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A SINGLE EU INC. ACROSS 27 MEMBER STATES

How the July Compromise Text Can Still Deliver a Usable Corporate Regime for European Startups

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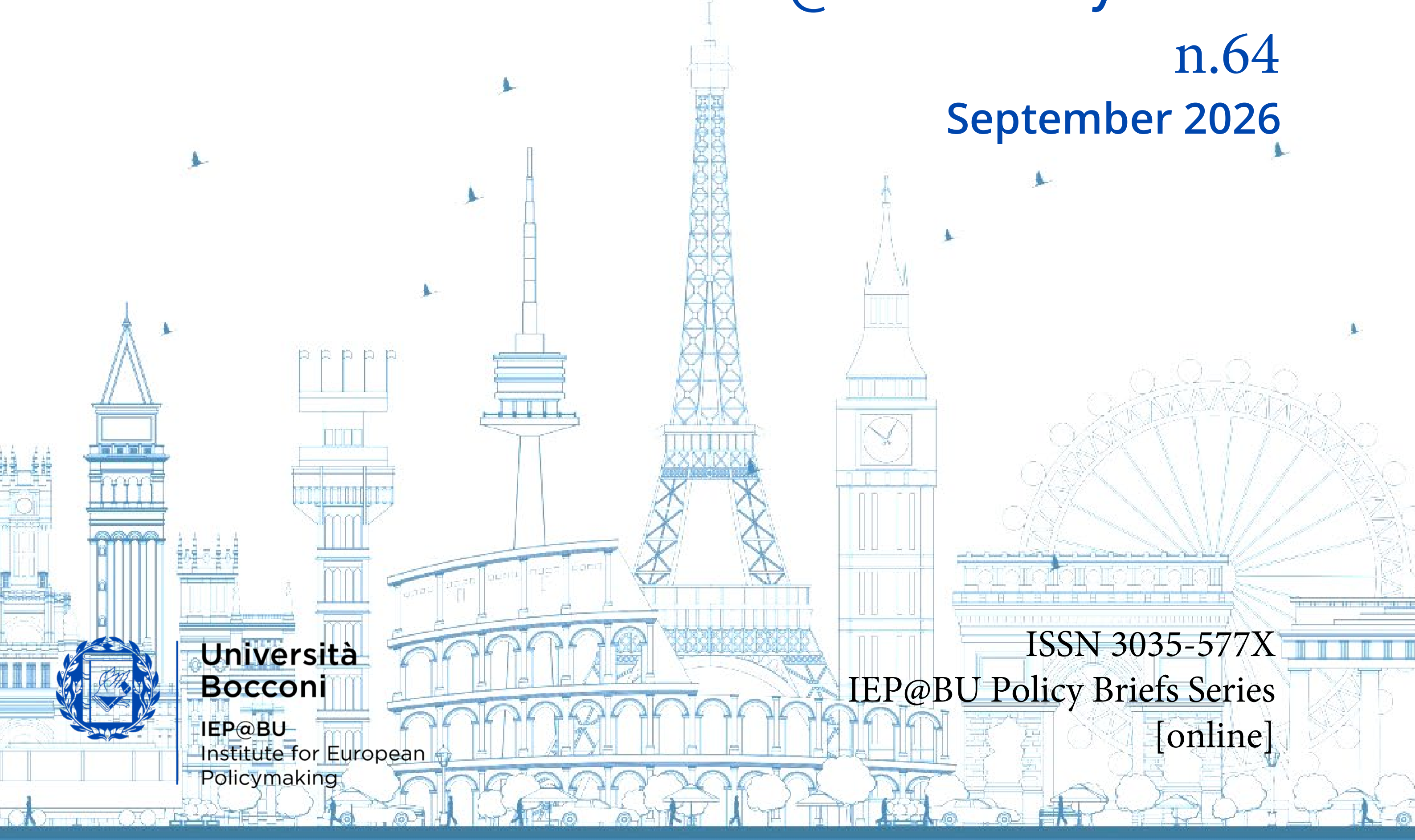

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Introduction

European startups can sell, hire and raise capital across the Single Market, but they must still incorporate and organise their financing under one of 27 national company-law regimes. The Letta and Draghi reports identified this fragmentation as one of the obstacles preventing innovative European firms from growing to scale, as it generates costs and legal uncertainty each time a company raises capital, changes its governance structure or expands across borders.

The Commission responded on 18 March 2026 by proposing EU Inc., the company-law cornerstone of a broader "28th regime". The expression captures the basic idea: an optional European framework that companies could choose alongside existing national company forms. Under the Commission's proposal, a company could be established or converted into an EU Inc., use a fully digital incorporation procedure within 48 hours and at a maximum cost of EUR 100 when relying on the EU templates, and benefit from common rules on shares, financing instruments, governance and employee equity.

The EU Inc. Regulation is therefore meant to give founders and investors a lean company-law vehicle they can use anywhere in the EU, instead of navigating 27 different national regimes. It matters most for innovative startups and scaleups, whose growth typically depends on raising venture capital, often across borders.

Venture-capital financing is built around a coordinated set of arrangements regarding the allocation of cash-flow, governance and exit rights between founders, venture capitalists and employees. Founders and investors choose these arrangements to minimise the transaction costs of funding and managing highly innovative firms. Incorporation is a one-off event, while financing rounds, board decisions, option grants and exits recur throughout a company's life.

Company law can either accommodate these arrangements, by deferring to what the parties negotiate, or undercut them, by imposing its own mandatory terms in their place. The practical value of EU Inc. consequently depends not only on whether a company can be incorporated quickly and inexpensively, but also on whether the financing and governance arrangements on which it relies will have the same legal effects throughout the Union.

