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September 2026

EU Inc. as Europe's 28th Corporate Regime

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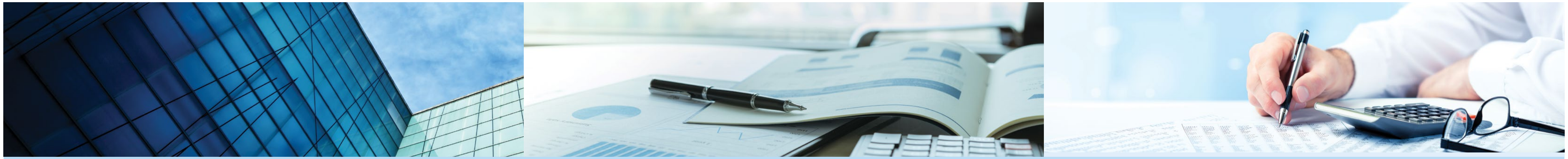
Edition 174



In this edition

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Introduction: Fragmentation and the European Response

For decades, European company law has developed primarily along national lines. While the internal market enables companies to offer goods and services across borders, the legal infrastructure governing their formation, financing, and governance remains fragmented across twenty-seven Member States. Each jurisdiction maintains its own incorporation requirements, capital rules, governance structures, and formalities. This diversity may be manageable for companies operating domestically, but it often becomes a structural constraint for startups and scaleups seeking to expand across borders.

This fragmentation has practical consequences. Cross-border expansion frequently requires the creation of multiple legal entities, each subject to local rules and procedures. Corporate restructurings are often slow and costly. Investors must navigate unfamiliar legal environments, and founders face legal uncertainty when scaling beyond their home jurisdiction. As a result, Europe has struggled to provide a company law framework that matches the speed and predictability offered by more centralised systems.

These concerns have increasingly moved to the forefront of European policy discussions. Reports on the future of the Single Market and European competitiveness identify company law fragmentation as a barrier to innovation, investment and growth. The startup and venture capital communities echo this, calling for a corporate form that enables companies to scale across the EU without having to effectively recreate themselves in each Member State.

The European Commission's response is the proposal for a regulation on the 28th regime corporate legal framework - "EU Inc." (the "**Proposal**"). Rather than harmonising national company laws, the Proposal introduces a new, optional corporate framework that coexists alongside existing national forms. The EU Inc. is conceived as a harmonised limited liability company with digital-first procedures, flexible governance, and a modern financing regime. Its ambition is not to replace national company law but to offer an alternative path for companies whose business model is European from the outset. Founders across the EU would be able to adopt this new form as an option alongside national company types. While the EU Inc. is not limited to startups, these are expected to be among its primary users.

In this edition of *Quoted*, we outline the EU Inc. proposal and examine a number of its key shortcomings and areas of concern. The following sections describe how the framework is structured in the Proposal, following the chapter structure of the Proposal.

Chapter 1: General Provisions

Chapter 1 sets out the foundational elements of the EU Inc. framework. It defines the EU Inc. as a limited liability company that may be formed by one or more natural or legal persons, either from scratch or through conversions, mergers, or divisions.

While the Proposal allows for further structural flexibility, it permits an EU Inc. to convert into a national limited liability company in its Member State of registration, or to carry out a merger or division, only after a twoyear waiting period (or once two sets of annual accounts have been adopted).

Crossborder conversions, mergers, and divisions involving an EU Inc. are not governed by the Proposal itself, but instead fall within the framework of the Mobility Directive (Directive (EU) 2017/1132, as amended). As the Mobility Directive leaves certain matters to Member States, crossborder operations involving an EU Inc. may therefore be subject to procedural requirements that differ from those applicable to comparable transactions carried out by purely national companies in the same jurisdiction.

Legal personality for an EU Inc. is acquired upon its registration in the business register of the chosen Member State and must be recognised across the EU. The EU Inc. is governed by a layered legal structure. The Proposal provides a harmonised core set of rules, while the articles of association further shape the company's internal organisation. For matters not addressed by either instrument, the national law of the Member State of registration applies by reference to a comparable domestic company form.

The Proposal requires companies to use the designation "EU Inc." in their name and introduces uniform rules on company names, registered offices, and the minimum statutory content of the articles of association. Those articles must be available both in the language of the Member State of registration and in a language customary in international business (such as English), reflecting the cross-border ambition of the regime.

