Bocconi

# MAKING EU INC. FIT FOR VENTURE CAPITAL

Amendments to strengthen contractual freedom, legal certainty and scalable financing for European startups

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The EU Inc. initiative marks a landmark in the construction of a genuine “28th regime” for European businesses. For the first time, entrepreneurs across the Union would be able to incorporate under a single, digital-first, (partly) European legal form, rather than navigating twenty-seven divergent national company laws.

By lowering the frictions of formation, cross-border operation, and access to capital, the Proposal directly serves the Union’s ambition to foster innovation and to help its most promising startups and scaleups raise finance and grow.

We warmly welcome the initiative and offer the following amendments in a constructive spirit, to help the instrument deliver fully on its own premises.

A word on scope is warranted at the outset. The debate over a genuine “28th regime” is considerably broader than the concerns of venture-backed firms: harmonised, EU-wide company-law rules matter for a much larger population of businesses that today bear the same fragmentation costs of operating across twenty-seven divergent national regimes. This brief deliberately trains its lens on innovative startups and scaleups financed by venture capital, because their financing needs throw the Proposal’s constraints into especially sharp relief. That focus should not, however, be mistaken for a claim that the 28th regime is—or should be—a bespoke instrument for high-growth, VC-backed companies. It is better understood as one flagship application of a far wider harmonisation project, and the amendments we propose are offered in that spirit.

The amendments that follow share a single guiding rationale: that innovative startups (as well as scaleups) need, and should be granted, materially greater contractual freedom than the Proposal currently envisages. The reason is grounded in how high-growth firms are financed.

Over decades, venture-capital practice has converged on a sophisticated and highly standardised contractual architecture designed to address the acute uncertainty, information asymmetries, and moral hazard that characterise the funding of innovative projects.

That architecture relies on arrangements that depart from ordinary corporate-law defaults: differentiated cash-flow and control rights, liquidation and other class preferences, drag-along and down-round mechanics, board-appointment rights attached to shares or investors, redeemable and convertible instruments, exculpation of directors, and employee equity with cashless exercise.

These are not aggressive deviations from a fair baseline; they are the mechanisms that make risky, early-stage financing possible in the first place.

What may appear “unfair” to one class ex post is typically what all parties, sophisticated and professionally advised, agreed was fair ex ante, behind a veil of ignorance as to which state of the world would materialise.

The difficulty is that European corporate laws frequently frustrate these arrangements. Crucially, the obstacle rarely lies in explicit statutory prohibitions. It arises instead from doctrinal interpretation and judicial practice—general clauses, reasoning by analogy, anti-avoidance principles, and mandatory readings of otherwise open-ended standards—which together render several national regimes far more rigid in action than they appear on the books.

This matters for EU Inc. because the Regulation will be applied by national courts and interpreted by the Court of Justice, and there is a well-documented tendency for EU corporate-law instruments to be read through the lens of national doctrines.

There is a real risk, moreover, that contractual freedom will be constrained through recourse to general principles and standards. If that happens, EU Inc. would import precisely the rigidities it was meant to overcome, and simply repealing explicit mandatory provisions would not be enough to prevent it.

The amendments therefore pursue three complementary strategies for innovative startups (and innovative startups only).

First, they introduce rules of interpretation that steer the “law in action” in a private-ordering-friendly direction: limitations on contractual freedom are to be narrowly construed in light of proportionality, and good faith is to be assessed consistently with the economic logic of venture-capital transactions, while abuse remains sanctionable.

Second, they enable and protect the specific arrangements on which VC finance depends, including through recognition of model charters and shareholder agreements kept current by expert bodies.

Third, they secure predictability, by anchoring insolvency jurisdiction and applicable law to the registered office.

Underlying all of this is a simple premise: sophisticated parties, advised by specialised counsel, are well placed to design firm-specific governance, and the law best serves innovation by enabling their choices, enforcing them with certainty, and intervening only against genuine abuse.