The Council's first compromise text of the Regulation, dated 17 July 2026, keeps welcome features of the Commission's proposal, such as fast, low-cost digital incorporation. But it also leaves national law much more room to determine whether, and if so how, the arrangements agreed by a company's founders and investors in its constitutional documents will be given effect.

In practice, this means that an EU Inc. could end up being governed by 27 different versions of national mandatory rules. Identical provisions could be valid and effective in one Member State but restricted, reinterpreted or uncertain in another. The compromise would thus risk reproducing, inside the very vehicle meant to solve it, the same fragmentation and legal uncertainty that innovative firms already face when incorporating under ordinary national company law.

A different risk compounds this one. European start-up finance is not static: term sheets, articles of association and side letters evolve to adapt to market changes, driven largely by internationally minded venture capital funds rather than by legislators. A Regulation that freezes today's practice into a rigid template risks arresting that evolution.

This Policy Brief proposes six changes to the July compromise, all pursuing the same objective: giving startups more room to rely on the contractual arrangements that make venture-capital financing work and ensuring that those arrangements are enforced across the EU once agreed. The recommendations do not seek to harmonise every aspect of company law or remove national safeguards for employees, creditors and the prevention of abuse. They seek to establish a predictable European core in the areas that determine whether founders and investors can use EU Inc. to finance and grow an innovative company.

In short, the changes would fix the rule that allows national law to override the parties' agreement; protect standard financing documents so they can be used without uncertainty as to their validity; make founders' and investors' negotiated rights over cash flows, control and exit effective as written; make directors' liability and distribution rules compatible with startups' risks and financial needs; make employee equity plans and insolvency rules workable and predictable; and guarantee that an EU Inc. can operate freely across the Union without being treated as a foreign company.

The legislative process still offers a window for action. The July compromise is only the Council's first working text, not the final Regulation. The proposed changes can still be incorporated into subsequent Council compromise texts or into the European Parliament's committee report, before the two institutions adopt their negotiating mandates and enter interinstitutional negotiations. Once the Regulation has been adopted, implementing acts may maintain and update templates and other technical requirements, but they will not be able to create substantive corporate rights on matters that the basic legislation has left to national law.

Without these changes, EU Inc. risks becoming a label rather than a genuine 28th regime: attractive on paper and useful for rapid incorporation, but of little practical value to the firms it was built for.

FOR READERS NEW TO THE FILE

The rest of this Brief argues about specific articles. This box is a short, self-contained guide to what the EU Inc. Proposal, in its 17 July 2026 compromise text, would actually do, for readers who do not follow the file day to day. It is a simplification, and it will need checking against later versions of the text before it is relied on for anything beyond orientation.

An optional form. A new legal form, EU Inc., would become available to European businesses. It would exist alongside national company forms, not replace them.

A limited scope for private ordering. EU Inc. would be governed by the Regulation, by its articles of association where expressly so provided by the Regulation, and, for matters not covered by it, by the national law of the Member State of registration and, again, articles of association, to the extent that the law of the relevant Member State permits it (Article 4).

Fast digital formation. Formation would run fully online, in principle within 48 hours and for a maximum fee of EUR 100 when the company uses EU-approved templates; a non-standard charter moves to a slower, nationally priced procedure (Articles 7–18).

Capital and shares. No minimum capital would be required. Shares would be dematerialised in a digital register, and the articles could create multiple share classes with different economic and voting rights (Articles 53–58, 61–63).

Governance. Every EU Inc. would have a board of directors and could add a supervisory board. The general meeting would keep broad powers to appoint and remove directors. Directors' duties and a business-judgment defence would be set at EU level, but liability would remain "further governed" by national law (Articles 42–45).

Distributions and employee equity. Distributions would have to pass a balance-sheet and a solvency test (Article 72). An EU-wide employee stock option plan would be available to companies below given turnover and headcount thresholds, but exercise would currently have to be paid in cash (Article 78).

Cross-border life. The Regulation would set common rules for branches and cross-border mobility, and a general non-discrimination rule for EU Inc. companies operating outside their State of registration — qualified, however, by an open-ended justification clause (Chapter IV, Article 103).

1. The Promise of EU Inc. and the Risk of Refragmentation

A Note on Method: Enabling Convergence, Not Freezing It

Innovation ecosystems are not static and they are not centrally designed. They are self-organising systems that converge on efficient contractual arrangements gradually and unevenly, mostly through the work of practitioners rather than of legislators. That convergence is already under way inside the European Union. Internationally minded venture capital funds are quietly harmonising the term sheets, articles of association and side letters used across Member States, carrying practice that has already proven itself in one jurisdiction into the next through repeated transactions rather than through law reform. Enriques, Nigro and Tröger document both the extent of that convergence and the frictions that national company laws still put in its way (Ref. 4).

A Regulation is, almost by construction, less adaptable than market practice. That is not an argument against legislating: some matters genuinely need a fixed, common European rule, and Section 4 below identifies them. It is an argument for legislating narrowly and enabling broadly, and for resisting the temptation to convert today's snapshot of venture capital practice into tomorrow's mandatory template. A simple test recurs throughout what follows: does a given provision let the convergence already under way continue, or does it reset the clock, forcing founders and investors who have already solved a problem once to solve it again inside a new, EU-shaped box?

The economic case for EU Inc. starts from a simple observation. Europe has a Single Market for goods, services, capital and people, while companies are still constituted and financed through national legal forms. Founders can sell across borders long before investors and advisers can treat their corporate architecture as portable.

The Commission proposal of 18 March 2026 sought to address this mismatch through a new optional form established by Regulation. The July compromise retains the central elements of that design: a company registered in a Member State, recognised throughout the Union and governed by a substantial body of directly applicable European rules. The proposal also remains open to companies generally, without limiting access to a narrow administrative category of startups.

