Association for Competitive Technology

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Feedback of

Association for Competitive Technology

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Square de Meeus 35,

1000 Brussels, Belgium

to the

European Commission

regarding the

Consultation on the 28th regime corporate legal framework – EU Inc.

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I. Introduction

The Association for Competitive Technology (hereafter 'ACT') welcomes the opportunity to submit comments to the European Commission's consultation on the 28th regime corporate legal framework – EU Inc.

ACT is a global trade association representing startups, scaleups, and small and medium-sized technology enterprises (SMEs). Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem who engage with verticals across every industry. We work with our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem ACT represents—which we call the app economy—is valued at approximately €95.7 billion and is responsible for more than 1.4 million jobs in the European Union (EU).[1]

II. Supported Measures

ACT welcomes and supports the objectives of the EU Inc. corporate legal framework as a first important step to help small companies grow across borders and reduce Single Market fragmentation. Because smaller companies will benefit the most from the chance to incorporate into a single and harmonised framework, the EU Inc. framework is one of the single most important negotiations for achieving the Commission's objective of strengthening EU competitiveness and boosting economic growth. EU Inc. is consistent with the recommendations of the Letta and Draghi reports and the Commission's own Competitiveness Compass, each of which identify an optional EU-wide corporate regime as important to closing Europe's innovation gap and strengthening the Single Market. ACT supports a number of the proposed measures in the EU Inc. proposal and encourages co-legislators to preserve the Commission's key features as highlighted below.

a. Use of the Regulation as the legal form

The establishment of the 28th regime framework in the form of a Regulation has been a core non-negotiable requirement for the startup community, including our members. ACT therefore supports the use of the Regulation, rather than a Directive, as the legal framework, as it will provide

[1] *See* 220912_ACT-App-EU-Report.pdf.

immediate and uniform application across all Member States. This is essential to ensure that provisions apply seamlessly in the EU.

b. The establishment of EU Inc. as a corporate framework in which all companies can opt in

We welcome the proposal to introduce EU Inc. as an EU-wide harmonised legal form (Articles 1 and 3). Creating a harmonised company form that businesses can voluntarily choose is an important step to address fragmentation in the Single Market and enable companies to operate more easily across Member States.

The proposal establishes EU Inc. as an optional limited liability company form, recognised in the legal order of each Member State (Article 1(a)), while providing a common EU-level framework. Companies adopting this form can register through an online interface (Article 1(b)) and benefit from legal personality recognised across Member States.

We also welcome the flexibility of the regime: companies may be created *ex nihilo* or established through domestic or cross-border conversions, mergers, or divisions, and may be formed by one or more natural or legal persons (Article 3).

c. Fast and fully digital incorporation

We strongly support the proposal to enable fast and fully digital incorporation for EU Inc. companies (Articles 10 and 15). The introduction of digital-only procedures, allowing companies to complete the entire formation process online without physical presence, represents an important step toward a truly modern and accessible company law framework.

We welcome the introduction of harmonised EU templates for articles of association (Article 8), which can significantly reduce legal complexity and administrative costs for founders across Member States.

Additionally, the fast-track formation procedure through the EU central interface (Article 15), enabling registration within 48 hours and at a maximum cost of €100 (Article 16), will help make the regime accessible to startups and SMEs.

Finally, we support the proposal that EU Inc. companies are not required to have a minimum share capital (Article 62), allowing companies to be established even with €0 capital and thereby removing unnecessary barriers to entrepreneurship.

d. Flexible corporate structure

The proposal entails a flexible share and financing framework for EU Inc. companies by introducing digital share registers and fully digital share transfers (Articles 54 and 59). This allows companies to manage and transfer shares efficiently online. It also enables multiple classes of shares and non-par value shares, providing companies with the flexibility needed to accommodate common venture capital and early-stage financing arrangements. Together, these provisions help ensure that EU Inc. companies can attract investors and structure funding rounds in line with global startup and venture capital practices.

e. EU Employee Stock Option Plan (EU-ESOP)

The proposal establishes a dedicated EU Employee Stock Option Plan (EU-ESOP) (Article 78) under EU Inc. This allows EU Inc. companies to grant stock options to employees, management, and board members, an important tool to help startups and scaleups attract, incent, and retain talent in a competitive global market.

In particular, the proposed taxation of stock options only at the exit (Article 79), when employees sell their shares, will remove upfront tax burdens that often discourage participation in stock option schemes and align incentives between employees and company growth.

A harmonised EU-level stock option framework will make it easier for innovative companies to offer competitive compensation packages and share ownership with their teams, strengthening Europe’s ability to attract talent and scale high-growth companies across the Single Market.

III. Areas of Improvement

ACT has identified some areas where the EU Inc. framework could be further improved during negotiations, to ensure greater legal certainty, consistency, and broader use from small businesses in the Single Market.

