope of application of the simplified winding-up of [Option 1: microenterprises; Option 2: innovative startups and scaleups]***

This Chapter applies to [Option 1: EU Inc. companies which are microenterprises; Option 2: EU Inc. companies which are innovative startups and scaleups].

### **Article 89**

#### ***Rules on winding-up of [Option 1: microenterprises; Option 2: innovative startups and scaleups]***

1. [Option 1: Microenterprises; Option 2: Innovative startups and scaleups], when insolvent, can request the opening of simplified winding-up proceedings that comply with the provisions laid down in this Title.
2. [Option 1: A microenterprise; Option 2: An innovative startup or scaleup] shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which [Option 1: a microenterprise; Option 2: an innovative startup or scaleup] is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the [Option 1: microenterprise; Option 2: innovative startup or scaleup] concerned.

### **Article 90**

#### ***Insolvency practitioner***

1. Subject to paragraph 2 of this Article, when simplified winding-up proceedings are opened, an insolvency practitioner is appointed.
2. The debtor, a creditor or a group of creditors may request that an insolvency practitioner is not appointed provided that [Option 1: the microenterprise; Option 2: the innovative startup or scaleup] has an up-to-date current balance sheet. The request shall demonstrate that [Option 1: the microenterprise; Option 2: the innovative startup or scaleup] has submitted its most recent required annual statement to the relevant national authorities

### **Article 91**

#### ***Means of communication***

In simplified winding-up proceedings, all communications between the court or the competent authority, the insolvency practitioner and the parties to such proceedings, can be performed by electronic means.

## Article 92

### *Request for the opening of simplified winding-up proceedings*

1. An insolvent [Option 1: microenterprise; or Option 2: innovative startup or scaleup] or any creditor of [Option 1: the microenterprise; or Option 2: the innovative startup or scaleup] can submit a request for the opening of simplified winding-up proceedings to a court or a competent authority.
2. [Option 1: Microenterprises; or Option 2: Innovative startups or scaleups] may submit a request for the opening of simplified winding-up proceedings without the representation by a lawyer or another legal professional.
3. [Option 1: Microenterprises; or Option 2: Innovative startups or scaleups] shall submit a request for the opening of simplified winding-up proceedings using a standard form.
4. The standard form referred to in paragraph 3 shall allow for the inclusion, among others, of the following information:
  - (a) if [Option 1: a microenterprise; or Option 2: an innovative startup or scaleup] is a legal person, the debtor's name, registration number, registered office or, if different, postal address;
  - (b) if [Option 1: a microenterprise; or Option 2: an innovative startup or scaleup] is an entrepreneur, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;
  - (c) a list of the assets of [Option 1: the microenterprise; or Option 2: the innovative startup or scaleup];
  - (d) name, address or other contact details of creditors of [Option 1: the microenterprise; or Option 2: the innovative startup or scaleup], as known to the microenterprise at the time of the submission of the request,
  - (e) the list of the claims against [Option 1: the microenterprise; or Option 2: the innovative startup or scaleup] and, for each claim, its amount specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;
  - (f) if security in rem or a reservation of title is alleged in respect of a certain claim and, if so, what assets are covered by the security interest.
5. The Commission shall establish the standard form referred to in paragraph 3 by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 103.

## Article 93

### *Decision on the request for the opening of simplified winding-up proceedings*

The court or the competent authority takes a decision promptly on the request for the opening of simplified winding-up proceedings.

## Article 94

### *Stay of individual enforcement actions*

Debtors shall benefit from a stay of individual enforcement actions, either by law or upon the decision of the court or the competent authority to open simplified winding-up proceedings and until the closure of those proceedings.

## **Article 95**

### ***Lodgement and admission of claims***

1. When simplified insolvency proceedings are opened, the insolvency practitioner, or in its absence, the debtor, shall prepare a list of creditors and claims.
2. The insolvency practitioner, or in its absence, the court or the competent authority shall inform all known creditors, by individual notices, of the list, indicating the time period for communicating any objection or concern as regards the list. The claims against the debtor indicated in the list shall be considered as lodged without any further action from the creditors concerned.
3. Any creditor may lodge claims not contained in the list referred to in paragraph 1 or make statements of objection or raise concern on claims included in the list, within a short period set in national law counted from the receipt of the individual notice referred to in the paragraph 2 or from the publication of the opening of simplified winding-up proceedings in the insolvency register referred to in Article 24 of Regulation (EU) 2015/848 whichever is the latest.
4. In the absence of any objection or concern communicated by a creditor within the time period indicated in paragraph 2, a claim included in the list referred to in paragraph 1 is deemed to be undisputed and shall be definitively admitted as stated therein.
5. The disputed claims shall be dealt with promptly either by the court or the competent authority. The court or competent authority may decide to continue the simplified winding-up proceedings with respect to undisputed claims.