# EU Inc. Proposal - Articles with Comments and Possible Amendments

| **Proposal Text** | **Comments** | **Amendments** | **Post-Amendment Text** |
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| Article 2<br>Definitions<br>[…]<br><br>Article 88<br>Scope of application of the simplified winding-up of EU Inc. innovative startups<br>1. This Chapter applies to EU Inc. companies which are innovative startups.<br>2. For the purposes of this Chapter, innovative startup means an EU Inc. company that fulfils the criteria set out in [PO: reference to Proposal for a Commission Recommendation on the definition of innovative enterprises, startups and high-growth scaleups, C (2026) 1800]. | 1. The Proposal contains a definition (by reference) of innovative startups at article 88. Because many of the amendments below would provide for special rules for such companies, a definition of innovative startups for the purposes of the entire instrument is needed. Therein, it is also useful to specify that an innovative startup may (no longer) qualify as such if it has its shares admitted to trading on a regulated market. The extensive contractual freedom that the amendments below grant to innovative startups would not be justified for listed companies. Otherwise, the definition is the same as Proposal's Article 88, which needs to be amended to delete its second paragraph. | 1. In Article 2, at the end, add the following:<br><br>**(31) 'innovative startup' means an EU Inc. company with no securities admitted to trading on a regulated market and that fulfils the criteria set out in [PO: reference to Proposal for a Commission Recommendation on the definition of innovative enterprises, startups and high-growth scaleups, C (2026) 1800].**<br><br>2. Article 88 is amended as follows:<br>a) In paragraph 1, the words "**EU Inc. companies which are**" are deleted;<br>(b) Paragraph 2 is deleted. | Article 2<br>Definitions<br>[…]<br>**(31) 'innovative startup' means an EU Inc. company with no securities admitted to trading on a regulated market and that fulfils the criteria set out in [PO: reference to Proposal for a Commission Recommendation on the definition of innovative enterprises, startups and high-growth scaleups, C (2026) 1800].**<br><br>**Article 88**<br>Scope of application of the simplified winding-up of EU Inc. innovative startups<br>1. This Chapter applies to **~~EU Inc. companies which are~~** innovative startups.<br>**~~2. For the purposes of this Chapter, innovative startup means an EU Inc. company that fulfils the criteria set out in [PO: reference to Proposal for a Commission Recommendation on the definition of innovative enterprises, startups and high-growth scaleups, C (2026) 1800].~~** |
| Article 4 Rules applicable to EU Inc.<br>1. EU Inc. companies shall be governed by this Regulation and by their articles of association which shall comply with this Regulation.<br>2. Matters that are not covered by this Regulation or by the articles of association shall be governed by national law, including the provisions transposing Union law, which apply to relevant national legal forms in the Member State in which the EU Inc. has its registered office.<br>3. Member States shall designate the | The EU Inc. Proposed Regulation will be applied by national courts and ultimately interpreted by the Court of Justice of the European Union. There is a serious risk—documented in the comparative corporate law literature—that EU corporate-law instruments are read through the lenses of national doctrinal categories, and that the Court of Justice may itself be tempted to constrain contractual freedom, inter alia, on the basis of the property-protection clause of the EU Charter of Fundamental Rights (Article 17). This is precisely one of the legal | At the end of Article 4, insert the following paragraph:<br><br>"**4. As regards innovative startups:**<br><br>**(a) any limitation to private ordering arrangements under this Regulation or the applicable member state law is to be narrowly construed in light of the proportionality principle. Member States, registrars, notaries, administrative authorities and courts shall not refuse registration, deny effect to, invalidate,** | Article 4 Rules applicable to EU Inc.<br>1. EU Inc. companies shall be governed by this Regulation and by their articles of association which shall comply with this Regulation.<br>2. Matters that are not covered by this Regulation or by the articles of association shall be governed by national law, including the provisions transposing Union law, which apply to relevant national legal forms in the Member State in which the EU Inc. has its registered office.<br><br>3. Member States shall designate the relevant national legal form referred to under paragraph 2, the provisions of which apply to EU Inc. companies. |

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| relevant national legal form referred to under paragraph 2, the provisions of which apply to EU Inc. companies. | arguments that have led German mandatory corporate law to rule out many private-ordering solutions that are typical of venture capital deals. Equivalent legal arguments are used in Italy.<br><br>To counter this risk, it would help to include rules of interpretation that explicitly steer the law in action in a private-ordering-friendly direction for innovative startups. | **recharacterise, or disapply clauses in the articles of association or in agreements among shareholders or other agreements with third parties that are instrumental to EU Inc.'s financing, or otherwise restrict the exercise of rights arising therefrom, on the ground of inconsistency with standards, general clauses or principles of EU or national private or corporate law, except where this is required by the Treaties, the Charter of Fundamental Rights of the European Union or by this Regulation;**<br><br>**(b) analogy, anti-avoidance clauses, or any other open-ended standards may not be deployed to invalidate, or otherwise refuse enforcement of rights arising from, articles of association or contractual clauses that this Regulation or member states' law does not explicitly prohibit;**<br><br>**(c) in assessing the parties' good faith and fair dealing in the performance of the duties arising from the arrangements referred to under letter (a) of the present paragraph, courts shall take the distinctive features of the financing transactions of such companies, the financial rationale underlying such transactions, the particular risk appetite of the parties involved, as well as international practices concerning the performance and interpretation of contracts involving an innovative startup and those who finance it through equity or hybrid instruments, however named and structured, into account.**<br><br>**(d) courts shall also take the criteria set out in letter (c) of the present paragraph into account for the purposes of:** | **4. As regards innovative startups:**<br><br>**(a) any limitation to private ordering arrangements under this Regulation or the applicable member state law is to be narrowly construed in light of the proportionality principle. Member States, registrars, notaries, administrative authorities and courts shall not refuse registration, deny effect to, invalidate, recharacterise, or disapply clauses in the articles of association or in agreements among shareholders or other agreements with third parties that are instrumental to EU Inc.'s financing, or otherwise restrict the exercise of rights arising therefrom, on the ground of inconsistency with standards, general clauses or principles of EU or national private or corporate law, except where this is required by the Treaties, the Charter of Fundamental Rights of the European Union or by this Regulation;**<br><br>**(b) analogy, anti-avoidance clauses, or any other open-ended standards may not be deployed to invalidate, or otherwise refuse enforcement of rights arising from, articles of association or contractual clauses that this Regulation or member states' law does not explicitly prohibit;**<br><br>**(c) in assessing the parties' good faith and fair dealing in the performance of the duties arising from the arrangements referred to under letter (a) of the present paragraph, courts shall take the distinctive features of the financing transactions of such companies, the financial rationale underlying such transactions, the particular risk appetite of the parties involved, as well as international practices concerning the performance and interpretation of contracts involving an innovative startup and those who finance it through equity or hybrid instruments, however named and structured, into account.** |