That broad availability is defensible. Turning the 28th regime into a certification scheme would create fresh eligibility disputes. Its credibility depends on EU Inc. remaining one corporate product after insertion into national legal orders.

The compromise text's Article 4 does three things. First, it places the Regulation and the articles of association at the top of the hierarchy. Second, it sends matters not governed by either instrument to the law of the Member State of the registered office. Third, it permits that Member State either to designate one or several equivalent domestic forms or to specify the national corporate-law provisions applicable to EU Inc.

The first step improves clarity. The second is unavoidable to some extent. No European company form can operate without rules on adjacent matters and procedural institutions. The third step is the source of the difficulty. It permits national legislators to decide which domestic company-law framework fills the gaps, potentially issue by issue. It also makes it uncertain whether national law is merely residual or can reshape the application of European rules.

This distinction has practical effects. A company can be embedded in a national system while its essential economic functions remain governed by European rules. Registration may remain national, legal personality may be conferred by the Member State of registration and litigation may take place before national courts. These institutional links provide no reason for the content of investor rights or the validity of governance arrangements to change from one jurisdiction to another.

Marco Ventoruzzo's AREL paper, *The New EU Inc.*, describes the proposal as an optional, harmonised and digital form designed to complement existing national systems. It also stresses that success depends on coherent implementation and a common and effective interpretation. This provides a useful starting point. EU Inc. can remain embedded in national legal orders, provided that national incorporation does not lead to national differentiation.

Article 114 TFEU strengthens this distinction. The legal basis is designed to approximate national rules in order to improve the functioning of the internal market. Reproducing national diversity is therefore unnecessary. A clear connection between the measure and a defined set of cross-border obstacles supports uniform rules in the areas where fragmentation imposes costs.

The July compromise should therefore be judged by the legal effects it produces. An EU Inc. registered in Milan, Munich or Madrid should be able to issue the same classes of shares, use the same financing documents and confer the same board and exit rights. National embedding is compatible with a European corporate product under those conditions. Changes in outcome caused by the applicable domestic form or national doctrine would instead produce 27 products marketed under one name.

2. Where National Law Re-enters the Regime

The compromise text contains a broad set of substantive rules at EU level. Its weaknesses lie in the points where national law re-enters and determines the usability of the form.

2.1 Article 4: a residual rule with structural consequences

Article 4 is the main gateway. Its draft language still contains alternative formulations for the scope of the European hierarchy. More importantly, paragraph 2 permits Member States to designate one or several equivalent national legal forms, specifying which matters each form governs, or to lay down the applicable national corporate-law provisions.

This can produce three types of fragmentation.

First, the same silence in the Regulation may be filled differently. A governance arrangement valid under the gap-filling rules of one Member State may be unavailable or differently characterised in another.

Second, the boundary between a matter "governed" by the Regulation and one left to national law may itself vary. National judges and registrars may classify the same issue differently, especially where an arrangement is partly corporate and partly contractual.

Third, national mandatory principles may affect provisions that appear European. A national court may use good faith, abuse of rights, equality of shareholders, capital-maintenance concepts or fiduciary doctrine to narrow an otherwise enabling rule.

The July text recognises the need for a hierarchy without adequately preventing these outcomes. Allowing several equivalent forms to govern different matters increases the risk of fragmentation.

2.2 Article 8 and Articles 16 to 18: customisation can reactivate national formality

Article 8 gives approved European templates an important effect. When the standard articles are used, national requirements for drawing up and certifying the articles are deemed satisfied. When the templates are not used, national requirements apply.

The fast-track procedure under Article 16 is also limited to companies using the templates. A non-standard charter moves the company to the five-day standard procedure and to a cost limit set nationally on a cost-recovery basis.

For a simple small company, this distinction may be acceptable. For a venture-backed company, it can become self-defeating. Professional investors rarely accept one fixed charter. They negotiate economic preferences, reserved matters, information rights, board composition, vesting and exit. If any meaningful customisation removes the company from the European safe path, the firms that would gain most from standardisation may struggle to use it.

Review can be preserved through modular templates. A founder should be able to select approved clauses and financing modules without losing the fast track. Companies that depart from the models should still face a defined set of European substantive checks, avoiding open-ended national review.

2.3 Article 14: a common checklist administered through different institutions

The compromise usefully states that competent authorities must decide on the basis of the criteria listed in Article 14. It also allows Member States to choose administrative, judicial, notarial or combined control.

An exhaustive checklist would allow institutional choice while preserving substantive convergence. The text, however, also refers to formal and substantive requirements and leaves the registration decision with the national authority in accordance with national law that complies with the Regulation. This can create space for domestic practice to expand the control.

The Regulation should make the closure of the list explicit. The competent authority should verify identity, capacity, disqualification, registered-office entitlement, mandatory content and compliance with the Regulation. Review of an approved clause should end there, without an additional test under domestic corporate-law doctrines.

2.4 Article 21: national law governs access for existing companies

An existing company can become an EU Inc. through domestic conversion, merger or division. These operations remain governed by the national law applicable to the converting, merging or dividing company. Article 21 also requires two years to have elapsed since registration, unless two sets of annual accounts have already been approved.

That waiting period is poorly aligned with startup finance. A young company may need to convert precisely when it raises its first institutional round. Requiring it to wait can force founders to use a foreign holding company or another legal form at the decisive stage.

Common safeguards can preserve national creditor and employee protections. A startup's age and the availability of a convenient domestic conversion procedure should have no bearing on access to EU Inc.

2.5 Articles 42, 44, 51 and 55: European governance with national pressure points

Article 55 permits multiple classes, liquidation preferences, veto rights, multiple or non-voting shares and other class-specific governance rights. This is valuable. Article 42, however, retains a general rule under which the general meeting appoints and dismisses directors at any time. The status of appointment rights attached to a share class or to a specific investor remains unclear.