The following recommendations aim to strengthen the proposal’s effectiveness for startups and SMEs while preserving its core objective of enabling scalable cross-border entrepreneurship.

a. Clarify the application of national law

Overall, ACT welcomes the introduction of Article 4, according to which, EU Inc. companies will be regulated by the proposed Regulation, articles of association, and, for not-covered areas, by the national law of the Member State in which the company has been registered. However, issues can arise when national laws largely diverge, particularly in areas such as taxation, employment, social security, and hiring. These divergences risk undermining the objective of creating a genuinely harmonised European company form and may limit the attractiveness of the EU Inc. framework for startups and SMEs operating across borders.

To ensure that the EU Inc. framework effectively facilitates cross-border entrepreneurship and scaling within the Single Market, reliance on national law should be kept to a minimum and accompanied by clear guidance on the areas where national rules continue to apply. In particular, the proposal should address the practical barriers arising from differing tax and employment regimes, which remain key obstacles to cross-border operations. Greater legal certainty and harmonisation would help reduce complexity, lower compliance costs, and increase the attractiveness of the EU Inc. framework for startups and SMEs.

i. Tax harmonisation

One important area where reliance on national law creates uncertainty is taxation. While the proposal explicitly clarifies that matters not covered by this Regulation or by articles of association shall be governed by national law, in this context, the lack of provision on tax harmonisation and social security represents a significant gap in the framework.

Without a minimum level of tax harmonisation, particularly for cross-border structures, EU Inc. companies will still need to engage specialist advisers in each jurisdiction. ACT therefore calls on the Commission to bring forward a complementary tax framework to ensure a minimum level of harmonisation across the Single Market, and to encourage efforts for Member States to work with the EU Institutions on further harmonisation of taxation for EU Inc. companies in particular.

Further, ACT requests that conversions into EU Inc. to be treated as tax neutral. While Article 3 allows existing companies to convert into EU Inc. through domestic or cross-border conversions, mergers, or divisions, the Commission's proposal is silent on the tax treatment such a step. Because existing EU tax law recognises that cross-border company migrations and reorganisations can give rise to tax consequences unless covered by a tax-neutral reorganisation framework,[2] existing SMEs and startups may face taxes when moving into the regime, deterring the exact kind of companies EU Inc. is intended to serve.

ii. Cross-border hiring

A second area where the continued application of national law creates practical obstacles is employment and workforce mobility. The proposal is silent on cross-border employment. Under the current framework, an EU Inc. company wishing to hire employees in a Member State other than its registered office will, in practice, still need to establish a local branch or subsidiary to comply with national employment, social security, and payroll registration requirements. This directly contradicts the premise of a single European company form and creates a structural disincentive to use EU Inc. for genuinely pan-European teams.

Many of ACT's member companies are digital-first and operate with distributed workforces across multiple Member States. Requiring them to establish a physical presence in each hiring jurisdiction does not reflect operational reality. ACT notes the Commission's stated intention to explore cross-border telework under the forthcoming Fair Labour Mobility Package and urges the Commission to ensure that the package includes provisions enabling EU Inc. companies to hire across borders without triggering additional establishment requirements.

iii. Employee Participation

Employee participation rules will continue to be governed by the law of the Member State of the registered office. In line with the broader reliance on national law under Article 4, this means that key aspects of corporate governance remain subject to divergent national regimes. This means EU Inc. companies face divergent requirements depending on where they are registered, reintroducing fragmentation in an area that is central to corporate structure and employee engagement and thereby limiting the objective of a truly uniform European company form.

We call for the introduction of harmonised minimum standards on employee participation within the EU Inc. framework, ensuring a baseline level of consistency across Member States while preserving flexibility where appropriate.

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[2] *See*, *e.g.*, Council Directive 2009/133/EC (Merger Directive) and national exit-tax rules implementing Article 5 of Directive (EU) 2016/1164.

b. Establishing a fully integrated EU-Level company registry

While the creation of a single EU portal through which EU Inc. companies can submit registration and other corporate documents is a welcome step forward, further progress is needed to achieve a truly integrated European system. Under the current proposal, the EU central interface functions as a one-stop shop connected to national company registries (Article 34).

If the Commission itself acknowledges that a central registry is ultimately necessary for the proper functioning of the regime, as the proposal's recitals suggest, then its absence at launch raises serious questions about the completeness of the framework from day one. A company form designed to operate uniformly across 27 Member States must be anchored in a single, coherent infrastructure at the moment of its creation, not retrofitted after the fact.

ACT encourages the amendment of the text to require a fully operational central EU registry as a core component of the Regulation, effective from its entry into force.

c. More ambitious framework for insolvency and cross-border winding-up

ACT also encourages further progress on insolvency and cross-border winding-up procedures. The proposal introduces a simplified winding-up procedure for innovative startups, allowing qualifying companies to close down more quickly and with reduced administrative burden when facing insolvency. This is a welcome step that recognises the need for faster and less bureaucratic exit processes for high-growth startups.