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| | | **(1) interpreting the agreements referred to in the present paragraph;**<br>**(2) applying any other open-ended standard that could have the effect of limiting the discretion enjoyed by the parties in the performance of such agreements;**<br>**(3) assessing whether innovative startups' directors breached their duties.**" | **(d) courts shall also take the criteria set out in letter (c) of the present paragraph into account for the purposes of:**<br>**(1) interpreting the agreements referred to in the present paragraph;**<br>**(2) applying any other open-ended standard that could have the effect of limiting the discretion enjoyed by the parties in the performance of such agreements;**<br>**(3) assessing whether innovative startups' directors breached their duties.** |
| Article 8<br>EU templates for standard articles of association<br>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.<br>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.<br>3.The Commission shall, by means of implementing acts, establish the multilingual EU templates for the standard articles of association. | The proposal anticipates that the Commission will draft templates of articles of association. In the absence of specific indications as to the governance of the templates production process and the templates contents, there is a risk that this approach will not yield templates that capture the contractual sophistication required by venture-capital practice. The Commission, however well intentioned, is not the body best placed to draft a Series A term sheet or a cap-table architecture for a fast-growing biotech, nor is it well placed to keep such templates current as practice evolves.<br>What is suggested here is a regime inspired by the New Legislative Framework, thus having the Commission to recognize private providers of EU Inc. templates.<br>It is also proposed that judges may not second-guess the validity of articles of | The rubric of Article 8 is replaced by the following: "**EU templates and model instruments**".<br>OPTION 1: Replace Article 8, para. 3, with the following:<br>"**3. The Commission shall recognise, by means of implementing acts, one or more independent bodies with appropriate expertise in corporate governance and/or venture-capital financing, start-up governance, employee equity participation and corporate contracting as bodies competent to prepare and publish model articles of association, model shareholders' agreements, and any other contractual or constitutional instruments customarily used in the financing and governance of innovative and/or other companies.**<br>**Recognition under the first subparagraph shall be granted only where the Commission is satisfied that the body** | Article 8<br>**EU templates and model instruments**<br>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.<br>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.<br>"**3. The Commission shall recognise, by means of implementing acts, one or more independent bodies with appropriate expertise in corporate governance and/or venture-capital financing, start-up governance, employee equity participation and corporate contracting as bodies competent to prepare and publish model articles of association, model shareholders' agreements, and any other contractual or constitutional instruments customarily used in** |

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| | association in line with the templates, except where required by the Treaties or the Charter of Fundamental Rights of the European Union or by this Regulation..<br><br>There would be one important limit to private ordering: the abusive exercise of those rights, i.e. to the detriment of the counterparts in a way that is inconsistent with the financial logic of VC deals, shall not be condoned. | **concerned:**<br><br>**(a) has demonstrated expertise in:**<br><br>**(1) drafting articles of association and other related corporate documents, and/or**<br><br>**(2) venture-capital financing, start-up and scale-up governance, or corporate-law standard-setting;**<br><br>**(b) is capable of ensuring appropriate participation of founders, investors, practitioners, academics and other relevant stakeholders in the preparation and periodic updating of model instruments;**<br><br>**(c) has procedures ensuring transparency, independence and the avoidance of conflicts of interest; and**<br><br>**(d) is capable of keeping the model instruments up to date in light of market practice, technological development and the financing needs of companies and innovative startups.**<br><br>**Clauses, provisions, instruments or arrangements that reproduce, incorporate by reference, or do not materially depart from model instruments published by a recognised body pursuant to this paragraph shall be deemed to comply with this Regulation and with the articles of association requirements laid down therein. That presumption shall be conclusive. Member States, registrars, notaries, administrative authorities and courts shall not refuse registration, deny effect to, invalidate, recharacterise, or** | **the financing and governance of innovative and/or other companies.**<br><br>**Recognition under the first subparagraph shall be granted only where the Commission is satisfied that the body concerned:**<br><br>**(a) has demonstrated expertise in:**<br><br>**(1) drafting articles of association and other related corporate documents, and/or**<br><br>**(2) venture-capital financing, start-up and scale-up governance, or corporate-law standard-setting;**<br><br>**(b) is capable of ensuring appropriate participation of founders, investors, practitioners, academics and other relevant stakeholders in the preparation and periodic updating of model instruments;**<br><br>**(c) has procedures ensuring transparency, independence and the avoidance of conflicts of interest; and**<br><br>**(d) is capable of keeping the model instruments up to date in light of market practice, technological development and the financing needs of companies and innovative startups.**<br><br>**Clauses, provisions, instruments or arrangements that reproduce, incorporate by reference, or do not materially depart from model instruments published by a recognised body pursuant to this paragraph shall be deemed to comply with this Regulation and with the articles of association requirements laid down therein. That presumption shall be conclusive. Member States, registrars, notaries, administrative authorities and courts shall not** |