Article 51 makes class approval mandatory when a decision modifies class rights. The articles may raise the voting threshold. Their ability to pre-authorise a waiver or allocate consent in a more targeted way remains unclear. That can interfere with drag-along clauses, restructurings and down rounds agreed before the relevant conflict emerges.

Article 44 introduces directors' duties and a business-decision defence. Paragraph 4 then states that liability is "further governed" by national law. A national rule can therefore change the practical exposure associated with the same board decision. This weakens the value of a common governance standard and may also discourage directors from implementing rights negotiated in investment documents.

2.6 Articles 59, 60, 72, 78 and 103: national variation beyond formation

The digital share register is a European innovation. Article 59(10), however, leaves rectification to national law. Divergent standards for correcting ownership records can affect transfers and the exercise of rights.

Article 60 allows access to a regulated market only where national legislation provides for it and makes conflicting national and Union market requirements prevail over parts of the Regulation. Some differentiation is unavoidable when a company becomes public. A national veto over the transition would add an unnecessary layer of uncertainty.

Article 72 requires a distribution to satisfy both a balance-sheet test and a twelve-month solvency test. The compromise also adds filing and supervisory checks. The cumulative test can make a contractual redemption right ineffective for a startup that is solvent despite accumulated losses.

Article 78 expressly requires the employee to pay the exercise price in cash and the new shares to be fully paid up. This excludes net exercise and cashless exercise, even though these mechanisms are often essential for employees who do not have the liquidity to pay the strike price before an exit.

Article 103 contains useful prohibitions on local presence, reincorporation and domestic payment-account requirements. Its general equal-treatment rule is nevertheless qualified by an open-ended objective-justification and proportionality clause. A broad exception at the beginning of the provision can weaken the certainty created by its more specific prohibitions.

Taken together, these gateways leave the compromise workable, though less valuable than its number of harmonised articles might suggest. The economic value of a corporate regime depends on whether national law returns at the points where parties allocate control, cash flow, liability and exit.

3. How Fragmentation Would Undermine a European Startup Regime

A startup uses company law as the operating system for a sequence of financing transactions under extreme uncertainty. Acquiring legal personality is only the first step.

Investors provide capital when the technology, market and eventual ownership structure are unknown. Founders contribute human capital that is difficult to value and may leave. Future rounds can dilute existing parties or impose different preferences. Employees accept equity whose value and liquidity may be remote. A successful outcome can take the form of a sale, a listing or a later financing, each producing different distributions and conflicts.

Venture-capital contracting responds to these problems with a linked architecture of rights:
- preferred economic rights determine how proceeds are allocated in different exit scenarios;
- liquidation preferences protect downside risk while preserving founder upside;
- conversion rights allow an investor to switch between preferred and common economics;
- anti-dilution and down-round provisions allocate the effect of a lower valuation;
- board-appointment and consent rights divide control without transferring day-to-day management;
- founder vesting and leaver clauses protect the company if key contributors depart;
- drag-along and tag-along provisions make an exit possible while protecting minority holders;
- convertible and SAFE-like instruments defer valuation while providing an agreed path to equity;
- redemption rights can create a contractual exit when no public market exists;
- employee options allocate upside without requiring an immediate cash investment.

These arrangements are interdependent. Uncertainty over priority reduces the value of a preferred share. Mandatory class consent can undermine a drag-along right. The general meeting's ability to remove an appointee weakens a board-appointment right. A legal requirement to pay cash before receiving shares defeats a cashless option plan.

Comparative research by Enriques, Nigro and Tröger examines the transplant of standard US venture-capital terms into Germany and Italy. It identifies a functionality gap that extends well beyond formal prohibitions. Some clauses cannot be replicated. Others require less efficient substitutes. Many are exposed to interpretative uncertainty.

The sources of rigidity are also important. Black-letter law is only part of the problem. Courts, scholars, notaries, registrars and advisers can treat open provisions as mandatory, use analogy to extend protective rules, or apply general clauses in ways that reduce contractual freedom. The law in action can therefore be much less enabling than the statute appears.

This evidence has direct implications for EU Inc. The Regulation will be applied by national institutions. If Article 4 allows those institutions to import domestic doctrines whenever the text is silent or incomplete, a European rule can produce national outcomes.

That uncertainty creates costs before any dispute reaches a court. An investor will request a local legal opinion. Counsel will adapt the term sheet. Registrars may reject unfamiliar clauses. Parties may duplicate rights in the charter and the shareholders' agreement. A lead investor may require a holding company in a more predictable jurisdiction. Founders may accept that request because the financing is time-sensitive.

Legal uncertainty therefore affects jurisdiction choice at the margin. Corporate law is one factor among several when European startups move or incorporate abroad; capital depth, talent, exit markets, taxation and regulation often carry greater weight. Marginal frictions still matter in venture capital because investment returns are highly concentrated and negotiations occur under tight time constraints. A legal form cannot solve every weakness of Europe's innovation ecosystem. It can at least avoid adding a reason to choose another jurisdiction.

Digital formation addresses only the first stage of a company's life. A common interface produces a one-off administrative saving, while a common financing architecture produces savings at every round, option grant, board appointment, transfer and exit.

The practical test should be:

> Would a sophisticated investor accept one EU Inc. documentation package without commissioning a new opinion on the validity and enforceability of its core corporate rights in each Member State?

A negative answer would reveal that the regime still functions as a European registration route into national company law. It would fall short of becoming a European startup regime.

4. What Must Be European and What Can Remain National

A European corporate core can remain limited in scope. A workable division can be drawn between the internal architecture of the company and the public or adjacent rules connected to where it operates.

