ACCOUNTANCY EUROPE.

CONSULTATION RESPONSE

ACCOUNTANCY EUROPE FEEDBACK: 28TH REGIME CORPORATE LEGAL FRAMEWORK – 'EU INC.' REGULATION

Dear Commissioner McGrath,

Accountancy Europe is pleased to provide feedback on the European Commission's proposed Regulation establishing a new 28th regime framework and the "EU Inc." legal form. Our members comprise 49 national institutes of accountants, auditors and advisers. Their day-to-day work includes supporting businesses with financial planning, reporting, data reliability, access to finance and governance, among other areas. A significant number of our practitioner members specialise in supporting SMEs.

Together with our practitioner experts and members, we have analysed the proposed 28th regime and EU Inc. framework and would like to offer a number of practical recommendations that we believe would further strengthen the proposal. This is a direct follow-up to our previous commitment to provide more detailed feedback on the proposal later on. We would also like to congratulate you and the Commission team for developing what is, overall, a strong and well-balanced proposal.

GENERAL COMMENTS

We would like to commend several important aspects of the proposed Regulation, such as:

a. the decision to maintain a broad scope for the EU Inc. legal form, rather than restricting it to a narrow category of companies such as "innovative start-ups", as it helps avoid market distortions and the creation of an uneven playing field between different types of companies

b. the emphasis on digitalised processes, the objective of enabling company formation within 48 hours, and the removal of paper-based and other burdensome administrative requirements which should significantly facilitate company creation across the EU. We also hope that the existence of an alternative EU Inc. framework will encourage Member States to review and simplify their own national company formation procedures, thereby extending similar benefits more broadly and beyond EU Inc. companies alone

c. the choice of a Regulation rather than a Directive, which should help minimise the risk of gold-plating during national implementation. We therefore strongly support the Commission's choice of legal instrument

Overall, we believe that the proposed Regulation strikes a reasonable balance between introducing new elements for the EU Inc. company form and reflecting current political realities. At the same time, the proposal remains relatively modest and is therefore unlikely, on its own, to fully address the obstacles faced by European companies seeking to grow and operate across borders.

Therefore, Accountancy Europe strongly believes that the EU Inc. legal framework should constitute only a first step, and that the 28th regime should be subsequently expanded through future proposals to provide additional harmonisation benefits for EU Inc. entities. The success of the 28th regime is dependent on building further elements into it in the future, and we strongly encourage the Commission to state this political ambition explicitly in the Regulation's recitals, making clear that the present proposal constitutes only the first stage of a broader and more comprehensive 28th regime.

In particular, we encourage the Commission to explore, at a later stage, ways to reduce fragmentation in areas such as taxation, labour law and other relevant legal frameworks affecting EU Inc. companies, and to especially

address additional specific needs of innovative start-ups. The ambition should be to create an EU Inc. 28th regime that is a European 'golden standard' in the eyes of investors, entrepreneurs and authorities alike.

We list below a number of practical adjustments that could be made to the proposal to make it even more effective.

EXPAND THE INDICATORS USED TO EVALUATE SUCCESS OF THE 28TH REGIME

The Commission proposal includes a commitment to review the uptake of the EU Inc. framework by companies, notably by assessing the number of such companies created (Recital 85 and Article 108). We welcome this explicit commitment to evaluating the effectiveness of the regime. However, we believe that the performance indicators currently proposed by the Commission are too limited to provide a sufficiently comprehensive picture of the regime's success.

The performance indicators outlined in Article 108 require the Commission to report on the uptake of the EU Inc. framework, but this assessment should extend beyond the mere number of EU Inc. companies established and also include meaningful economic, financial and other indicators. In principle, the regime could lead to a high number of incorporations while generating limited investment, scaling, job creation or broader contributions to EU competitiveness.

A broader set of indicators would also help assess the "quality", and not only the "quantity", of EU Inc. formations, including whether such entities represent genuine economic activity rather than shell companies, regulatory arbitrage structures or low-value incorporations.

We therefore encourage the Commission and the co-legislators to consider a broader range of performance indicators under Article 108, which could include, inter alia:

- capital raised by EU Inc. companies
- average time required for incorporation
- levels of cross-border investment activity
- size and scale of EU Inc. companies
- growth and survival rates
- employment creation
- uptake of employee share ownership schemes
- extent of cross-border operations and establishment
- indicators relating to fraud, abuse, insolvency and market integrity

ENSURE CONSISTENT TREATMENT BY NATIONAL AUTHORITIES

As indicated above, we commend the Regulation's objective of ensuring the fast, seamless and low-cost formation of EU Inc. companies. We are concerned, however, that certain provisions of the Regulation are drafted in relatively broad terms, which may result in divergent treatment of EU Inc. entities depending on the practices of the national authorities in the Member State of registration.

One such example is Article 28 (2), which provides that: "*Paragraph 1 is without prejudice to the obligation laid down in Union or national law to submit documents to complete procedural requirements or exceptionally and*

on a case-by-case basis, where public authorities have reasonable grounds to suspect abuse or fraud related the EU Inc. company."