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| | | **disapply clauses in the articles of association or in agreements among shareholders or other agreements with third parties that are instrumental to EU Inc.'s financing, or otherwise restrict the exercise of rights arising therefrom, on the ground of inconsistency with national company law, national doctrines of corporate law, general clauses or principles of national private law, except where this is required by the Treaties or the Charter of Fundamental Rights of the European Union or by this Regulation.**<br><br>**The Commission shall publish and keep up to date on the EU Inc. digital portal the list of bodies recognised pursuant to this paragraph and the model instruments notified by those bodies. Recognition may be withdrawn by implementing act where the conditions set out in the third subparagraph are no longer met.**<br><br>**Nothing in this paragraph shall prevent courts from sanctioning the exercise of the rights attributed to parties by templates and model instruments to the detriment of shareholders or other counterparts, so long as the rights holders act in a way that could not, at the time the relevant financing transaction was entered into, be anticipated to be inconsistent with the economic logic of the said transactions.**" | **refuse registration, deny effect to, invalidate, recharacterise, or disapply clauses in the articles of association or in agreements among shareholders or other agreements with third parties that are instrumental to EU Inc.'s financing, or otherwise restrict the exercise of rights arising therefrom, on the ground of inconsistency with national company law, national doctrines of corporate law, general clauses or principles of national private law, except where this is required by the Treaties or the Charter of Fundamental Rights of the European Union or by this Regulation.**<br><br>**The Commission shall publish and keep up to date on the EU Inc. digital portal the list of bodies recognised pursuant to this paragraph and the model instruments notified by those bodies. Recognition may be withdrawn by implementing act where the conditions set out in the third subparagraph are no longer met.**<br><br>**Nothing in this paragraph shall prevent courts from sanctioning the exercise of the rights attributed to parties by templates and model instruments to the detriment of shareholders or other counterparts, so long as the rights holders act in a way that could not, at the time the relevant financing transaction was entered into, be anticipated to be inconsistent with the economic logic of the said transactions.**" |
| Article 42 Company bodies | Article 42(4) vests the power to appoint and dismiss directors "at any time" in the | In Article 42(4), add, at the end, the following sentence: **"The articles of association of** | Article 42 Company bodies<br><br>1. The articles of association shall lay down the |

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| 1. The articles of association shall lay down the rules concerning the organisation of the EU Inc. company and the conditions under which it is managed.<br><br>2. The company shall have a board of directors, which shall be responsible for the management of the company. 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.<br><br>3. The board of directors may exercise all the powers of the company that are not required by the applicable rules in accordance with Article 4 to be exercised by the general meeting or by another statutory body.<br><br>4. The general meeting shall have the power to appoint and dismiss directors at any time and to 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. Those instructions shall be binding on the board of directors, unless they are contrary to the applicable rules in accordance with Article 4. | general meeting.<br><br>It is unclear whether the articles of association may reserve that power, in whole or in part, to specific shareholders.<br><br>This matters because US-style VC board arrangements commonly allocate appointment and removal rights to a given investor or class of shares.<br><br>Clarify that the articles of association of an EU Inc. that qualifies as an innovative start-up may confer the right to appoint and/or remove one or more directors on designated shareholders or classes of shares and that the general meeting's power under Article 42(4) does not extend to removing directors appointed under those special rights. | **innovative startups may derogate to the provisions of the present paragraph.**";<br><br>After paragraph 4, add: **"5. The articles of association may grant to one or more designated shareholders, or to the holders of one or more classes of shares, the right to appoint and/or to remove one or more directors, including the majority thereof. Where the articles of association so provide, the power of the general meeting under paragraph 4 to appoint and dismiss directors shall not extend to directors appointed pursuant to those rights, who may be removed only by the shareholder or class of shares holding the relevant right, unless the articles of association provide otherwise."** | rules concerning the organisation of the EU Inc. company and the conditions under which it is managed.<br><br>2. The company shall have a board of directors, which shall be responsible for the management of the company. 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.<br><br>3. The board of directors may exercise all the powers of the company that are not required by the applicable rules in accordance with Article 4 to be exercised by the general meeting or by another statutory body.<br><br>4. The general meeting shall have the power to appoint and dismiss directors at any time and to 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. Those instructions shall be binding on the board of directors, unless they are contrary to the applicable rules in accordance with Article 4. **The articles of association of innovative startups may derogate to the provisions of the present paragraph.**<br><br>**5. The articles of association of innovative startups may grant to one or more designated shareholders, or to the holders of one or more classes of shares, the right to appoint and/or to remove one or more directors, including the majority thereof. Where the articles of association so provide, the power of the general meeting under paragraph 4 to appoint and dismiss directors shall not extend to directors appointed pursuant to those rights, who may be removed only by the shareholder or class of shares holding the relevant right, unless the articles of association provide otherwise.** |

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| Article 44 Directors' duties<br><br>1. Without prejudice to further obligations that may apply in specific situations, a director shall have the duty to always act:<br>(a) in accordance with the company's articles of association;<br>(b) in good faith and in the best interests of the company;<br>(c) with reasonable care, skill and diligence.<br><br>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.<br><br>3. A director shall not be liable to the company:<br>(a) for any damage or loss incurred by the company resulting from a business decision provided that he or she 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;<br>(b) for any damage or loss incurred by the company resulting from an action taken based on a lawful resolution of the general meeting.<br><br>4. The liability of directors shall be further governed by the applicable | 1. Article 44 does not allow Delaware-style exculpatory clauses for breach of the duty of care, where the articles so provide, provided directors act in good faith and subject to creditor-protection limits.<br><br>More generally, Article 44(1)(b) imposes a mandatory duty to act in good faith and in the best interests of the company, while Article 44(4) leaves liability further governed by applicable national law.<br><br>Read through national fiduciary doctrines, this could create uncertainty for directors implementing validly agreed VC arrangements, such as drag-along rights provisions, redemption rights and even IPOs.<br><br>For innovative startups, it is proposed to permit exculpatory clauses in the articles of association extending to substantive duties under Article 44, except in cases of fraud, bad faith or self-dealing, and clarify that giving effect to rights validly attached to a class of shares or to a shareholders' agreement is consistent with directors' duties under Article 44. | After paragraph 4, add the following paragraphs:<br><br>**"5. As regards innovative startups:**<br><br>**(a) the articles of association may limit or eliminate the liability of a director to the company for breach of the duties set out in paragraph 1. No such provision shall limit or eliminate liability for acts or omissions involving fraud, bad faith, intentional misconduct or self-dealing;**<br><br>**(b) a director does not breach the duties set out in paragraph 1 only by reason of acting to give effect to rights validly attached to a class of shares in accordance with Article 55, or to obligations validly undertaken by the company or its shareholders in a shareholders' agreement, provided the director acts in good faith."** | Article 44 Directors' duties<br><br>1. Without prejudice to further obligations that may apply in specific situations, 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.<br><br>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.<br><br>3. A director shall not be liable to the company: (a) for any damage or loss resulting from a business decision provided that he or she acted in good faith, exercised the care that a reasonably prudent person would use, and had the reasonable belief that he or she was acting in the best interests of the company; (b) for any damage or loss resulting from an action taken based on a lawful resolution of the general meeting.<br><br>4. The liability of directors shall be further governed by the applicable national law.<br><br>**5. As regards innovative startups:**<br><br>**(a) the articles of association may limit or eliminate the liability of a director to the company for breach of the duties set out in paragraph 1. No such provision shall limit or eliminate liability for acts or omissions involving fraud, bad faith, intentional misconduct or self-** |