The following matters should form the common European corporate core:

- formation, legal validity and minimum charter content;
- the hierarchy between the Regulation, the articles of association and shareholders' agreements;
- share classes and the economic, voting and governance rights attached to them;
- appointment, removal and consent rights associated with shares or investors;
- the allocation of powers between the general meeting, board and any supervisory body;
- directors' substantive duties, the business judgment rule, liability, exculpation and indemnification;
- pre-emption, conversion, redemption and transfer rights;
- liquidation preferences, anti-dilution and agreed exit arrangements;
- the corporate effects of convertible and SAFE-like instruments;

- employee equity, including the corporate mechanics of exercise and settlement;
- the digital share register and the legal effect of entries and rectification;
- domestic conversion into EU Inc.;
- the interpretation and enforcement of the preceding rights.

These matters define the corporate bargain. Different national outcomes directly reduce portability and comparability.

Other matters can remain national, subject to existing Union law and non-discrimination:

- general taxation, including the tax treatment of employees and investors;
- labour law, collective bargaining, employee information and board participation;
- social security;
- accounting standards and audit requirements;
- anti-money laundering, sanctions and beneficial-ownership obligations;
- sectoral authorisations and prudential regulation;
- general civil procedure and court organisation;
- ordinary insolvency rules, except where a specific European connection rule is required to protect the corporate bargain;
- rules linked to the company's real economic activity and independent of its legal form.

The boundary will sometimes require careful drafting. Employee equity, for example, has both corporate and tax consequences. EU Inc. can harmonise the creation, exercise and settlement of the instrument while leaving personal income tax to Member States. A convertible instrument can have common corporate effects even if accounting or tax treatment varies. Directors can face one substantive liability standard while national procedural rules govern the claim.

This distinction also answers the concern that EU Inc. could become a deregulatory device. A self-contained corporate core can preserve worker protection, tax liabilities, anti-money laundering and sectoral rules. It should prevent Member States from using corporate-law formality or interpretation to change arrangements concluded between sophisticated parties where the Regulation has chosen an enabling rule.

The policy objective is targeted. Preserve national diversity where it reflects the location of work, income, regulated activity or enforcement institutions. Remove it where it changes the meaning of the same European share, board right, financing instrument or exit clause.

5. Six Amendments to Preserve the European Character of EU Inc.

The six recommendations that follow respond to the same logic. Leaving key aspects of EU Inc. to national laws and their interpretations is a recipe for over-regulation and complexity. In a different domain, the AI Act is a recent illustration: several Member States have gold-plated it in transposition, while the harmonised standards meant to make it workable in practice have taken years longer than planned, forcing the Commission itself to push back the compliance deadline. The result is a framework whose actual content is harder to work with, and harder to change, than a clear, uniform rule would have been. The amendments below apply one core principle throughout: innovative startups’ financing and governance arrangements should be governed by private ordering — the company’s articles of association and the agreements founders and investors negotiate — rather than by corporate-law rules imposed by the EU or by Member States, and the law should defer to that private ordering wherever possible.

Recommendation 1. Ring-fence a self-contained European corporate core

Provisions concerned: Recitals 6 and 6a; Articles 1 and 4.

Article 4 should prevent the reconstruction of EU Inc. through national forms and, for innovative startups, acknowledge the primacy of private ordering to the widest possible extent.

The final text should:

- define the field of the Regulation broadly enough to include formation, internal organisation, financing, shareholder rights, directors' duties and internal corporate remedies;
- state that national corporate law applies only where the Regulation expressly refers to it;
- delete the possibility for a Member State to designate several national forms for different matters;
- delete the alternative allowing Member States to "specify or lay down" the corporate-law provisions applicable to EU Inc.;
- prohibit national gold-plating in matters governed by the Regulation or the articles of association;
- protect arrangements permitted by the Regulation from conflicting national corporate law;
- add a rule of interpretation that limitations on private ordering are construed narrowly.

The operative principle could read:

> National corporate law shall apply to an EU Inc. only where this Regulation expressly so provides. It shall not supplement, restrict, recharacterise or invalidate rights, instruments or arrangements governed or permitted by this Regulation or by the company's articles of association.

For unlisted EU Inc. companies, an additional paragraph should direct courts, registrars, notaries and administrative authorities not to deny effect to a clause merely because it conflicts with a national corporate-law doctrine, analogy, general clause or open-ended standard, unless the restriction is required by the Treaties, the Charter or an express provision of the Regulation.

Existing safeguards would continue to apply to fraud, coercion, sham transactions, breaches of mandatory worker or creditor protections, and the abusive exercise of rights. The interpretative rule would protect the ex ante bargain from being displaced by a national view that a different bargain would have been fairer.

Recommendation 2. Create an optional EU Startup and Venture Financing Module

Provisions concerned: Article 2; a new Chapter VIIa; consequential amendments to Articles 42, 51, 55, 67 to 78 and 88.

EU Inc. should remain a general form. Restricting access to a nationally certified category of "innovative startup" would create new borders and eligibility disputes. The better solution is an optional financing module selected in the articles of association.

The module should be available to an EU Inc. whose securities are not admitted to trading on a regulated market. It should apply once the articles contain a clear opt-in and should cease to apply prospectively if the company becomes listed. The company and its shareholders would therefore choose the more enabling regime directly.

The module should expressly validate:

- preferred shares and differentiated cash-flow rights;
- single or multiple liquidation preferences;
- conversion and redemption rights;
- anti-dilution and down-round adjustments;
- board-appointment rights attached to a class, investor or individual shareholding;
- investor consent and reserved-matter rights;
- drag-along, tag-along and transfer restrictions;
- founder vesting, good-leaver and bad-leaver provisions;
- convertible loans, SAFEs, KISS-like and functionally equivalent instruments;
- warrants, options and employee equity pools;
- net exercise and cashless exercise;
- contractual waivers or allocations of class consent agreed in advance, subject to clearly defined safeguards.