A key principle introduced in this chapter is that of digital-only procedures. As a rule, all procedures within the scope of the Proposal must be capable of being completed fully online, with physical presence permitted only in narrowly defined exceptional circumstances. Employee participation rights are explicitly preserved by reference to applicable national rules.

While this structure seeks to combine harmonisation with flexibility, the continued role of national law means that EU Inc. does not operate in isolation from domestic legal systems. Notably, the Proposal does not introduce a harmonised method of taxation of the EU Inc. across the Member States, except for certain elements in relation to the EU Employee Stock Option Plan.

The continued role of national law raises the question of whether the EU Inc. will function as a genuinely uniform European company form or whether its application will continue to reflect national differences.

Chapter 2: EU Central Interface, Formation and Filing

Chapter 2 introduces the EU central interface based on the Business Registers Interconnection System (BRIS). This interface allows founders to incorporate an EU Inc. online using a harmonised application form and, where applicable, standard EU model articles of association.

Where these standard templates are used, a fast-track digital incorporation procedure applies. Registration must be completed within forty-eight hours at a capped cost of one hundred euros, including preventive control. Such preventive control is considered essential to mitigate the risk of abusive or fraudulent letterbox companies associated with tax evasion or money laundering. Where founders opt for tailor-made articles, longer deadlines apply and the cost cap does not apply.

Preventive control remains a mandatory element of the incorporation process, but its scope is limited. It focuses on formal compliance and required statutory content, as well as the legal capacity and authority of those acting on behalf of the company. This control may be carried out by administrative, judicial, or notarial authorities (depending on national arrangements), but must comply with the strict time and cost limits imposed by the Proposal.

The identification of founders and prospective directors, as well as the execution of incorporation documents, takes place through electronic identification and trust services in accordance with the eIDAS Regulation. This framework replaces physical appearance and traditional authentication methods with crossborder recognised digital identification, shifting the basis of legal certainty at incorporation from personal verification to systembased digital trust. It also ensures that individuals disqualified from serving as a director in any Member State cannot be appointed to the board of an EU Inc., thereby introducing a crossborder safeguard against abusive conduct.

For jurisdictions with a strong notarial tradition, this represents a significant shift in the mechanics of incorporation. The use of EU model articles effectively replaces the traditional notarial deed in fasttrack cases, resulting in a twotrack system: standardised incorporations follow a streamlined digital route, while more complex structures continue to involve longer timeframes and greater national involvement. This development raises broader questions about the evolving role of preventive oversight, as efficiency gains are achieved through standardisation and digitalisation, potentially at the expense of more substantive, casespecific scrutiny traditionally exercised at the incorporation stage.

Chapter 3: Accessibility and Cross-Border Use of EU Inc. Information

Chapter 3 harmonises the disclosure and accessibility of information relating to EU Inc. companies. It specifies which documents and data must be made publicly available through business registers and which must also be accessible at EU level via BRIS.

A key feature is the once-only principle. EU Inc. companies should not be required to submit the same information repeatedly when it is already available through interconnected registers. Instead, national public authorities are expected to consult existing data rather than request duplicate filings.

The Proposal also introduces EU-level instruments, such as the EU Company Certificate (a uniform document evidencing an EU Inc.'s registration and key details) and the digital EU power of attorney (intended to facilitate cross-border representation of the company). Legalisation and apostille requirements for company documents are abolished within the scope of the Proposal. This means that official documents issued by one Member State (such as a certificate of good standing or a register extract) must be accepted EU-wide without further formalities, except in exceptional cases where there are doubts as to their authenticity.

Chapter 4: Cross-Border Branches

Chapter 4 extends the digital and once-only logic to the establishment of branches in other Member States. EU Inc. companies may register branches fully online, either through the EU central interface or via national business registers.

Relevant information about the EU Inc. (such as its name, registration number, registered office, and directors) is automatically retrieved via BRIS when setting up a branch, so founders do not have to re-submit data already on file. The branch registration itself is completed using a standard online form. In addition, through the same digital process, the system facilitates the automatic issuance of local identifiers - such as tax identification numbers (TINs) and VAT numbers for the new branch, where required - by sharing relevant data with the competent authorities.