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| national law. | | | **dealing;**<br><br>**(b) a director does not breach the duties set out in paragraph 1 only by reason of acting to give effect to rights validly attached to a class of shares in accordance with Article 55, or to obligations validly undertaken by the company or its shareholders in a shareholders' agreement, provided the director acts in good faith.** |
| Article 51 Protection of class rights<br><br>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.<br><br>2. Unless otherwise provided in the articles of association, the following events shall amongst other be deemed to modify or alter the rights of a class:<br>(a) reducing the nominal value (if any) or the dividend rights of that class;<br>(b) altering the order of priority for distribution of profits or liquidation proceeds;<br>(c) creating a new class of shares having rights superior to the rights attached to an existing class.<br><br>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 | Article 51(1) provides that a decision altering class rights cannot take effect without the approval of the affected class.<br><br>The articles of association may vary what counts as an alteration and the required majority, but not the class-consent requirement itself.<br><br>This is misaligned with VC deals, where parties may wish to allocate or pre-waive class-consent rights, including to make drag-along or down-round mechanics effective notwithstanding class protections.<br><br>Allow the articles of association to derogate from the class-approval requirement in Article 51(1), including through pre-agreed waivers or allocation of approval rights. | In Article 51(1), add, at the end, the following sentence: **"The articles of association of innovative startups may derogate to the provisions of the present paragraph.**";<br><br>and<br><br>after paragraph 3, add **"4. For the purposes of paragraph 1, the articles of association of innovative startups may, in respect of any class of shares, provide for the approval right to be waived in advance, whether generally or in defined circumstances, or to be exercised by one or more designated shareholders or by a specified majority within the class."** | Article 51 Protection of class rights<br><br>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. **The articles of association of innovative startups may derogate to the provisions of the present paragraph.**<br><br>2. Unless otherwise provided in the articles of association, the following events shall amongst others be 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.<br><br>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.<br><br>**4. For the purposes of paragraph 1, the articles of association of innovative startups may, in respect of any class of shares, provide for the approval right to be waived in advance, whether** |

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| class of shares. | | | **generally or in defined circumstances, or to be exercised by one or more designated shareholders or by a specified majority within the class.** |
| Article 52 Withdrawal of a shareholder<br><br>1. Upon application by a shareholder of an EU Inc. company, the competent court shall order the EU Inc. and the other shareholders to acquire that shareholder's shares if it finds that the company's affairs are being or have been conducted in a manner oppressive to him or her.<br><br>2. The application referred to in paragraph 1 shall be filed against the EU Inc. company and all other shareholders.<br><br>3. Where the competent court finds in favour of the applicant, the EU Inc. company shall, on the account of the other shareholders and in proportion to the number of shares they hold, purchase the shares held by the applicant at a price corresponding to the fair value determined by the court on the date of service of the application referred to in paragraph 1. The court shall also specify the period within which the share price is to be paid to the outgoing shareholder, together with interests accrued from the date of service of the application.<br><br>4. The EU Inc. and the other shareholders are jointly and severally liable for the payment of the share price referred to in paragraph 3. | Article 52(1) mandatorily provides that, in case of oppression, a shareholder has the right to be bought out at a fair price (as determined by Article 52(3). This right may be particularly disruptive in innovative startups and generally in companies where the lag between foundation and break-even is long. Private parties should be allowed to decide whether such protection should be granted to (minority) shareholders. | In Article 52, add, after paragraph 4, the following: **"5. The articles of association of innovative startups may derogate to the provisions of the present article.**" | Article 52 Withdrawal of a shareholder<br><br>1. Upon application by a shareholder of an EU Inc. company, the competent court shall order the EU Inc. and the other shareholders to acquire that shareholder's shares if it finds that the company's affairs are being or have been conducted in a manner oppressive to him or her.<br><br>2. The application referred to in paragraph 1 shall be filed against the EU Inc. company and all other shareholders.<br><br>3. Where the competent court finds in favour of the applicant, the EU Inc. company shall, on the account of the other shareholders and in proportion to the number of shares they hold, purchase the shares held by the applicant at a price corresponding to the fair value determined by the court on the date of service of the application referred to in paragraph 1. The court shall also specify the period within which the share price is to be paid to the outgoing shareholder, together with interest accrued from the date of service of the application.<br><br>4. The EU Inc. and the other shareholders are jointly and severally liable for the payment of the share price referred to in paragraph 3.<br><br>**5. The articles of association of innovative startups may derogate to the provisions of the present article.** |