The list should remain open and illustrative. Venture practice evolves, and a closed list would become obsolete while inviting arguments that an unlisted mechanism is prohibited.

The module should also include disclosure safeguards. Before opting in, shareholders should receive clear information on the effect of differentiated rights. Employees receiving options should receive comprehensible information on dilution, exercise cost, tax uncertainty and liquidity risk. These safeguards improve consent without changing the substance of the agreed rights.

Recommendation 3. Turn European templates into a legal safe harbour

Provisions concerned: Article 8; Articles 14, 16 and 17.

The compromise currently treats templates primarily as standard articles for incorporation. That is too narrow. The documentation of a venture-backed company extends across the articles of association, shareholders' agreement, subscription agreement, instrument terms and employee plan. Gaps between those documents are a major source of national recharacterisation.

Article 8 should therefore be retitled "EU templates and model instruments" and cover:

- modular articles of association;

- shareholders' agreements;
- subscription and investment agreements;
- convertible and SAFE-like instruments;
- founder vesting and leaver arrangements;
- employee option and equity plans;
- standard board and shareholder resolutions.

The Commission should retain public responsibility for recognition and oversight. Model drafting and updating should draw on specialised expertise from founders, investors, lawyers, employee-equity specialists, academics and registrars. A technical body should be capable of updating modules more rapidly than the Regulation itself.

The legal effect is as important as the content. A clause that follows an approved model should be presumed valid, registrable and enforceable in every Member State. The presumption should be strong enough to protect users from a second national-law review. It should be rebuttable only for fraud, inconsistency with an express provision of the Regulation or materially incorrect use of the template.

Modularity is essential. Founders should be able to select among approved options for preferences, board composition, vesting and exit without losing the 48-hour procedure. A rigid take-it-or-leave-it charter would offer simplicity at the cost of commercial relevance.

Templates should provide a safe harbour while leaving parties free to draft non-standard arrangements under the interpretative protection in Recommendation 1. Departures from an approved model should remain fully available under the general rules of the Regulation.

Recommendation 4. Harmonise formation and conversion across the Union

Provisions concerned: Articles 8(2), 14 to 18 and 21.

The July text takes an important step by requiring authorities to decide on the basis of Article 14's criteria. The final text should close the remaining gaps.

First, Article 14 should state that the list of preventive checks is exhaustive. Member States can decide whether a register, court, administrative authority or notary performs them. The substantive test should remain the one defined by the Regulation.

Second, the fast track should apply to every charter assembled from approved modules. A company using a standard financing module should receive the same 48-hour and EUR 100 treatment as one using the basic template.

Third, the standard procedure should have a Union-wide maximum fee. A nationally determined cost-recovery ceiling would make the cost of using a negotiated charter vary by jurisdiction.

Fourth, the effect of national certification requirements should be limited. Where a non-standard charter is submitted, national law may govern authentication of identity or signature only if the same objective cannot be achieved through EU trust services. The legal form and substantive validity of the charter should remain governed by the Regulation.

Fifth, Article 21's two-year waiting period should be removed. An existing company should be able to convert when its financing needs require it. Common safeguards for creditors, employees and minority shareholders can apply regardless of age.

Finally, domestic conversion should produce a common result within a common maximum period. The steps performed by the pre-conversion national form may remain national. The criteria for registration as EU Inc. and the legal effect of conversion should be European.

Recommendation 5. Establish uniform governance, liability and employee-equity rules

Provisions concerned: Articles 42, 44, 45, 51, 55, 72 and 78.

The Regulation should remove contradictions between enabling financing provisions and mandatory governance rules.

Article 42 should clarify that the general meeting's appointment power is subject to rights granted in the articles to a share class, named investor or holder of a specified instrument. Removal should follow the same allocation unless the appointee is disqualified or removal for cause is required by the Regulation.

Article 51 should permit the articles to define in advance how class consent operates. This can include a waiver for a specified drag-along, restructuring or down-round mechanism, or the allocation of consent to a class representative. Informed approval in the charter or investment round provides the relevant safeguard; a mandatory second veto after interests have changed can defeat the original bargain.

Article 55 should state that the listed class rights are non-exhaustive and valid regardless of whether an equivalent right exists under the national law of registration. Rights may also be attached to a named investor or an objectively defined shareholding, provided they are disclosed in the articles or digital share register.

Article 44 should provide a genuine business judgment safe harbour. A poor outcome alone should not expose a disinterested director to liability where the director acted in good faith, was adequately informed and rationally believed the decision served the company's interests. Paragraph 4 should confine national law to procedure and remedies, preserving the substantive duty and safe harbour established by the Regulation.

The articles should be allowed to provide proportionate exculpation and indemnification, excluding fraud, intentional misconduct and knowing breach. Implementing a valid class right or shareholders' agreement should not expose directors to liability solely because another shareholder receives a less favourable outcome.

Article 72 should be reviewed in relation to redemption. Creditor protection should remain effective. A contractual redemption right should nevertheless remain available where the company is adequately solvent despite accumulated losses that cause the balance-sheet test to be missed. One option is to allow redemption when either the balance-sheet or solvency test is met, with director liability for an unreasonable solvency assessment and clear creditor remedies.

Article 78 should allow the exercise price to be freely determined, including a nominal price, subject to disclosure and tax law. It should expressly permit:

- cash exercise;
- net exercise, with a reduced number of shares delivered;
- cashless exercise financed through the immediate sale of part of the shares;
- settlement through treasury shares;

- withholding of shares or proceeds for tax obligations.

