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EUROPE.**

# **THE EU'S 28<sup>TH</sup> REGIME**

A modern corporate legal framework

Factsheet

**FACTS.**

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## **HIGHLIGHTS**

The 28<sup>th</sup> Regime is a key element in the European Commission's competitiveness compass. By introducing a company structure that stands outside Member State's own regimes, it aims to reinforce the single market and remove internal barriers.

It is anticipated that there will be several measures proposed under the aegis of the 28<sup>th</sup> Regime. The first proposal is a Regulation that introduces a 'cradle to grave' legal framework covering all aspects of company law from formation to dissolution. It also introduces the concept of 'EU Inc'.

The proposed legal system is designed to be 'digital only', emphasising the concept of 'once-only' submission of information, and allow quick and low-cost company formation.

This document summarises the main elements of the proposal and identifies those elements derived from exiting EU acquis.

# PROPOSED 28<sup>TH</sup> REGIME REGULATION

## INTRODUCTION

The 28<sup>th</sup> Regime is a proposal for a company law system that sits outside Member States' own company law structures. It would be open to any organisation that registers in the EU, provided it has at least one director resident in the EU, and it is designed to feature a high degree of digitalisation.

Many of the advantages promoted for the 28<sup>th</sup> Regime already exist under current EU law. For example, the right to register a company in one Member State and conduct operations in another is a fundamental right laid down in articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU).

Several provisions in the proposed Regulation build on existing company law directives. In particular, they draw from Directive (EU) 2017/1132, which entered into force on 30 June 2017, and from Directive (EU) 2025/25, amending Directives 2009/102/EC and (EU) 2017/1132, which entered into force on 30 January 2025.

Because the 28<sup>th</sup> Regime is proposed as a Regulation, it would apply directly and uniformly in all Member States once agreed, without the need for a national transposition process. At the same time, the draft Regulation leaves a number of elements to be determined under existing national legal systems.

## THE BASICS

The proposal introduces a new harmonised form of limited liability company. Companies formed or converted under this Regulation would use a name followed by the suffix "EU Inc."

There is no specified scope in terms of size. Therefore, the provisions are open to all companies, whether newly incorporated for this purpose or created through domestic or cross-border conversions, mergers, or divisions of existing companies (article 3). Cross-border conversions, mergers and divisions of existing companies remain subject to the relevant provisions of Directive (EU) 2017/1132, namely articles 21 and 41 (more details below).

Where this draft Regulation does not regulate a specific matter of law, the relevant provisions of the Member State of registration have primacy. Article 12 makes this explicit in respect of employee participation.

Member States may not treat EU Inc. companies less favourably than other companies formed in their jurisdiction, unless such different treatment is justified and proportionate, as stated in article 102.

In particular, Member States are not allowed to:

- deny EU Inc. companies access to public support measures
- impose authorisation or other requirements for taking up or pursuing an economic activity based on the location of their registered office
- require a local representative or physical presence, or
- refuse payment accounts opened in another Member State.

## **INCORPORATION AND REGISTRATION**

An EU Inc. company may be formed by one or more natural or legal persons (article 3(c)) and may have one or more shareholders at incorporation. It may also have one or more directors at incorporation, but must always have at least one natural person as a director (article 42).

Harmonised model articles of association will be made available, and must cover at least the matters referred to in the Annex to this draft Regulation (article 7).

An EU Inc. shall have its registered office **and** its central administration / principal place of business in the Union (article 9). There is, however, no obligation for the registered office and the principal base to be located in the same Member State – in accordance with the freedom of establishment in the TFEU and related case law of the European Court of Justice (ECJ).

Member States must digitalise all of the procedures described in this draft Regulation (article 10) - the principle of 'digital-only'. Company procedures are, therefore, digital by default, unless the articles of association specify otherwise. Member States have the right to override the digital-only procedures in exceptional circumstances – the physical presence of a person representing the company can only be required on a case-by-case basis.

A harmonised, digital application form shall be used for formation of an EU Inc. (article 13). Applications can be submitted via an EU portal or via a national business register. A fast-track registration procedure will be available in most cases (article 16).

The principle of "once-only" submission, derived from Directive (EU) 2025/25, applies to the registration process. This means that information submitted is circulated to all relevant government bodies in the Member State of registration. This includes the company's EUID, and also data relevant for obtaining a tax identification number, a VAT identification number and for the beneficial ownership register in the Member State of registration. That business register shall also digitally exchange the information about the EU Inc. with the social security authorities (article 20).