This harmonised procedure is intended to reduce both costs and administrative friction when expanding into other EU markets.

Chapter 5: Organisation

Chapter 5 addresses the internal organisation of EU Inc. companies. Management is entrusted to a board of directors composed exclusively of natural persons, with at least one director required to be resident in the EU. This approach diverges from the regimes in certain Member States, such as the Netherlands, where legal entities may serve as directors and no residency or nationality requirements apply. While the EU Inc. framework thereby ensures a minimum level of EU-based oversight, it may constrain companies seeking to appoint only nonEU individuals or to include corporate entities on their boards, potentially limiting flexibility in an international context.

Directors are subject to harmonised duties, including an obligation to act in the best interests of the company and to manage conflicts of interest. The Proposal also codifies certain principles, such as a business judgment rule to protect directors from personal liability for decisions taken in good faith on the basis of reasonable information, even if those decisions later turn out poorly. Enforcement of these duties and liability for breaches, however, remain matters of national law.

Shareholder and board meetings may be held fully online, and resolutions may be adopted in writing. Minority shareholders benefit from a number of protections, including a judicial exit right allowing them to seek a court-ordered buyout of their shares in cases of unfair prejudice.

From a comparative perspective, important institutional differences emerge between the EU Inc. and, for example, the Delaware corporate framework. The Proposal forms part of the European Commission's broader effort to strengthen Europe's competitiveness and reduce the incentive for founders to incorporate in jurisdictions such as Delaware. Delaware's attractiveness is closely linked to its specialised Court of Chancery. Over more than two centuries, that court has developed a deep and consistent body of corporate case law, providing companies and investors with a high degree of legal predictability. Disputes are adjudicated by judges with specific expertise in company law, within a well-understood and stable jurisprudential framework.

By contrast, the EU Inc. framework offers no directly comparable judicial infrastructure. Disputes involving an EU Inc. will be resolved by the courts of the Member State of registration, applying a combination of EU rules and domestic law. Although the Commission encourages Member States to consider establishing specialised chambers for EU Inc. disputes, this is optional rather than mandated.

As a result, legal certainty and consistency in the interpretation of EU Inc. rules will depend largely on national courts and legal cultures of the respective 27 Member States. This stands in contrast to Delaware's centralised adjudication model and underscores how institutional design, including specialised courts and coherent case law, plays a decisive role in the attractiveness of a company form.

Chapter 6: Digital Register, Shares and Share Transfers

Chapter 6 governs the issuance, registration, and transfer of shares in an EU Inc. All shares exist exclusively in dematerialised form and are recorded in a digital share register maintained by the company. Registration in this register has constitutive effect for the exercise of shareholder rights: the person recorded in the digital register is legally presumed to be the owner of the shares and entitled to all associated rights.

Shares are, in principle, freely transferable, subject to any restrictions laid down in the articles of association. Issuances and transfers may be executed fully online, through electronically signed instruments and registration in the digital share register. Member States may not require a notarial deed or a comparable formality for the issuance or transfer of EU Inc. shares to be legally effective.

This represents a fundamental departure from practice in several Member States, where notarial involvement traditionally plays a central role in share transactions. The absence of notarial intervention and other forms of preventive control significantly reduces transaction costs and delays, particularly in financing rounds and internal restructurings. However, by explicitly precluding Member States from imposing any notarial or similar formal requirement on share transfers, the Proposal also removes a prior independent check on the validity and integrity of such transactions.

Dutch civil law notaries would normally verify that shares are transferred free of encumbrances (e.g., not subject to seizure or pledges) and that formalities like board or shareholder approvals have been observed. Without this preventive oversight, share transactions rely entirely on the digital process, placing greater weight on the integrity of electronic identification, authentication, and record-keeping systems. If it later turns out that a transfer was fraudulent or that there is an error in the share register, the EU Inc. framework itself provides no dedicated mechanism for rectification. Any such issues must be resolved under the national law of the Member State of registration. In other words, a potentially pan-European problem would be addressed via divergent domestic solutions, which could undermine the uniformity the EU Inc. aims to achieve.

The Proposal does not eliminate preventive safeguards. For share transfers, however, it replaces independent notarial or comparable oversight with digital authentication and verification by the company. A share transfer agreement must be electronically signed, notified to the EU Inc. by both parties, verified by the company as regards the transferor's title and compliance with the articles of association, and recorded in the company-maintained digital share register before it becomes effective. The transfer documentation and the information recorded in that register, including the history and sequencing of transfers, therefore provide a digital trail against which irregularities can subsequently be identified.