An EU employee equity regime that requires employees to provide cash before liquidity exists will exclude many of the people it is meant to benefit.

Recommendation 6. Guarantee cross-border equivalence and uniform interpretation

Provisions concerned: Articles 59, 60 and 103; new provisions on dispute resolution and judicial coordination.

The final Regulation should protect EU Inc. after incorporation.

Article 103 should impose equal treatment as the rule. The open-ended objective-justification clause should be replaced by a closed list of legitimate objectives. Any permitted differential treatment should be necessary, proportionate and unrelated to the Member State of registration.

The specific prohibitions on local presence, local representatives, domestic payment accounts and reincorporation should be retained. They should also cover requirements to use a domestic intermediary, domestic corporate form or additional national registration when the information is already available through BRIS.

Article 60 should prevent a Member State from making access to a regulated market depend on a discretionary national choice. Applicable securities law can override private-company mechanics where necessary for market integrity. An EU Inc. that satisfies Union listing requirements should be able to retain its legal form.

Article 59 should provide a common standard for rectifying the digital share register. National procedure can identify the competent authority. The grounds, interim protection and legal effect of rectification should be uniform.

Uniform text also needs uniform interpretation. Three mechanisms can reduce divergence:

1. The Regulation should permit arbitration clauses for internal corporate disputes, subject to protection for parties who did not validly consent and to the non-arbitrability of public enforcement.
2. The Commission should maintain a searchable repository of national judgments, arbitral awards where publication is permitted, registry decisions and Court of Justice rulings concerning EU Inc.
3. National courts should be able to request accelerated treatment of preliminary references that concern the validity or interpretation of the common corporate core.

These measures would give national institutions the information and incentives needed to apply one regime consistently, without creating a new European corporate court.

6. Conclusion: A European Company Form Must Produce European Rights

EU Inc. can still become the most important European company-law reform in decades. The July compromise retains a directly applicable Regulation, digital formation and an unusually broad set of common rules. The case for improving it is therefore stronger than the case for abandoning it.

The final negotiations should give priority to the legal product that emerges after registration. Registration speed is already one of the compromise's strongest features.

Article 4 must ring-fence a European corporate core and prevent domestic doctrines from rebuilding national variants. An optional financing module must validate the arrangements on which startup investment depends. Templates must extend to the full documentation package and provide a real safe harbour. Formation and conversion must follow European criteria. Governance, liability and employee equity must work as a coherent system. Cross-border treatment and interpretation must preserve the same rights after the company begins to operate.

These changes leave tax, labour law, social security, accounting and sectoral regulation within their existing frameworks. They require precision about the matters for which uniformity is the purpose of the instrument.

EU Inc.'s success will depend on founders and investors knowing that the same articles, financing instruments and governance rights have the same legal effect across the Union. The 48-hour online registration process is a useful entry point to that common legal product.

If national corporate law can re-enter whenever the Regulation is silent, incomplete or politically inconvenient, EU Inc. will reproduce the fragmentation it was created to overcome. A European company form must produce European rights.

Technical Annex

Indicative Legislative Changes

A. Recitals 6 and 6a

PROBLEM

The recitals recognise flexibility but do not establish a sufficiently clear boundary between the European regime and national corporate law.

INDICATIVE CHANGE

State that the Regulation establishes a common corporate core for the formation, internal organisation, governance and financing of EU Inc. National corporate law applies only where expressly provided and may not supplement or restrict arrangements governed or permitted by the Regulation or the articles.

EXPECTED EFFECT

Provides interpretative guidance for courts, registrars, notaries and national legislators.

B. Article 4

PROBLEM

Member States may designate one or several equivalent national forms or specify the corporate-law rules applicable to EU Inc.

INDICATIVE REPLACEMENT

1. EU Inc. companies shall be governed by this Regulation and, where and to the extent that this Regulation requires or permits a matter to be regulated by them, by their articles of association.
2. National law shall apply only where this Regulation expressly so provides.
3. National corporate law shall not supplement, restrict, invalidate or recharacterise rights, instruments or arrangements governed or permitted by this Regulation or by the articles of association.
4. Limitations on private ordering under this Regulation shall be interpreted narrowly. Analogy, national corporate-law doctrines and general clauses shall not be used to deny registration or effect to an arrangement that this Regulation does not expressly prohibit, without prejudice to the Treaties, the Charter, fraud, intentional misconduct and express anti-abuse provisions of this Regulation.

EXPECTED EFFECT

Prevents EU Inc. from becoming a set of national variants and protects the Regulation's enabling provisions in application.

C. Article 8

PROBLEM

Templates cover standard articles only. Non-use reactivates national formality and excludes the fast track.

INDICATIVE CHANGE

Retitle the provision "EU templates and model instruments". Require modular models for articles, shareholders' agreements, investment agreements, convertibles and employee plans. Provide that compliant clauses are presumed valid, registrable and enforceable. Allow approved combinations of modules within the fast track.

EXPECTED EFFECT

Reduces transaction costs without forcing venture-backed companies into a commercially unrealistic standard charter.

D. Articles 14 to 18

PROBLEM

Member States retain institutional choice and the standard procedure has a national cost ceiling. Non-standard documentation can face national certification rules.

INDICATIVE CHANGE

Make Article 14's checklist exhaustive. Permit national choice of authority but prohibit additional substantive controls. Apply the EUR 100 ceiling to approved modular charters and add a common ceiling for the standard procedure. Limit national authentication requirements to identity and signature where EU trust services are insufficient.

EXPECTED EFFECT

Creates equivalent formation outcomes while respecting national administrative structures.

E. Article 21

PROBLEM

Domestic conversion remains governed by national law and is unavailable for two years unless two sets of annual accounts have been approved.