Once the registration process is complete, the EU Inc. can request from the national register a multilingual EU company certificate, compatible with the proposed European Business Wallet, in accordance with article 30 Directive (EU) 2017/1132. This certificate must be accepted by all Member States as proof of the company's valid formation and of the veracity of information on the register.

## **DOCUMENTATION SUBMITTED TO THE REGISTER**

Documents and information filed in respect of the governance activities of EU Inc. (resolutions, company filings, etc.) must be signed either via a trust service or using the signing function of the proposed European Business Wallet (article 23). Signing and submitting forms can be delegated to an electronic filing agent, using the EU digital power of attorney (article 24).

Digital copies and extracts of documents and information about an EU Inc., provided and certified as true copies by a business register, and authenticated through a trust service or the European Business Wallet presented in another Member State, are exempt from legalisation and similar formalities (article 32), reflecting rules derived from Directive (EU) 2017/1132.

Likewise, documents and information relating to an EU Inc. held on a business register cannot generally be subject to demands for translation (article 33), unless it is 'strictly necessary' and in limited circumstances. Where this is the case, the translation can be made by an AI translation agent approved by the relevant Member State.

Key company data must be made publicly available in the business register (article 25). Companies are required to 'keep up to date' documentation and information filed in the business register (article 27). They

shall file amendments to the articles of association, either via the EU portal or the national register, within 5 days after the amendment resolution has been made.

For other filing deadlines, Article 15 of Directive (EU) 2017/1132 applies. It provides that the documents must be normally entered in the register within 21 days of receipt of the complete documentation regarding those changes including, if applicable, the legality check as required under national law for entry in the file. The filing requirements for annual accounts are those contained in Directives 86/635/EEC, 91/674/EEC and Directive 2013/34/EU.

## **ACCOUNTING LAW**

The EU Inc. is subject to the accounting requirements of the Member State where its registered office is situated (article 105). Where the law of the Member State of registration requires it, the company must also file the average number of employees during the financial year in accordance with article 26, which is derived from Directive (EU) 2017/1132.

The company is not required to issue shares with a nominal share value nor have a fixed amount of capital.

## **INTERNAL ORGANISATION**

Chapter V of the draft Regulation contains the detailed rules relating to the internal organisation of an EU Inc. Key elements include:

- the general meeting grants the power to approve annual accounts, to appoint and dismiss directors at any time and exercise other matters as specified in the draft Regulation.
- directors must disclose any conflict of interest and refrain from taking part in the decision-making process where this exists
- the articles **may** require certain or all related party transactions to be brought to attention of shareholders, the board or the general meeting (article 46)
- general meetings and directors' meetings **may** be held online or in hybrid form
- the articles **may** allow written resolution
- shareholders' decisions are by simple majority; a two-thirds majority is required for amending the articles (this requirement can also be amended in the articles) (article 50)

## **SHARES AND SHARE CAPITAL**

Chapter VI contains the detailed rules relating to shares, their issue, transfer and recording. These include

- all shares are to be held in a digital register, available for all shareholders and legitimately interested parties
- Unless the articles state otherwise, all shares carry one vote and must be freely transferable, using digital procedures (articles 58 and 59)
- Member States cannot prevent EU Inc. from seeking listing on a multilateral trading facility provided that all applicable legal requirements are met (article 60)

Chapter VII contains detailed provisions in respect of the value of shares, consideration, issue of new shares and payment in kind for shares. Notable provisions, many of which can be amended in the articles, include:

- a priori, shares do not have a nominal value and do not contribute to capital (article 61).

- If the articles specify a nominal value this shall be a contribution to capital and the capital element must be fully subscribed and provided on issue
- all shares must have the same nominal value
- a company cannot have shares with and without a nominal value
- A company is not required to have a minimum amount of capital or to build up capital or legal reserves over time (article 62).
- Consideration for shares can take the form of any transfer of economic value – including payments in kind (article 64). Payments in-kind by providing work and services cannot be contributed to capital.
- The issue of new shares is to be decided by general meeting, and issues of new shares are subject to 14-day pre-emption rights for existing shareholders.