## **Article 96**

### ***Decision on the procedure to be used***

1. In simplified winding-up proceedings, once the insolvency estate has been established, the insolvency practitioner, or in its absence the debtor, shall proceed with the realisation of the assets and the distribution of the proceeds.
2. Notwithstanding paragraph 1 of this Article, the court or the competent authority may take a decision on the closure of the simplified winding-up proceedings without any realisation of the assets, if any of the following conditions is fulfilled:
  - (a) there are no assets in the insolvency estate;
  - (b) the assets of the insolvency estate are of such a low value that it would not justify the costs or time of their sale and of the distribution of the proceeds;
  - (c) the apparent value of encumbered assets is lower than the amount owed to the secured creditor(s) and the court or the competent authority considers it justified to allow those secured creditor(s) to take over the asset(s).
3. Where the insolvency practitioner proceeds with the realisation of the debtor's assets as referred to in paragraph 1, the insolvency practitioner shall also specify the means of realisation of the assets. For the sale of an asset of the debtor, the insolvency

practitioner shall use the electronic auction system referred to in Article 97, unless this is not appropriate in view of the nature of the asset or the circumstances of the proceedings.

## Article 97

### *Electronic auction systems for the sale of the assets of the debtor*

1. Member States shall ensure that one or several electronic auction platforms are established and maintained in their territory for the purpose of the sale of the assets of the insolvency estate in simplified winding-up proceedings.
2. Member States may extend the use of the electronic auction systems, as referred to in paragraph 1, to the sale of the debtor's business or assets that are subject to other types of insolvency proceedings opened in their territory.
3. Member States shall ensure that the electronic auction platforms, as referred to in paragraph 1, are accessible by all natural and legal persons with domicile or place of registration in their territory or in the territory of another Member State. Access to the auction system may be subject to electronic identification of the user, in which case persons with domicile or place of registration in another Member State shall be able to use their national electronic identification schemes, in accordance with Regulation (EU) No 910/2014[1].

## Article 98

### **Interconnection of the electronic auction systems**

1. The Commission shall establish a system for the interconnection of the national electronic auction systems as referred to in Article 97 by means of implementing acts. The system shall be composed of national electronic auction systems interconnected via the European e-Justice Portal, which shall serve as a central electronic access point in the system. The system shall contain, in all the official languages of the Union, information on all auction processes announced in national electronic auction platforms, enable the search among these auction processes and provide hyperlinks leading to the pages of the national systems where offers may be directly submitted.
2. The Commission shall lay down, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' national electronic auction systems, setting out:
  - (a) the technical specification or specifications defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of the electronic auction systems;
  - (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of electronic auction systems;
  - (c) the minimum set of information that shall be made accessible through the central platform;
  - (d) the minimum criteria for the presentation of announced auction processes via the European e-Justice Portal;

- (e) the minimum criteria for the search of announced auction processes via the European e-Justice Portal;
- (f) minimum criteria for guiding the users to the platform of the national auction system of the Member State where they may submit their offers directly in the announced auction processes;
- (g) the means and the technical conditions of availability of services provided by the system of interconnection;
- (h) the use of the European unique identifier referred to in Article 16(1) of Directive (EU) 2017/1132[2],
- (i) specification of which personal data can be accessed;
- (j) data protection safeguards.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 103, by [one year after the transposition deadline].

## **Article 99**

### ***Costs of establishing and interconnecting electronic auction systems***

1. Each Member State shall bear the costs of establishing and adjusting its national electronic auction systems, as referred to in Article 97, to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those systems. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.
2. The establishment, maintenance and future development of the system of interconnection of electronic auction systems as referred to in Article 51 shall be financed from the general budget of the Union

## **Article 100**

### ***Responsibilities of the Commission in connection with the processing of personal data in the system of interconnection of electronic auction platforms***

3. The Commission shall exercise the responsibilities of controller pursuant to Article 3(8) of Regulation (EU) 2018/1725 in accordance with its respective responsibilities defined in this Article.
4. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.
5. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.
6. With regard to the information from the interconnected national auction systems, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national auction systems operated by the Member States or other bodies.