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| Article 55 Equality of shares and classes of shares<br><br>1. All shares in the EU Inc. company shall carry equal rights and obligations unless otherwise provided in accordance with paragraph 2. Shareholders in the same position shall be afforded equal treatment by the EU Inc. company.<br><br>2. The articles of association may provide for multiple classes of shares with nonidentical rights and obligations attached to them. Shares carrying the same rights and obligations shall constitute one class.<br><br>3. The rights and obligations referred to under the first subparagraph may amongst other 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 55(1) provides that “Shareholders in the same position shall be afforded equal treatment by the EU Inc. company.” While that principle is, in the abstract, the very epitome of justice, in practice it can give rise to great uncertainty as to the validity of some arrangements or the legality of a given behaviour. For this reason, it should not be a mandatory principle, leaving parties to decide whether to be subject to it or not.<br><br>Article 55(3) lists the rights that classes may carry, including distribution/liquidation preferences, veto rights and multiple voting rights, but does not state that those rights are valid regardless of their extent.<br><br>In some Member States, the issue is not whether such rights are admissible in principle, but whether they may be so extensive as to leave founders' ordinary shares with little or no economic participation. National doctrines may still be invoked through Article 4 to limit their degree rather than their existence.<br><br>Clarify that the rights listed in Article 55(3) are valid regardless of their extent, including where they substantially subordinate other classes economically or in governance terms, subject only to expressly stated Regulation-level limits.<br><br>Clarify that in closely-held companies special cash-flow rights can also be conferred on individual shareholders, without the need for creating a special class of shares. | After paragraph 3, add the following paragraphs:<br><br>**“4. The articles of association of innovative startups may derogate to the provisions of the present article. In particular:**<br><br>**(a) the rights and obligations referred to in paragraph 3 shall be valid irrespective of their extent, including where they substantially subordinate, economically or in terms of governance, the shares of one or more other classes to the shares to which those rights attach, and including where they have the effect of leaving a class with limited or no participation in profits, in liquidation proceeds or in voting. Those rights shall not be restricted by virtue of the applicable national law referred to in Article 4;**<br><br>**(b) the articles of association may grant the rights and obligations referred to in paragraph 3 to individual shareholders.** | Article 55 Equality of shares and classes of shares<br><br>1. All shares in the EU Inc. company shall carry equal rights and obligations unless otherwise provided in accordance with paragraph 2. Shareholders in the same position shall be afforded equal treatment by the EU Inc. company.<br><br>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.<br><br>3. The rights and obligations referred to under the first subparagraph may amongst others 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.<br><br>**4. The articles of association of innovative startups may derogate to the provisions of the present article. In particular:**<br><br>**(a) the rights and obligations referred to in paragraph 3 shall be valid irrespective of their extent, including where they substantially subordinate, economically or in terms of governance, the shares of one or more other classes to the shares to which those rights attach, and including where they have the effect of leaving a class with limited or no participation in profits, in liquidation proceeds or in voting. Those rights shall not be restricted by virtue of the applicable national law referred to in Article 4;**<br><br>**(b) the articles of association may grant the rights and obligations referred to in paragraph 3 to individual shareholders.** |

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| Article 56<br>Exercise of shareholder rights<br>[…]<br>6.Shareholders holding at least one-tenth (1/10) of the number of shares may at any time request the competent court or administrative authority to appoint an independent expert to carry out an investigation on 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.<br>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. | Article 56(6) (according to which '[s]hareholders holding at least one-tenth […] of the number of shares may at any time request the competent court or administrative authority to appoint an independent expert to carry out an investigation on suspicions of a material breach of law or of the articles of association by the company') is unduly restrictive of contractual freedom for closely held companies. It should be made optional for such companies. | At the end of Article 56(6), the following subparagraph is inserted: "**The articles of association of innovative startups may limit, condition or exclude the rights provided for in the first subparagraph.**" | Article 56<br>Exercise of shareholder rights<br>[…]<br>6.Shareholders holding at least one-tenth (1/10) of the number of shares may at any time request the competent court or administrative authority to appoint an independent expert to carry out an investigation on 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.<br>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.<br>**The articles of association of innovative startups may limit, condition or exclude the rights provided for in the first subparagraph.** |
| Article 72 Distributions<br>1. The general meeting shall decide on distributions.<br>2. The articles of association may authorise the board of directors or another company body to decide on distributions.<br>3. 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 total amount of | Article 72(3) makes distributions contingent on both a solvency and balance sheet test, whereas Articles 74(4) and 76(6) permit acquisition of own shares and payment of the redemption price only out of funds available for distribution under Article 72, thereby subjecting buy-backs and redemptions to *both* the solvency and balance-sheet tests.<br>A redeemable share may therefore fail to provide a VC investor exit right for a loss-making start-up even where the company is able to pay.<br>Amend Article 72 to allow directors of innovative startups to approve | After article 72(5), insert the following:<br>**6. Notwithstanding paragraphs 3, 4 and 5, the articles of association of innovative startups may provide that distributions can be lawfully made if the statement referred to in paragraph 3 certifies that either the balance sheet test or the solvency test has been met.** | Article 72 Distributions<br>1. The general meeting shall decide on distributions.<br>2. The articles of association may authorise the board of directors or another company body to decide on distributions.<br>3. 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 total amount of 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 |