### **BRANCHES AND SUBSIDIARIES**

EU Inc. companies can form branches or subsidiaries in other Member States. Based on the “enter-once” principle, and using information transmitted by the BRIS system, the Member State of registration of the branch or subsidiary may not request information already on file about the parent EU Inc., though it may ask for additional information not yet on record.

### **EU SHARE OPTION SCHEME**

The draft Regulation includes provisions on a specific share option scheme, the EU ESO. Under this scheme, the chargeable event for tax purposes only takes place on disposal of the relevant shares.

### **LIQUIDATION / WINDING UP**

It also contains specific liquidation and winding up rules, including a fast-track liquidation procedure for “innovative companies”.

## **THE SPECIFICS**

### **ARTICLES OF ASSOCIATION (ARTICLES 7 & 8)**

The articles of association shall be drawn up in at least one official language of the Member State of registration and in a customary international business language. When the model articles of association are used, both language versions have equivalent legal status. The Commission will provide the multilingual EU templates via a delegated act.

The articles may be amended before or after incorporation. However, doing so will have potential impacts:

- if non-standard articles are used, the national language version has primacy where there are discrepancies between the language versions
- national laws concerning the drawing up and certification of articles are deemed to be automatically satisfied when model articles are adopted. This is not the case for amended articles

The articles of association must be signed by the founding shareholders via a trust service as specified in Regulation 910/2014, in line with article 13.

## **FORMATION, FILING AND EU CENTRAL INTERFACE**

### **APPLICATION FORM**

The harmonised, digital application form is to be completed by the prospective members of the board and signed through a trust service (article 13). The application form will contain the information necessary to allow:

- a) company formation in the national business register
- b) issuing the tax identification number, TIN and/or
- c) issuing the VAT identification number
- d) registering beneficial ownership information in the beneficial ownership register.

The application form must be accompanied by the articles of association and will contain a declaration from the prospective directors that they acknowledge their duties and declare any circumstances that could lead to their disqualification in the Member State of registration. If such circumstances are disclosed, the fast-track application procedure will not apply.

Member States are required to subject the articles of association to 'preventative control' (article 14, derived from Directive (EU) 2025/25), to verify that:

- a) the formal requirements for the articles of association are fulfilled and that EU templates are used correctly
- b) the mandatory minimum content is included as specified in the Annex
- c) the name and the object of the company comply with the requirements of this Regulation
- d) the applicants have the necessary legal capacity and have authority to represent the company
- e) any consideration that is to be contributed to capital have been fully provided and, when provided in-kind, that the relevant rules have been met

### **BRIS**

The Commission is required to establish BRIS (Business Registers Interconnection System) – an electronic platform to interconnect Member State business registers, building on Directive (EU) 2017/1132.

When an EU Inc. is formed through the central interface, the European Commission is responsible for transmitting the data to the business register of the Member State of registration. The Member State has the responsibility for deciding to register the company.

The central interface shall also provide information about the registration of intellectual property rights, including trademarks and designs.

### **FAST-TRACK FORMATION**

Member States shall ensure that the preventive control carried out in accordance with article 14 and the registration of the EU Inc. is completed within 48 hours from the submission of the documents through the EU central interface and with a maximum cost of EUR 100 or equivalent sum in the currency applicable in the Member State of registration (article 16).

Where the standard articles of association are not used, the deadline for the preventative control and registration shall be completed within 5 working days from the submission of the application form and the articles.

If the EU Inc. is formed using the Member States' business register, the process must also be online and subject to preventative controls as for formations through the EU central interface – including fast-track procedures.

## **CROSS BORDER CONVERSIONS**

EU Inc. can also be created by cross-border conversions, mergers etc.

Cross border conversions are covered by detailed rules in Directive (EU) 2017/1132, as introduced by the Mobility Directive (EU) 2019/2121. Companies looking to convert their existing national company format into an EU Inc. would need to:

- prepare the draft terms for the conversion and prepare a report for members and employees
- engage an independent expert to examine the draft terms and prepare a report for members (unless members agree to waive this)
- publicly disclose the details of the planned conversion
- vote on the planned conversion at a general meeting with at least a two-thirds majority
- offer dissenting shareholders a chance to dispose of their shares in return for adequate cash compensation
- provide for the protection of creditors and employees, including a consultation with employees, and
- allow both the Member State of origin and the Member State of destination to review the draft terms to ensure compliance with their respective local laws.