While we fully support the objective of this and similar provisions in the Regulation in enabling national authorities to ensure compliance with applicable rules and to address risks of abuse or fraud, we believe that the wording used in certain provisions, including Article 28 (2), is overly broad and insufficiently precise. In practice, the possibility for authorities to request additional documentation could easily become the norm rather than the exception, particularly if the concept of "reasonable grounds" is interpreted expansively. This creates a risk of divergent practices across Member States, as well as precautionary or speculative requests for additional documentation made on a routine basis "just in case".

We therefore propose amending this and similar provisions throughout the Regulation to specify more clearly the circumstances under which authorities may require additional documentation from EU Inc. companies. Any such requests, or any differential treatment applied to EU Inc. entities, should be based on verifiable facts, documented indicators and appropriate procedural safeguards. Authorities should also be required to justify such requests in writing in order to ensure proportionality, limit unnecessary administrative burdens and avoid duplication.

REDUCE THE RESTRICTIONS ON EU-ESO

Article 78 (2) restricts the eligibility for warrants issued under the EU employee stock option plan (EU-ESO) to employees and members of the board of the EU-ESO and its subsidiaries providing that they hold 25% or less of the voting rights or rights in proceeds of the company or have held such shares in the 24 months preceding issuance.

We believe that the 25% holding is unnecessarily restrictive and may limit its usefulness by innovative companies who may well need more flexibility in their financing arrangements. We recommend a higher percentage, for example of 33%, to be considered. We also believe that the 24-month threshold for previous holdings in the EU-ESO is too restrictive and consideration should be given to reducing this, for example to 12 months, at least for innovative start-ups.

CLARIFY PLACE OF TAXATION OF EU-ESO

Article 79 sets out certain key elements regarding the taxation of warrants under the EU-ESO, including the taxable event and the calculation of the taxable amount, but it does not provide clarity on several other important aspects, most notably which Member State has the taxing rights upon disposal. This lack of legal certainty is problematic, may increase the risk of double taxation in certain situations and, thereby, reduce the appeal of the EU-ESOs.

We understand that the Commission's choice of the legal base for the proposal prevents it from dealing with tax issues such as providing legal certainty on the place of taxation. We would, however, recommend additional wording in Article 79 to indicate that the European Commission shall (e.g. by July 2027) issue a Recommendation to the Member States regarding the place of taxation of the EU-ESOs. Ideally, such a Recommendation would be followed by a legislative proposal.

For such a Recommendation, the Commission could consider different approaches for allocating the taxing rights, such as assigning them to the Member State in which the employee benefiting from the share options is resident at the time of disposal, or alternatively to the Member State in which the EU Inc. company issuing the shares has its registered office, or even a combination. Each of these and other approaches presents advantages and disadvantages, and we recognise that determining the appropriate allocation mechanism is likely to involve complex political considerations.

Nevertheless, our key point is that, regardless of the approach ultimately chosen for the allocation of EU-ESO taxing rights, the commitment to issue a Recommendation on this should be stated explicitly in Article 79 with the objective of providing some degree of legal certainty and hopefully minimise the risk of double taxation.

BROADEN THE APPLICATION OF THE SIMPLIFIED WINDING UP PROCESS

While a simplified winding-up process may be particularly beneficial for innovative start-ups, which are often inherently riskier than more traditional businesses and whose investors may seek a formalised and predictable exit mechanism, there does not appear to be a compelling justification for limiting this process exclusively to innovative start-ups.

We therefore believe that the rapid winding-up procedure set out in Chapter X of the Regulation should be made available to all EU Inc. companies. If the Commission's concern is that extending the procedure universally could place excessive pressure on the relevant authorities, eligibility could instead be limited to EU Inc. entities that meet the EU definition of SMEs. This would ensure that the simplified procedure remains accessible to a broader category of smaller businesses, rather than being restricted solely to a subset of innovative start-ups.

REMOVE THE SEEMINGLY REDUNDANT ARTICLE 105

Article 105, entitled "Accounting", provides that: "*The EU Inc. shall be subject to the requirements of the applicable accounting law of the Member State in which its registered office is situated. However, Article 26 shall apply as regards the filing and public availability of accounting documents of the EU Inc.*"

The substance of Article 105 appears to be largely covered by Article 4(2), which states that: "*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*".

In this respect, Article 105 appears to duplicate, in relation to accounting matters, the general conflict-of-laws rule already set out in Article 4 (2). This repetition risks creating unnecessary redundancy, confusion and potential legal ambiguity, and we therefore recommend deleting Article 105 altogether. If additional clarification is required in relation to accounting requirements, this could more appropriately be addressed directly within Article 26, rather than through a separate and partially overlapping provision. Alternatively, a reference "including accounting law" could be added to Article 4 (2).

CONCLUDING REMARKS

Accountancy Europe and its members remain committed to contributing constructively to the co-legislative process to help ensure that the proposed Regulation establishes a robust and effective EU Inc. framework that supports the growth of European businesses. We may provide additional recommendations at a later stage. In the meantime, should you wish to discuss any of the above suggestions in greater detail, we remain at your disposal.

Yours sincerely,

Jens Poll — President

Eelco van der Enden — CEO