

FESE position on the 28th regime corporate legal framework - 'EU Inc'

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FESE supports the creation of the 28th Regime corporate legal framework ('EU Inc.')

as an optional, harmonised legal framework that companies across the EU can choose to adopt. The initiative has the potential to reduce fragmentation, facilitate cross-border activity and support scale-up across the Single Market.

While recognising the Commission's objective of primarily supporting innovative and high-growth companies, FESE considers it important that the regime is designed to support companies throughout their full corporate cycle, regardless of their legal form. In this context, **FESE welcomes Article 60 of the proposal, which allows EU Inc. shares to be admitted to trading on regulated markets (RMs) or multilateral trading facilities (MTFs).**

While the proposal already includes important elements to establish the 28th regime legal framework, FESE would like to offer the following additional considerations with a view to ensuring its effectiveness and long-term viability.

1. Scope of the 28th regime and access to public markets

The 28th regime must be designed in a way that is fully compatible with access to public market financing, so as not to hinder it when it becomes relevant as companies scale and mature. It must therefore remain compatible with going public, issuing securities, and accessing a broad range of financing sources, while enabling a smooth and legally secure transition from private to public status.

Companies that choose the EU Inc. framework should not be required, at later stages of their development, to revert to national company law regimes in order to access public markets, including by converting into a different legal form, such as a public limited company. The ability to maintain a single legal form throughout a company's lifecycle, from incorporation to IPO, is one of the key advantages of the Commission's proposal. Requiring companies to undergo a mandatory conversion would introduce additional costs, legal complexity and delays, while reducing the attractiveness of the EU Inc. framework for innovative and high-growth companies.

To provide essential predictability for issuers, advisors, and market operators, admission to trading on regulated markets should be a guaranteed and fully harmonised feature of the EU Inc. The current wording of Article 60, which makes admission to regulated markets dependent on national legislation, introduces a structural risk that access conditions will differ significantly across Member States. This could lead to a scenario where an EU Inc. is admissible in one Member State but faces structural hurdles in another, undermining the objective of a genuine single market for capital.

While Article 60 appropriately recognises the possibility for EU Inc. companies to access RMs and MTFs, it is important to ensure that such access is feasible in practice. Many of the governance aspects relevant for listed companies, such as qualified majorities, minority shareholder protections, and delisting or squeeze-out procedures, are already addressed through existing EU legislation (including the Listing Act and the Takeover Bids Directive). Therefore, it is important to ensure clarity, predictability and consistent application of existing EU rules across all Member States, in particular with regard to:

- access to regulated markets under national law;
- the treatment of EU Inc. governance features by national competent authorities and trading venues;
- and the interaction between flexible corporate structures and disclosure-based securities regulation.

Without a consistent application of existing EU rules and clear guidance on their application to EU Inc. companies, national regulators and market participants may revert to applying familiar domestic standards to fill perceived gaps. This could result in an EU Inc. being informally required to align its corporate structure with that of a national public company, effectively negating the intended benefits and flexibility of the new framework and potentially forcing companies to restructure before an IPO.

2. Mitigating fragmentation and ensuring harmonisation

The success of the EU Inc. as a single, harmonised corporate form depends on its uniform application across all Member States. Although structured as a Regulation, the framework leaves leeway by deferring to national law and practices in fundamental areas. This risk arises particularly in Member States with prescriptive corporate laws. National authorities in these jurisdictions may apply domestic standards to the EU Inc. framework. This could create functionally distinct national variants, where a "German EU Inc." operates differently from a "French EU Inc.," thereby perpetuating the very legal fragmentation the new regime is intended to eliminate.

Furthermore, the lack of a unified judicial framework poses a fundamental threat to legal certainty. By relying on national private and liability law without establishing harmonised EU-level legal definitions, the proposal leaves interpretation to national courts. This will inevitably lead to conflicting case law shaped by divergent legal traditions. To counteract this, it is essential to establish a mechanism that ensures a uniform European jurisprudence.

FESE urges co-legislators and Member States to commit to a common, ambitious application of the Regulation and to refrain from imposing additional national requirements or "gold-plating." The objective must be to establish a truly European legal form.