The Proposal does not, however, establish a separate EU-level mechanism for monitoring share transfers or detecting fraud. Where the register is incorrect as a result of error, fraud or a failure to record a valid transfer, rectification is left to national law. While the Proposal requires Member States to provide penalties for certain breaches of the registration and record-keeping requirements, the effectiveness of the regime ultimately depends on the integrity of the digital records and on the effectiveness of the remedies and enforcement mechanisms under national law.

Chapter 7: Financing

Chapter 7 introduces a flexible financing framework. EU Inc. companies are not subject to a minimum capital requirement, and shares have no nominal value. Capital maintenance rules are replaced by balance sheet and solvency tests for distributions, share buybacks, and capital reductions.

Multiple classes of shares are permitted, and financing instruments such as convertibles and warrants are explicitly recognised. This allows financing structures commonly used in venture capital practice to be embedded directly within the corporate framework.

For debt finance providers (such as banks and, increasingly, private credit funds), the Proposal may provide greater transactional certainty, as an EU Inc. would remain bound by acts performed by its directors even where those acts are beyond the scope of the company's object. It could solve cross and upstream guarantee limitations now prevalent in certain Member States. However, other topics relevant for debt providers such as publication of financial statements and the creation of security over shares in a company are not covered, which may affect the uniform application of the Proposal.

Chapter 8: EU Employee Stock Option Plan

Chapter 8 establishes an optional EU employee stock option plan (**EU-ESO**). EU Inc. companies may issue EU-ESOs to employees and certain other eligible persons, subject to a mandatory waiting period. Under the Proposal, income derived from a qualifying EU-ESO by an eligible employee would be deemed to arise only when shares acquired on exercise are disposed of. The taxable amount would be the difference between the fair market value of the shares at disposal and the exercise price of the EU-ESOs. The aim is to strengthen the position of EU Inc. companies in attracting and retaining talent while leaving labour and tax law largely to national systems. This deferred timing of taxation is intended to prevent so-called “dry tax” outcomes, whereby employees would otherwise incur a tax liability on unrealised gains before liquidity is available (for example, upon exercise).

Several Member States have unilaterally enacted, or, like the Netherlands, are in the process of introducing targeted tax regimes for employee stock options in innovative start-ups and scale-ups. The Proposal specifies that warrants issued under the EU-ESO and the resulting shares must not receive tax treatment that is less favourable than that applicable to comparable employee stock options or similar instruments under national law.
The coexistence of the EU-ESO regime and domestic regimes may give rise to additional complexities and potentially divergent outcomes across Member States, particularly where the interaction between these regimes is not clearly defined.

Chapter 9: Closure of Solvent EU Inc. Companies

Chapter 9 addresses the dissolution and liquidation of solvent EU Inc. companies. Procedures are designed to be fully digital, with online filing and electronic communication between the company, creditors, and authorities.

The Proposal provides for an optional fast-track liquidation procedure where an EU Inc. has no assets or liabilities, or where all creditors have consented to the dissolution plan. In such cases, the winding-up can be completed swiftly (potentially within around three months), after which the company is struck off the register. During this process, the once-only principle is applied again: the company’s information and dissolution documents submitted to its home register are automatically shared with other relevant authorities (such as tax or social security) via BRIS, thereby reducing duplicative filing requirements. Directors remain liable for any undisclosed liabilities that emerge following a swift liquidation, and company records must be preserved for six years post-dissolution to protect creditors and other stakeholders.

For standard solvent liquidations (i.e. where assets remain to be distributed), an EU Inc. follows procedures broadly similar to those applicable to national companies, but within a harmonised framework that emphasises efficiency and transparency. A closed list of grounds for nullity is established to limit the circumstances in which a court may retroactively declare an EU Inc. void, thereby enhancing legal certainty for third parties dealing with the company during its existence.

Chapter 10: Insolvency and Simplified Liquidation for Innovative Startups

Chapter 10 introduces a simplified liquidation procedure for EU Inc. companies that qualify as *innovative startups*. The objective is to allow EU Inc. companies in this category to be wound up in an orderly manner through a swift and cost-effective process. This procedure operates alongside existing national insolvency and restructuring frameworks and is intended to allow failed startups to exit the market more quickly, largely thanks to its fully digital design.