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| 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).<br>4. Where the company carries out a distribution in violation of paragraphs 1, 2 or 3 or where the directors signing the statement referred to in paragraph 2 [**recte: 3**] knew or, in view of the circumstances, should have known at the time of the statement that, following the distribution, the total amount of 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.<br>5. Where a shareholder has received a distribution carried out in violation of paragraphs 1, 2 or 3 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 total amount of 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 | distributions if either the balance sheet test or the solvency test has been met. | | course of business in the 12 months following the date of the distribution (solvency test).<br>4. Where the company carries out a distribution in violation of paragraphs 1, 2 or 3 or where the directors signing the statement referred to in paragraph 2 [**recte: 3**] knew or, in view of the circumstances, should have known at the time of the statement that, following the distribution, the total amount of 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.<br>5. Where a shareholder has received a distribution carried out in violation of paragraphs 1, 2 or 3 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 total amount of 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.<br>**6. Notwithstanding paragraphs 3, 4 and 5, the articles of association of innovative startups may provide that distributions can be lawfully made if the statement referred to in paragraph 3 certifies that either the balance sheet test or the solvency test has been met.** |

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| the distribution to the company to the extent that commitments entered into with creditors so require. | | | |
| Article 78 EU-ESO<br>1. The company may establish an EU employee stock option plan (EU-ESO) under which it issues warrants to eligible persons.<br><br>2. Eligibility for warrants issued under the EU-ESO shall be restricted to members of the board and employees of the company and its subsidiaries. Warrants under the EU-ESO shall not be issued to persons who, 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.<br><br>3. The general meeting shall decide on the establishment of the EU-ESO. The resolution shall at least set out:<br>(a) the group of eligible persons;<br>(b) the maximum number of warrants that may be issued under the EU-ESO and the shares to which the holder of a warrant shall be entitled upon exercise of the warrant;<br>(c) a mandatory waiting period before which the warrants issued under the EU- ESO shall not be exercised, which shall be at least 24 months from the issuance of a warrant.<br><br>4. Warrants issued under the EU-ESO shall be non-transferable and issued for no consideration. | Article 78 does not state that the exercise price of EU-ESO warrants may be freely set.<br><br>Article 78(5) requires the consideration to be paid in cash and fully paid up on issue, which may preclude both nominal strike prices and net or cashless exercise.<br><br>Both are standard features of US employee equity arrangements.<br><br>Confirm that the exercise price of EU-ESO warrants may be freely set, including at a nominal level where appropriate, and permit net or cashless exercise. | Replace Article 78, paragraph (5) with the following: "**5. The exercise price of warrants issued under the EU-ESO may be freely determined in the resolution referred to in paragraph 3, including at a nominal level. New shares issued upon exercise of such warrants shall be fully paid up on issue, and the exercise price may be satisfied in cash or by net or cashless exercise, whereby a part of the shares otherwise issuable to the holder is withheld in satisfaction of the exercise price.".** | Article 78 EU-ESO<br><br>1. The company may establish an EU employee stock option plan (EU-ESO) under which it issues warrants to eligible persons.<br><br>2. Eligibility for warrants issued under the EU-ESO shall be restricted to members of the board and employees of the company and its subsidiaries. Warrants under the EU-ESO shall not be issued to persons who, 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.<br><br>3. The general meeting shall decide on the establishment of the EU-ESO. The resolution shall at least set out: (a) the group of eligible persons; (b) the maximum number of warrants that may be issued under the EU-ESO and the shares to which the holder of a warrant shall be entitled upon exercise of the warrant; (c) a mandatory waiting period before which the warrants issued under the EU-ESO shall not be exercised, which shall be at least 24 months from the issuance of a warrant.<br><br>4. Warrants issued under the EU-ESO shall be non-transferable and issued for no consideration.<br><br>**5. The exercise price of warrants issued under the EU-ESO may be freely determined in the resolution referred to in paragraph 3, including at a nominal level. New shares issued upon exercise of such warrants shall be fully paid up on issue, and the exercise price may be satisfied in cash or by net or cashless exercise, whereby a part of the shares otherwise issuable to the holder is withheld in satisfaction of the exercise** |

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| 5. The consideration for new shares issued upon exercise of warrants under the EU- ESO shall be paid in cash and shall be fully paid up on issue of the shares.<br><br>6. The board of directors shall be authorised to issue warrants under the EU-ESO and to 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-ESO by transferring own shares held in treasury.<br><br>7. Existing shareholders shall have no pre-emptive rights on warrants issued under the EU-ESO and on new shares issued to satisfy claims arising from the warrants. | | | **price.**<br><br>6. The board of directors shall be authorised to issue warrants under the EU-ESO and to 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-ESO by transferring own shares held in treasury.<br><br>7. Existing shareholders shall have no pre-emptive rights on warrants issued under the EU-ESO and on new shares issued to satisfy claims arising from the warrants. |
| CHAPTER X<br><br>[…] | Under the Proposal, EU Inc. would risk being subject to two different connecting factors at the moment when legal certainty matters most. Its corporate law framework is anchored to the Member State of the registered office, but insolvency jurisdiction and applicable insolvency law may depend on the company's centre of main interests. For start-ups, whose management, assets, employees, investors and markets may be spread across several Member States, this would create uncertainty as to which court may open proceedings and which national insolvency law will apply. It may also encourage litigation over jurisdiction and weaken the predictability of the EU Inc. as a financing vehicle. | Before Article 88, insert the following:<br><br>**Article 87a**<br>**Registered-office rule for start-up insolvencies**<br><br>**1. In the case of an EU Inc. qualifying as an innovative start-up within the meaning of this Regulation, the law applicable to insolvency proceedings, restructuring proceedings, pre-pack sale proceedings, winding-up proceedings and any other collective proceedings concerning that EU Inc. shall be the law of the Member State in which the EU Inc. has its registered office, insofar as the matter is not governed by this Regulation.**<br><br>**2. The courts or administrative authorities** | Chapter X<br><br>**Article 87a**<br>**Registered-office rule for start-up insolvencies**<br><br>**1. In the case of an EU Inc. qualifying as an innovative start-up within the meaning of this Regulation, the law applicable to insolvency proceedings, restructuring proceedings, pre-pack sale proceedings, winding-up proceedings and any other collective proceedings concerning that EU Inc. shall be the law of the Member State in which the EU Inc. has its registered office, insofar as the matter is not governed by this Regulation.**<br><br>**2. The courts or administrative authorities of that Member State shall have exclusive jurisdiction to open the proceedings referred to in paragraph** |