3. Compatibility with EU securities law

3.1. Digital register & dematerialised securities

Part VI of the draft introduces detailed requirements for maintaining a digital share register that would, in practice, be incompatible with the possibility of dematerialising EU Inc. shares in central securities depositories (CSDs) or tokenising these shares within DLT infrastructures regulated under EU law, notably the CSDR and the DLT Pilot Regime. Since all shares admitted to trading on RMs or MTFs must be dematerialised in a CSD, these provisions would seriously undermine the ability of EU Inc. shares to be traded publicly.

Although Article 60 states that Member States shall not prohibit access to public markets, this must be read in conjunction with compliance with other applicable EU legislation. To avoid regulatory conflict, the proposal should explicitly clarify that the share-register requirements set out in Article 53 et seq. apply only where shares are not dematerialised in CSDs or DLT platforms regulated under CSDR and the DLT Pilot Regime. Without such clarification, the current record-keeping rules risk contradicting the mandatory dematerialisation requirements under CSDR that underpin trading on public markets.

3.2. Shareholder register management

In many Member States, companies are no longer permitted to maintain their own shareholder registers, as this function has been transferred to trusted third parties. This approach serves as an important safeguard against money-laundering risks and helps prevent disputes over the validity of shareholder records. Allowing company executives, particularly majority shareholders, to control both current and historical shareholder registers would create opportunities for manipulation. In this context, FESE would like to express concern

that maintaining such an option under Article 54 for EU Inc. companies could create incentives for undesirable forum shopping.

3.3. Future perspectives: 28th Regime for digital issuance

Looking beyond the current proposal, the 28th Regime could also offer an important opportunity to address long standing fragmentation in EU securities law from a digital-finance perspective. Divergent national definitions and approaches to dematerialised and digital securities make cross-border issuance significantly more complex, time consuming, and costly than issuing securities in physical form.

A dedicated 28th regime for digital issuance could be explored in future Commission initiatives. Such a framework would establish clear, harmonised issuance requirements for dematerialised debt securities in a cross-border environment and be available to issuers across all Member States, regardless of the governing law of the securities or the issuer's seat. It could also provide a legal basis for dematerialised issuance in Member States where such frameworks do not exist yet.

However, the introduction of a 28th regime for the issuance of dematerialised debt securities should not proceed in isolation, as it would not address the underlying fragmentation in areas such as securities ownership and insolvency laws. EU policymakers should prioritise addressing these structural issues in parallel with the development of the 28th regime for digital issuance to ensure a coherent and harmonised framework.

4. Streamlining and improving digital process efficiency

FESE welcomes the incorporation of the “once-only” principle for data submission as a key streamlining element of the proposal. EU and national frameworks currently impose heavy and often duplicative reporting requirements on companies. These should be reduced by ensuring that firms provide data only once, with authorities reusing it as needed.

Further efficiencies could be achieved through increased automation of standard procedures and, where appropriate, the deployment of digital tools, including AI-based solutions. A well-calibrated European Single Access Point (ESAP) could also contribute to these objectives and help avoid the creation of additional digital layers.

5. Taxation & Employee participation

The proposal addresses certain tax aspects, particularly regarding European Employee Share Ownership and employee participation, aiming to harmonise the timing of taxation. This is a positive step, but the scope could be expanded. Developing more uniform requirements and tax treatment for employee share-ownership plans across the EU would help start-ups and growing companies offer competitive compensation packages while easing wage pressures during growth phases.

FESE acknowledges that the unanimity requirement for tax measures represents a major obstacle to the effective implementation of the 28th Regime. In this context, although highly sensitive, closer alignment of rules on employee participation could facilitate cross-border activity. Divergences in national labour law systems, such as the role of trade unions, collective agreements, and employee representation on supervisory boards, can act as barriers to talent attraction and investment across borders. The 28th Regime should aim to minimise these disparities.

6. Other elements

Finally, while the proposal of a 28th regime could offer additional flexibility, lessons from the limited success of the Societas Europaea show that optional EU-level company frameworks only work if they respond to concrete market needs. Any proposal must be grounded in thorough impact assessments and clear evidence of demand.