INDICATIVE CHANGE

Delete paragraph 4. Establish common eligibility, creditor, employee and minority-protection requirements and a maximum period for registration as EU Inc.

EXPECTED EFFECT

Allows young companies to adopt EU Inc. when their first institutional financing makes conversion necessary.

F. New Chapter VIIa: EU Startup and Venture Financing Module

PROBLEM

The Regulation permits several instruments but does not provide a complete and protected contractual architecture for unlisted venture-backed companies.

INDICATIVE CORE PROVISION

> An EU Inc. whose securities are not admitted to trading on a regulated market may elect in its articles of association to apply the EU Startup and Venture Financing Module. Under the Module, the articles and related agreements may provide for any differentiated economic, voting, governance, conversion, redemption, transfer, vesting, exit or employee-equity right, unless expressly prohibited by this Regulation.

Add a non-exhaustive list covering preferred shares, liquidation preferences, board and consent rights, drag-along, tag-along, anti-dilution, founder vesting, leaver provisions, convertible and SAFE-like instruments, redemption, option pools and cashless or net exercise.

EXPECTED EFFECT

Creates an identifiable European financing product without restricting access to EU Inc. generally or relying on national startup certification.

G. Articles 42, 51 and 55

PROBLEM

General-meeting powers and mandatory class consent can conflict with board-appointment rights, drag-along clauses and negotiated down-round mechanisms.

INDICATIVE CHANGE

Make appointment and removal powers subject to disclosed rights attached to classes, investors or specified holdings. Allow the articles to define advance class-consent waivers for named mechanisms. Clarify that the Article 55 list is non-exhaustive and protected from contrary national law.

EXPECTED EFFECT

Aligns governance provisions with the economic and control arrangements used in professional financing rounds.

H. Article 44

PROBLEM

National law "further governs" director liability, weakening the common standard.

INDICATIVE CHANGE

Replace paragraph 3 with a business judgment safe harbour based on good faith, adequate information, disinterest and rational belief in the company's interests. Limit national law to procedure and remedies. Permit proportionate exculpation and indemnification, excluding fraud, intentional misconduct and knowing breach.

EXPECTED EFFECT

Gives directors one substantive standard and protects the implementation of valid financing arrangements.

I. Articles 72 and 78

PROBLEM

Cumulative distribution tests can defeat redemption. Employee option exercise must be paid in cash.

INDICATIVE CHANGE

Permit a redemption where the company meets a robust solvency test, with director and shareholder liability for an improper assessment. Permit nominal exercise prices, net exercise, cashless exercise, treasury-share settlement and withholding for taxes.

EXPECTED EFFECT

Makes redemption and employee equity operational for loss-making but viable startups and employees without spare liquidity.

J. Articles 59, 60 and 103

PROBLEM

Share-register rectification remains national, access to regulated markets depends on national legislation, and equal treatment is weakened by a broad justification clause.

INDICATIVE CHANGE

Harmonise the grounds and effect of register rectification. Remove the national option to prohibit listing where Union requirements are met. Move any justified exceptions to Article 103 into a closed list and preserve absolute prohibitions on local presence, reincorporation, domestic intermediaries and duplicative registration.

EXPECTED EFFECT

Protects the portability of the form after incorporation and reduces host-state interference.

References

1. Council of the European Union, *Proposal for a Regulation on the 28th Regime - EU Inc.: First Presidency Compromise Text*, ST 11829/26, 17 July 2026. https://table.media/assets/documents/177_euinc.pdf

2. European Commission, *Proposal for a Regulation on the 28th Regime Corporate Legal Framework - EU Inc.*, COM(2026) 321 final, 18 March 2026. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52026PC0321

3. Luca Enriques, Casimiro A. Nigro and Tobias H. Tröger, *The EU Inc.: A Half-Naked 28th Regime*, ECGI Law Working Paper No. 942/2026. https://www.ecgi.global/publications/working-papers/the-eu-inc-a-half-naked-28th-regime

4. Luca Enriques, Casimiro A. Nigro and Tobias H. Tröger, *Can U.S. Venture Capital Contracts Be Transplanted into Europe? Systematic Evidence from Germany and Italy*, ECGI Law Working Paper No. 848/2025. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5287685

5. Luca Enriques, Casimiro A. Nigro and Tobias H. Tröger, *Mandatory Corporate Law as an Obstacle to Venture Capital Contracting in Europe: Implications for Markets and Policymaking*, ECGI Law Working Paper No. 834/2025. https://www.ecgi.global/publications/working-papers/mandatory-corporate-law-as-an-obstacle-to-venture-capital-contracting

6. Luca Enriques and Casimiro A. Nigro, *No Private Ordering Please, We're Italian*, 11 Italian Law Journal 139 (2025). https://theitalianlawjournal.it/data/uploads/11-italj-1-2025/139-enriques-nigro.pdf

7. Luca Enriques, Casimiro A. Nigro and Tobias H. Tröger, *Templates in the EU Inc. Regulation Proposal*, ECGI Law Working Paper No. 925/2026. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6777038

8. Luca Enriques and Casimiro A. Nigro, *Making EU Inc. Fit for Venture Capital*, IEP Bocconi working document, 16 July 2026. https://iep.unibocconi.eu/making-eu-inc-fit-venture-capital

9. Marco Ventoruzzo, *The New EU Inc.: A Single Corporate Form for a Single Market*, AREL Single Market Lab, 31 March 2026. https://www.arel.it/en/papers/the-new-eu-inc/

10. Giovanni Strampelli, *EU Inc.: A Flexible but Incomplete Blueprint for European Startup Finance*, Oxford Business Law Blog, 29 April 2026. https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/eu-inc-flexible-incomplete-blueprint-european-startup-finance