

_ CNUE Position Paper

Proposal for a regulation on the 28th regime corporate legal framework – “EU Inc.”

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The Notaries of Europe acknowledge the need to increase the competitiveness of the European Single Market. The European Commission’s “EU Inc.” proposal may seem to promote this goal. However, it may jeopardise the European Union’s key competitive advantages: the rule of law, legal certainty, and the reliability of business transactions.

The proposal seeks to introduce a new company form following a concept alien to European continental law and legal traditions, which instead mimics elements existing in jurisdictions such as Delaware, where company formation is largely based on minimal or none ex ante control and mainly relies on ex post litigation. Currently, the legal systems of most Member States ensure that the life cycle of companies involves preventive checks and verifications. Legal certainty is thus not a bureaucratic obstacle, but Europe’s unique selling point and strategic competitive advantage.

Therefore, the Notaries of Europe provide the following observations with regard to the legal basis of the proposal, its scope, the Acquis in European Company Law, the prevention of crime, the corporate lifecycle and the further steps in the legislative procedure.

1. Legal basis

The proposed regulation is based on Article 114 of the TFEU. Under this provision, the EU may adopt measures to approximate the laws and administrative provisions of the Member States that relate to the establishment and functioning of the single market. However, it is highly questionable that the “EU Inc.” proposal meets the conditions of Article 114 TFEU. The proposed regulation is not limited to harmonising individual aspects of company law (which in that case would also require acting by way of a directive based on Article 50 TFEU), but rather creates a new, independent company

form that is largely detached from existing national legal systems. This choice of legal basis may have the effect to circumvent the unanimity requirement of Article 352 TFEU and to limit the involvement of national legislative bodies in the legislative process.

The choice of Article 114 TFEU is daring, also in light of the jurisprudence of the Court of Justice of the European Union (Case C-436/03), which made clear that a regulation whose purpose is the “creation of a new form of ... society in addition to the national forms” and which “leaves unchanged the different national laws already in existence” cannot be regarded “as aiming to approximate the laws of the Member States.” Moreover, even if the “EU Inc.” proposal were considered to approximate the laws of the Member States, Article 114 TFEU could be used as a legal basis only if no other, more specific legal basis existed to achieve that purpose in company law. Article 50 TFEU has been used for precisely that purpose for more than 50 years. This article, however, permits only the adoption of directives, not regulations.

2. Scope

The proposal deals only with company law related matters. The most challenging hurdles for companies are not located in the area of company law but in the areas of taxation law, labour law and reporting duties as well as in the attraction of skilled workers and the fragmentation of the capital market. The uneven protection of employees in EU labour law makes it hard for companies to establish an EU-wide employee management strategy and the taxation differences produce enormous complexity and advisor fees. Lastly, time consuming hurdles like setting up a bank account and slow and complicated administrative processes when it comes to permitting and licensing requirements, as well as obtaining ID tax numbers, paralyse start-up activities in their very beginning. All these obstacles also hinder access to capital for European entrepreneurs as they make investments in the European market less attractive.

The proposal does not address those issues because the scope is too broad. The EU Inc. is available to innovative companies that want to pursue activities in other Member States and scale up by attracting investments and talent, but also to those that will never have any activities outside the local level and will remain a one-person company. The scope should be altered to those companies that envisage cross-border

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activities and should cover the areas in which the single market currently falls short. This is not the area of company law.

3. Acquis

The proposed EU Inc. contradicts European Company Law as we know it today and jeopardises the remarkable progress of European Company law in the last years by weakening the existing preventive controls mandated by national and EU Company Law, deteriorating their intensity and modalities and reducing the occasions in which they are performed. This would undermine legal certainty and diminish the trustworthiness of the single market.

By providing mandatory public preventive control through courts, administrative bodies and/or notaries (cf. Article 10 of Directive (EU) 2017/1132, as amended by Directive (EU) 2025/25, and Recitals. 9, 10 of the latter), the EU has decided to ensure legal certainty in company law. Such control ensures that company information entered in business registers is complete, correct and easily accessible. Businesses, authorities and the wider public can therefore use transparent and reliable company information. This significantly reduces administrative burden as well as transaction and ex post litigation costs. Thus, company information costs are not shifted to third parties like customers, suppliers and public administrations and these third parties do not have to incur costly and time-consuming due diligence procedures to verify the legal status and other company information when they intend to enter into any type of contract or relationship. Therefore, public preventive control is a key feature of EU company law.

The EU Inc. breaks with these principles in a subtle manner and rather follows the system of US corporate law, which relies on ex post litigation, and is detrimental to the EU's competitiveness. The proposal purports to stick to the Acquis, while it actually abolishes its legal safeguards.

4. Crime prevention

Due to structural complexity and a strong increase in cross-border transactions over the last years, companies may be used for illegal purposes. Not surprisingly, criminals tend to operate in legal systems with lower transparency requirements in company law than those imposed by EU law.