## **INTERNAL ORGANISATION**

Chapter V of the draft Regulation contains the detailed rules relating to the internal organisation of an EU Inc. Key elements include:

- the general meeting grants the power to approve annual accounts, to appoint and dismiss directors at any time and exercise other matters as specified in the draft Regulation. Instructions are binding on directors unless they conflict with the draft Regulation or the articles (article 42)
- director's and co-directors' have the automatic right to represent the EU Inc. The articles or the general meeting may restrict the powers of representation, but these restrictions do not affect the rights of 3<sup>rd</sup> parties (article 43)
- directors must disclose any conflict of interest and refrain from taking part in the decision-making process where this exists – this restriction can be removed via the articles or in general meeting (article 45)
- the articles **may** require certain or all related party transactions to be brought to attention of shareholders, the board or the general meeting (article 46)
- general meetings and directors' meetings **may** be held online or in hybrid form – but there must be an electronic means of identifying shareholders entitled to attend and vote at a general meeting, with the board deciding on the validity of that system (article 47)
- the articles **may** allow written resolution; electronic written resolutions may be used when means are provided to establish the identity of those voting, establish that all entitled persons receive the resolution and that consent is stored and can be verified (article 48)

- shareholders' decisions are by simple majority; Two-thirds majority is required for amending the articles (this requirement can also be amended in the articles) (article 50)
- A shareholder can apply to the competent court to force other shareholders of the EU Inc. to acquire their shares if the company's affairs have been conducted in an oppressive manner (article 52)

## SHARE CAPITAL

Chapter VI contains the detailed rules relating to shares, their issue, transfer and recording.

- All shares are to be held in a digital register. Bearer shares are not permitted. The digital register must be available to all shareholders and legitimately interested parties and articles 53 and 54 cover the contents of the register and the share certificate
  - Unless the articles state otherwise, all shares carry one vote and must be freely transferable, using digital procedures (articles 58 and 59)
- Member States cannot prevent EU Inc. from seeking listing on a multilateral trading facility provided that all applicable legal requirements are met (article 60)

Chapter VII contains detailed provisions in respect of the value of shares, consideration, issue of new shares and payment in-kind for shares. Notable provisions, many of which can be amended in the articles, include:

- Shares do not have a nominal value and do not contribute to capital (article 61). If the articles specify a nominal value:
  - this shall be a contribution to capital and the capital element must be fully subscribed and provided on issue
  - all shares must have the same nominal value
  - a company cannot have shares with and without a nominal value
- A company is not required to have a minimum amount of capital or to build up capital or legal reserves over time (article 62). If capital exists, maintenance of capital rules applies (article 63)
  - Consideration for shares can take the form of any transfer of economic value – including payments in kind (article 64). Payments in-kind by providing work and services cannot be contributed to capital. There are detailed rules for in-kind consideration (article 65). These are derived from article 49 of Directive (EU) 2017/1132, and include:
    - in-kind consideration shall have a determinable value – stated in the articles for first shares and in the documentation in relation to the issue of further shares
    - a report by one or more independent experts approved the relevant authorities is required before the issuance of shares – specifying the assets comprising the consideration, the basis of valuation and whether the consideration allocated is of at least the value specified in the documentation
    - the requirement for an independent expert's report can be waived through the articles or a general meeting – the waiver must be on public record
    - if in-kind consideration is found to be significantly over-valued, the excess is recoverable from the shareholder

- The issue of new shares is to be decided by general meeting, or if authorised by the articles, by the board (article 67). The same provisions also apply to the issue of convertible instruments (article 68) and redeemable shares (article 76)
- Issues of new shares are subject to 14-day pre-emption rights for existing shareholders. The general meeting or the board, if authorised, can override pre-emption rights
- There are rules relating to increases in capital, distributions, acquisition and treatment of own shares and capital reductions (arts 70 to 77)

## **FORMATION OF SUBSIDIARIES AND BRANCHES**

Any company may form an EU Inc. as a subsidiary either through a business register or via the EU central interface and cannot be asked for information or documentation already available in BRIS (article 19). Where the subsidiary is in another Member State, the local business register shall obtain directly from BRIS information and documentation relating to the holding company.

Likewise, a branch may be formed in another Member State using an application form electronically signed by a director by means of a recognised electronic identification system (article 38). No information can be requested if already available on BRIS. Information to be included with the application form includes basic information about the branch (which is specified in article 40) as well as sufficient information to enable the issuance of tax and VAT identification numbers.