However, the scope of this simplified procedure is currently limited to companies that qualify as ‘innovative startups’ (Articles 88 and 89). ACT encourages policymakers to consider broadening these simplified insolvency mechanisms to all EU Inc. companies, ensuring that the regime provides predictable and efficient exit options for the wider startup and SME ecosystem operating across the Single Market.

If EU Inc. is intended to be a corporate framework, it should be capable of regulating the entire lifecycle of a company: from formation through growth, restructuring, and, if necessary, exit. Additionally, the definition of ‘innovative startups’ still needs to be clarified and may prove challenging, which could affect the applicability and fairness of the simplified procedure.

d. Include a standardised EU investment instrument

The proposal does not introduce a standardised EU convertible investment instrument equivalent to the US SAFE. While the recitals (Recital 45) acknowledge that EU Inc. companies may use instruments such as SAFEs and convertible notes, the absence of a harmonised EU-level instrument means that deal terms will continue to vary across jurisdictions. We call for the introduction of EU-FAST, a standardised, EU-wide simple agreement for future equity to reduce transaction costs and legal complexity in early-stage funding rounds.

e. Dispute Resolution

EU Inc. companies will have to rely on national courts designated by each Member State for dispute resolution (Recital 81). Without a specialised EU court or, at a minimum, a harmonised procedural framework, EU Inc. companies face divergent legal interpretations, inconsistent outcomes, and variable costs depending on their registered office.

Two EU Inc. companies facing the same legal question, on share transfers, director liability, or investor rights, may receive materially different answers depending on the jurisdiction of their registered office. This is incompatible with the objective of a uniform European company form.

To promote legal certainty and facilitate cross-border business operations, ACT encourages the adoption of a harmonised procedural framework for EU Inc. matters, supported where appropriate by national courts in the short term as a means of establishing a dedicated EU-level dispute resolution mechanism, including through a unified EU Court.

ACT also supports the establishment of an alternative dispute resolution (ADR) mechanism for EU Inc.-related disputes. Such a mechanism could provide a faster, more accessible, and cost-effective avenue for resolving disputes while supporting greater consistency in the interpretation and application of the Regulation across Member States.

The ADR framework could be supported by common procedural rules and a network of specialised experts with expertise in EU company law, helping to reduce fragmentation and avoid unnecessary litigation before national courts. This would be particularly beneficial for startups and SMEs, which often lack the resources to engage in lengthy cross-border court proceedings.

By complementing national judicial systems with a specialised ADR mechanism, the EU Inc. framework would become more predictable, efficient, and attractive for companies seeking to operate and scale across the Single Market.

f. Templates

i. Templates for Fast-Track formation

ACT welcomes the Commission's intention to provide standardised templates for the formation of EU Inc. companies (Article 16). Templates can play an important role in reducing administrative burdens, lowering legal costs, and facilitating the rapid establishment of companies across the Single Market, particularly for startups and SMEs with limited resources.

However, the use of such templates should remain voluntary. While templates can streamline incorporation procedures, companies should retain the flexibility to adopt customised governance arrangements where appropriate for their business model or investment structure. Importantly, the availability of templates should not become a prerequisite for benefiting from the core advantages of the EU Inc. framework. Companies that choose not to use the standard templates should still be able to complete registration within the proposed 48-hour timeframe and benefit from the maximum incorporation fee of €100. Otherwise, the framework risks creating a two-tier system that penalises companies with more complex needs.

ii. Templates for Investment

ACT also encourages the Commission to develop optional standardised templates for common investment transactions and corporate actions, such as share subscription agreements, shareholder resolutions, and employee stock option plans.

One of the key objectives of EU Inc. is to facilitate access to capital and enable companies to scale across borders. However, legal fragmentation and differing market practices continue to generate significant transaction costs for founders and investors. Providing non-binding investor templates would increase legal certainty, reduce negotiation costs, and accelerate fundraising processes, particularly for early-stage companies and cross-border investments.

Such templates should be developed in consultation with founders, investors, and lawyers and remain optional, allowing parties to adapt them to their specific circumstances while benefiting from a common European baseline.

IV. Conclusion

The EU Inc. proposal represents the most significant advance in European company law harmonisation in decades. It reflects real progress on priorities that matter most to founders and investors, and ACT acknowledges and welcomes that progress.

ACT generally welcomes the European Commission's objectives and urges the European Parliament and Council to take the reactions from the startup community into consideration and amend the proposal accordingly. The gaps in tax harmonisation, cross-border hiring, investment instruments, and dispute resolution are not minor technical matters; they go to the heart of whether EU Inc. can deliver the simplification it promises.

Policymakers should prioritise full harmonisation in advancing the EU Inc. proposal. That means a centralised registry and, at a minimum, a specialised ADR procedure or a harmonised procedural framework. These two changes would substantially improve the proposal.

ACT will continue to engage constructively with the Commission, Parliament, Council, and national governments to ensure that the final text of EU Inc. and its implementation deliver real, lasting simplification for founders building European companies.

Sincerely,

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