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Through the absence of proper preventive controls (e.g. identity, capacity and consent verification and overall legality assessment and customer due diligence), all recent European efforts with regard to the prevention of money laundering, terrorist financing and the enforcement of sanctions would be undermined by EU Inc. The lack of sufficient public preventive control (e.g. when templates are used or in the transfer of shares) would also lead to a significant risk of tax evasion.

The proposed EU Inc. facilitates criminals to infiltrate the European economy by gaining control of companies, business activities and real estate.

5. Corporate Lifecycle

The EU Inc. lacks adequate preventive control throughout the entire corporate lifecycle.

- The proposed “preventive control” (Article 14) is essentially limited to a formal review and falls short compared to the necessary and reliable substantive review. In particular, there is no secure verification of the identities of the shareholders and directors involved. Digital self-identification via electronic signature and an EU interface is not equivalent to reliable digital identification by public office holders; it is limited to a mere automated data comparison. The public commercial register relies on information provided by managing directors without any reliable verification of underlying transactions. Such entries cannot establish public faith. As a consequence, third parties can no longer rely on the accuracy of information in registers and are forced to carry out extensive due diligence, including legal opinions and, eventually, insurance mechanisms. This shifts costs and legal risks from the company to market participants and increases transaction costs across the board.
- Furthermore, it remains unclear how even the envisaged limited preventive control is to be effectively carried out in practice, in particular when the EU templates are used, for example with regard to verifying the legal capacity of the persons involved, since this- procedure provided for in the proposed regulation leaves no room for notarial certification and authentication.
- The proposed capital regime further marks a breach with traditional share capital requirements. A corporation without capital is being created: limited liability is granted without the need to raise a minimum amount of capital. Particularly problematic, especially in the context of capital transactions, is the extensive lack of effective preventive oversight. Errors in this area can lead to the issuance of invalidly created shares with significant economic consequences.

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- The same applies to the prohibition of notarial involvement for the validity of transfers and issuance of shares. Without a corresponding review: who will verify that a party is duly authorised to represent the company and that the transferor has the power to dispose of the shares? And who will ensure that the underlying title such as a share purchase agreement is valid? The management board of an EU Inc. is neither equipped nor designed to perform such assessments. It is unclear how pledges or usufructs can be validly established and how their existence can be objectively ascertained by the pledgee or usufructuary. The guarantee of legality and anti-money laundering compliance associated with notarial involvement is lost. Without a corresponding review, neither the parties at stake nor the legal community can rely on the fact that share transfers and issuances have been correctly executed.
- Similarly, the lack of proper preventive control envisaged in the closure and liquidation procedure of the EU Inc. would undermine the protection of relevant stakeholders such as shareholders, creditors and employees.
- Moreover, protection for less experienced parties is also eliminated. Without substantive public preventive checks, balanced contract drafting is not guaranteed. This particularly affects cases involving consumers or employees.
- Linking key legal consequences to the registered office (“registered office”) opens up considerable scope for forum shopping. It is to be expected that companies will deliberately choose to establish their registered office in Member States with factually lower requirements. This could lead to a “race to the bottom” in European company law.

The extensive lack of preventive control throughout the corporate lifecycle has direct and foreseeable consequences. Jurisdictions that rely primarily on ex post litigation rather than ex ante oversight, such as Delaware, have developed a highly specialised and well-resourced judiciary to handle the resulting volume of corporate disputes. In the EU, the legal infrastructure does not function in the same way. The shift from preventive public control to litigation-based dispute resolution will inevitably generate a significant increase in the demand for judicial capacity across Member States, placing considerable strain on national court systems that are already under pressure. This is a cost that is not only borne by the company itself, but by the public and by parties in dispute, like SMEs and individuals with limited resources to engage in protracted legal proceedings. The proposal thus risks replacing a system of affordable legal certainty with one of expensive legal uncertainty.

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6. Way forward

It is important that fundamental, well-established principles of European company law are preserved even under a potential 28th regime and not undermined by the EU Inc.

The acquis of European Company Law as established in Directive (EU) 2017/1132 as last amended in January 2025 by Directive (EU) 2025/25 should therefore be consequently applied to the EU Inc. Reliable public registers require effective prior oversight and must not be replaced by mere self-declaration. Existing and proven national registry structures should be used instead of creating new or de facto parallel structures, because only in this way can additional bureaucracy be avoided and existing quality assurance mechanisms be preserved. This also includes respecting the domestic division of responsibilities.

Notaries in many Member States already act as digitalisation partners and one-stop shops with 48 hours service, combining efficient and fast procedures with reliable legal oversight. Building on these existing structures would allow the EU Inc. to achieve its objectives without undermining legal certainty or creating parallel systems.

If the EU Inc. follows these principles, it will have the potential to actually contribute to European competitiveness. This, however, requires substantive amendments of the proposal in the course of the further legislative procedure.


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