## **THE EU EMPLOYEE STOCK OPTION PLAN (EU-ESO) (ARTICLES 78 – 79)**

The EU ESO is restricted to employees and board members of the EU Inc. It is not available to employees or board members that hold more than 25% of voting rights or rights in a winding up or have held more than 25% in the 24 months preceding issue.

The general meeting shall decide on the group of eligible persons, the maximum number of warrants that can be issued and the waiting period to exercise the options – which cannot be less than 24 months after issue.

Warrants are to be issued with nil-value and exercised for cash and there are no pre-emption rights.

The taxable event will be on the disposal of the shares for which the option has been exercised. The taxable amount will be the difference between the sale proceeds and exercise price.

The tax on disposal of EU ESO stock will be based on the most preferential tax treatment available, presumably, in the Member State of residence at the time that the holder of the stock disposes of them.

## **WINDING UP**

There are requirements that when a company is dissolved as a result of a solvent liquidation, this information must be filed digitally with the business register and that the register is updated immediately (articles 80 and 82).

## **FAST TRACK LIQUIDATION (ARTICLES 83 – 87)**

The fast-track procedure requires the simultaneous notification of dissolution (per article 80), and an application for removal from the business register, submitted fully online. The filing shall include key information (article 84) including the financial statement of liquidation, evidence of consent from creditors and confirmation that the records will be kept for 6 months from removal from the register.

Under the normal process, the striking off would take place within 30 days of receipt of the application,

Creditors have 30 days from the submission of the documentation mentioned in the previous paragraph to state their opposition to the fast-track process and require the opening of the ordinary liquidation process – submitting such claims via the business register.

Tax authorities also have 30 days to provide clearance, where required by national law, and may extend the deadline by a maximum of another 30 days to consider additional information.

### **WINDING UP OF INNOVATIVE EU INC. STARTUPS (ARTICLES 88 -101)**

This is the only specific section referring to innovative startups, which are defined in a proposal for a [Commission Recommendation on the definition of innovative enterprises, startups and high-growth scaleups](#).

It proposes a simplified winding-up procedure for insolvent innovative startups, where insolvency is defined as the EU Inc. being generally unable to pay its debts as they fall due. Member States are obliged to provide simple conditions to clarify when this arises.

As a default, an insolvency practitioner is appointed when simplified winding up procedures are opened. Where it can be demonstrated that an up-to-date balance sheet is available and that the most recent annual financial statements have been filed, the debtor (the company), a creditor or a group of creditors can request that an insolvency practitioner is not appointed if (article 90).

All proceedings are to be carried out digitally. A standard form will be provided requiring information, for example, about the creditors and the company's assets. The relevant competent authority will decide on the application without delay and a stay from individual enforcement action by creditors will be in place once the decision is made.

A competent authority can take the decision not to realise the assets of the company and close the winding up procedure if there are no assets, the assets are of such low value that they would not cover the costs of liquidation or the value of encumbered assets is less than the amount owed to secured creditors – in which case the secured creditors can take over the assets.

Member States are required to set up an electronic auction system for sales of assets of the debtor, which can also be used for other insolvency auctions (article 97). All known creditors are warned of the impending auction (article 101). Member States can restrict whether existing shareholders or managers are allowed to participate.

The competent authority has 6 months to decide on the simplified winding-up procedure – with the possibility to extend for another 6 months (article 102).

## THE ANNEX: MINIMUM CONTENT OF THE ARTICLES OF ASSOCIATION OF AN EU INC. COMPANY

An EU Inc. company shall have articles of association that cover at least the following particulars:

- the legal form
- the name of the company
- the address of the registered office of the company, including the Member State where it shall be/is registered
- the object of the company
- the amount of capital, including where the amount of capital is EUR 0
- the total number of shares issued
- where the shares of the company have a nominal value, that value
- the subscription of the first shares, including:
  - (i) the nature and value of any consideration for the shares
  - (ii) whether any part of the consideration is to be contributed to capital
  - (iii) for any part of the consideration that is not a contribution to capital, the time by which the consideration is to be paid in accordance with article 64(5)
  - (iv) the identity of the founding shareholder(s)
- the identity of the first director(s)
- the date of beginning and end of the financial year.

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