## **Article 101**

### ***Sale of the assets by electronic auction***

1. The electronic auction of assets of the insolvency estate in simplified winding-up proceedings shall be announced in due time in advance on the electronic auction platform referred to in Article 97.
2. The insolvency practitioner informs through individual notices all known creditors on the object, time and date of the electronic auction, as well as on the requirements to participate therein.
3. Any interested person is allowed to participate in the electronic auction and bid. Member States may, however, set out the conditions under which the debtor's existing shareholders or managers are authorised to participate.

### **Article 102**

#### ***Decision on the closure of the simplified winding-up proceedings***

1. The court or the competent authority takes a decision on the closure of the simplified winding-up proceedings within six months after the submission of the request for the opening of the simplified winding-up proceedings. The deadline may be extended once, by a maximum of six months in case additional time is needed for the sale of the debtor's business or assets, or for the distribution of proceeds. In the absence of such an extension or when the extended deadline expires, the procedure must be automatically converted into an ordinary winding-up procedure.
2. In case the debtor is a legal person, the decision on the closure of the simplified winding-up proceedings triggers the relevant measures under national law leading to the dissolution of the legal personality of the debtor.

### **Article 103**

#### **Committee**

1. For the purposes of Articles 89 to 102 the Commission shall be assisted by the Committee on Restructuring and Insolvency (the 'Committee') as referred to in Article 30 of Directive (EU) 2019/1023 of the European Parliament and of the Council. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## **CHAPTER XI – FINAL PROVISIONS**

### **Article 104**

#### ***Data Protection***

1. The processing of any personal data carried out in the context of this Regulation shall be subject to Regulation (EU) 2016/679 and to Regulation 2018/1725.
2. The registers, authorities or persons or bodies mandated under national law to deal with any aspect of the procedures within the scope of this Regulation shall not store

personal data transmitted through the system of interconnection of registers or by the business registers to authorities for the purposes of Articles 13, 15, 16, 17, 18, 19, 20, 23, 24, 27, 28, 37, 39, 40 and 82, unless otherwise provided for by Union or national law.

**Article 105**  
***Accounting***

The EU Inc. shall be subject to the requirements of the applicable accounting law of the Member State in which its registered office is situated. Nevertheless, the provisions of this Regulation on the filing and public availability of accounting documents set out in Article 26 remain unaffected.

**Article 106**  
***Sanctions***  
(to be added)

**Article 107**  
***Entry into force***  
(to be added)

**ANNEX Minimum content of the articles of association of an EU Inc.**

The articles of association of an EU Inc. company shall regulate at least the following matters:

I. Basic identification

- the legal form,
- the name of the company,
- the address of the registered office of the company and the Member State where it shall be/is registered,
- the duration of the company, which can be limited or unlimited,
- the object of the company describing its main activity or activities, which shall be expressed using the relevant Statistical Classification of Economic Activities in the European Community (NACE) code. Tailor-made articles of association may provide a more specific list of objects and purposes under the NACE codes.

II. Capital

- the amount of the capital or no capital (0 ER),
- if any, the description and value of any considerations contributed to capital in exchange for the first shares.

III. Shares

- no-par value or if provided for in the articles of association, indication of a par value,

- if any, list of the first shares issued in exchange for considerations contributed to capital, with the identity of the shareholder(s) who provided them,
- if any, list of the first shares issued in exchange for considerations credited to an equity entry (other than capital), with the description and value of these considerations and the identity of the shareholder(s) who provided or must provide these considerations,
- the total number of shares issued,
- data protection provisions regarding the digital share register.

#### IV. Corporate governance and representation

- in case of several directors, the right to represent individually or if provided for in the articles of association, obligation to represent the company jointly as “co-directors”.

#### V. Shareholder decision-making

- the nomination of a chairperson

#### VI. Financial requirements

- the dates of beginning and end of each financial year, and, if they differ, of the first financial year.

#### VII. Dissolution and liquidation

- the procedure for appointing a liquidator.

#### VIII. Other matters

- whether the company can register branches in other EU Member States or third countries,
- the competent jurisdiction in the event of dispute over the interpretation of the articles of association.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*