The scope of this simplified liquidation procedure is limited to companies classified as innovative startups. The criteria for this classification are further specified in an accompanying recommendation of the European Commission, rather than in the Proposal itself. As a result, access to the simplified regime depends on compliance with criteria defined outside the core legislative text.

The procedure may be initiated once the company is generally unable to pay its debts as they mature - a threshold broadly comparable to the existing bankruptcy test under Dutch law. Proceedings may be initiated either by the debtor or by a creditor, using a standard form developed for this purpose, and notably without mandatory representation by a legal professional.

In principle, an insolvency practitioner (e.g. a bankruptcy trustee or *curator*) is appointed to prepare a list of creditors and claims. As an exception, it may be requested that the liquidation is conducted without an insolvency practitioner. In all cases, the simplified liquidation procedure follows a debtor in possession model. The debtor remains authorised to control the business, while the insolvency practitioner, where appointed, supervises compliance with applicable legal requirements.

Member States are required to ensure that assets of the insolvency estate can be realised through online judicial auction. During the procedure, the debtor may benefit from a temporary stay of individual enforcement actions in order to preserve the value of the insolvency estate. The procedure is designed to be completed within six months, with the possibility of a single extension of up to an additional six months if necessary.

The emphasis on digital communication, standardised forms and electronic asset realisation is intended to limit procedural costs and maximise value for the joint creditors. At the same time, the coexistence of this EU-level procedure with national insolvency regimes means that its practical operation will remain closely connected to domestic insolvency law and institutional capacity.

Conclusion and Next Steps

The EU Inc. represents a constructive and, some would argue, necessary first step towards addressing longstanding fragmentation in European company law. By introducing a harmonised corporate form with digital procedures, flexible governance, and a modern financing framework, the Proposal responds to many of the structural issues faced by companies operating at a European scale.

At the same time, the Proposal does not fully resolve the problem it seeks to address. Significant areas remain outside the scope of harmonisation and continue to be governed by national law. This includes matters such as directors' liability and the enforcement of directors' duties, shareholder remedies, procedural aspects of litigation, rectification of share registers, accounting and audit requirements, certain aspects of taxation, employee participation rights, employment law, insolvency law, creditor enforcement, security interests over shares and other assets, and various aspects of cross-border mobility that continue to be governed by the Mobility Directive and national law. Moreover, the EU Inc. does not operate exclusively under the Proposal. National law continues to apply alongside the harmonised framework for matters falling outside its scope or expressly referred back to the Member State of registration. As a result, companies adopting the EU Inc. form may still encounter divergent legal outcomes depending on the Member State of registration. This continued reliance on national frameworks means that the underlying fragmentation of the internal market is mitigated, but not eliminated. Moreover, the absence of a centralised adjudicatory system (akin to Delaware's Court of Chancery) could limit the development of a uniform body of case law, leaving interpretation of EU Inc. rules to be shaped by potentially varying national court decisions.

The European Commission has expressed its intention to move swiftly, with the aim of adopting and implementing the EU Inc. framework by 2027. Given the breadth of the Proposal, its interaction with existing national systems, and the need for Member States to adapt administrative, judicial, and digital infrastructures, this timeline is ambitious. Ensuring consistent application, legal certainty, and market confidence within such a compressed timeframe will be challenging.

The Proposal is now subject to negotiations between the European Parliament and the Council as part of the EU's legislative process. While the European Commission has set out an ambitious objective of adoption and implementation by 2027, the scope and novelty of the initiative mean that both the timeline and the substance of the framework could evolve during the legislative negotiations.

Whether the EU Inc. evolves into a genuinely European company form will therefore depend not only on the adoption of the Proposal itself but also on the speed and quality of its implementation, including how Member States leverage their discretion (e.g. establishing specialised courts or digital infrastructure), and on future legislative steps to further reduce reliance on national law. As an initial building block, EU Inc. sets an important direction of travel, but further development will be required if the original objective of overcoming structural fragmentation is to be fully achieved.

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Quoted is a periodical newsletter for contacts of Loyens & Loeff N.V.
Quoted has been published since October 2001.

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