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| | The proposed amendment resolves this by aligning jurisdiction and applicable law. For EU Inc. companies qualifying as innovative start-ups, insolvency proceedings would be opened exclusively in the Member State of the registered office, and the residual applicable insolvency law would be that of the same Member State. Secondary or territorial proceedings in other Member States would be excluded, ensuring a single, predictable and cost-effective insolvency forum. | **of that Member State shall have exclusive jurisdiction to open the proceedings referred to in paragraph 1.**<br><br>**3. For the purposes of paragraphs 1 and 2, the registered office of the EU Inc. shall be the connecting factor for both applicable law and jurisdiction. The location of the centre of main interests, central administration, principal place of business, assets, creditors or business operations of the EU Inc. shall not affect the determination of applicable law or jurisdiction.**<br><br>**4. Proceedings referred to in paragraph 1 opened in the Member State of the registered office shall be treated as main proceedings for the purposes of recognition and enforcement under Regulation (EU) 2015/848. Secondary or territorial insolvency proceedings may not be opened in respect of the same EU Inc. in another Member State.**<br><br>**5. This Article shall apply notwithstanding any provision of Regulation (EU) 2015/848 concerning jurisdiction, applicable law or the opening of secondary or territorial proceedings, to the extent necessary to ensure a single point of entry for insolvency proceedings concerning innovative start-ups incorporated as EU Inc. companies.** | **1.**<br><br>**3. For the purposes of paragraphs 1 and 2, the registered office of the EU Inc. shall be the connecting factor for both applicable law and jurisdiction. The location of the centre of main interests, central administration, principal place of business, assets, creditors or business operations of the EU Inc. shall not affect the determination of applicable law or jurisdiction.**<br><br>**4. Proceedings referred to in paragraph 1 opened in the Member State of the registered office shall be treated as main proceedings for the purposes of recognition and enforcement under Regulation (EU) 2015/848. Secondary or territorial insolvency proceedings may not be opened in respect of the same EU Inc. in another Member State.**<br><br>**5. This Article shall apply notwithstanding any provision of Regulation (EU) 2015/848 concerning jurisdiction, applicable law or the opening of secondary or territorial proceedings, to the extent necessary to ensure a single point of entry for insolvency proceedings concerning innovative start-ups incorporated as EU Inc. companies.** |
| Article 103<br><br>List of prohibited requirements<br><br>1.Unless it is objectively justified and proportionate, Member States shall | Article 103 provides that '*Unless it is objectively justified and proportionate*, Member States shall treat EU Inc. companies no less favourably than other limited liability companies formed in accordance with their national law in any | In Article 103, paragraph 1, delete the words "**Unless it is objectively justified and proportionate,**" | Article 103<br>List of prohibited requirements<br>1.**~~Unless it is objectively justified and proportionate,~~** Member States shall treat EU Inc. companies no less favourably than other limited liability companies formed in accordance with their |

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| treat EU Inc. companies no less favourably than other limited liability companies formed in accordance with their national law in any aspect of their activities and operations.<br><br>2.A Member State shall not adopt or maintain any of the following with regard to EU Inc. companies whose registered office is in another Member State:<br><br>(a)without prejudice to the Union State aid rules, criteria that deny eligibility of those EU Inc. companies to public support in view of their place of headquarters in other Member States or that require those companies to dissolve and reestablish or to set up a subsidiary in order to become eligible;<br><br>(b)measures that impose an authorisation or other requirement for taking up or exercising an economic activity based on the location of their registered office;<br><br>(c)the requirement to have a local representative or a physical presence in that Member State in order to complete a procedure necessary to take up or exercise an economic activity or to obtain an authorisation;<br><br>(d)measures that deny the use of a payment account set up in another Member State for the purposes of completing a procedure necessary to take up or exercise an economic activity or obtaining an authorisation.<br><br>3.For the purpose of this Article, the following definitions shall apply: | aspect of their activities and operations'. The initial proviso appears to put EU Inc. even in a worse position than companies formed under the law of a member state and operating (exclusively) in another EU member state, because on its face it says that host member states can discriminate against them (treat them 'less favourably'), to the extent that such a treatment is objectively justified and proportionate. This is just a subset of the conditions that limit member states' power to impose domestic rules to citizens and firms from other member states (the *Gebhard* test): there is no reference either to non-discrimination (actually, the rules says the opposite, that EU Inc. may be discriminated against; but the EU Treaties should rule out that outcome whatever the EU Inc. Regulation might say) or to the measures having to be justified by 'imperative requirements in the general interest', although perhaps that is only implicit.<br><br>The initial proviso is inconsistent with the idea and the very purpose of the EU Inc. | | national law in any aspect of their activities and operations.<br>[…] |

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| (a)Authorisation means a formal or implied decision that is in law or in fact required from a competent authority in order to obtain access to an economic activity, exercise an economic activity or terminate it;<br>(b)Requirement means requirement as defined in Article 4 point 7) of Directive 2006/123/EC. | | | |