Promoting European Entrepreneurship Instead of Creating New Labour Law Rules

Position Paper on the Proposal of the European Commission for a Regulation on an EU Inc. (COM(2026) 321)

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This document has been machine-translated from German; the German version is available here.

Summary

The European Commission's proposal for the EU Inc. provides companies with a clear and practical framework to grow within the EU Single Market and operate across borders. It addresses the right issues: it enables digital entrepreneurship, facilitates cross-border activities, refrains from introducing new labour law or employee participation rules, and provides a workable model for employee stock ownership. This pragmatic approach must be preserved throughout the forthcoming legislative process. In doing so, the EU Inc. can strengthen the competitiveness of the Single Market, further reduce administrative burdens, and help ensure that the EU's fundamental freedoms are better utilised. The EU Inc. would provide companies with reliable and efficient conditions for growth and innovation within the Single Market.

Employee participation and labour law are comprehensively regulated in all 27 EU Member States. The registered-office principle for employee participation proposed by the Commission therefore ensures clear allocation of responsibilities and prevents complex delimitation issues. The determination of the applicable national law as set out in the Commission proposal is sufficient and practical.

In the case of cross-border conversions, mergers or divisions, existing EU rules on employee participation remain applicable. Companies and trade unions can therefore rely on familiar and proven procedures under the EU Company Law Directive. No additional or even harmonised European employee participation rules should be introduced during the legislative process. Further European harmonisation would not solve problems, but would create new conflicts and make consensus in the legislative process impossible.

The proposed flexibility and tax provisions regarding employee stock ownership help companies attract and retain talent over the long term. For the EU Inc. to work in practice, it needs such clear, simple and consistent rules.

The EU Inc. will only be a success if it strengthens the Single Market, remains clear and understandable as well as fast and digital, and if the rules are coherent and no contradictory requirements emerge. The European Parliament and the Council of the EU are now called upon to adopt the proposal swiftly and not overload it. Only then will a framework emerge that will actually be used by companies.

In Detail

Ensure the EU Inc. Remains Focused on What Matters

For the EU Inc. model to work, it must remain simple. Only in this way can the EU Inc. strengthen the Single Market. It gives companies an additional option to grow across borders and attract investment. Young and innovative companies in particular benefit from being able to incorporate and scale quickly, digitally and with legal certainty. Complex additional rules deter especially small and medium-sized enterprises. Anyone creating a new instrument should not burden it immediately with special provisions. This applies in particular to areas closely linked to national systems – such as labour law and employee participation.

The proposal, which is currently well-focused, should be preserved in its current form: legal persons and natural persons would then be able to establish an EU Inc. flexibly or adapt existing structures. Digital procedures are needed to facilitate incorporation, administration and expansion. Uniform EU-wide rules reduce costs and create confidence among investors in the Single Market.

Ensure Clear National Rules on Employee Participation Through the Registered-Office Principle

As the Commission rightly proposes in Article 12, employee participation should be governed by the law of the EU Member State in which the EU Inc. has its registered office. Each Member State has its own rules on employee involvement. These should continue to apply in the future. The EU Inc. is therefore not free of employee participation rules; rather, the rules of one of the 27 Member States apply in each case. These systems interact and function within their national context. Any deviating rule in the Regulation, or even a European harmonisation of employee participation law, would endanger this. Moreover, there is no legal basis for harmonisation under Article 114 TFEU. Previous company law proposals have shown that rules on employee participation make consensus in the legislative process impossible.

It is also important that the proposal refrains from introducing complicated special rules for determining the applicable employee participation regime. Additional criteria, for example based on employee numbers in other Member States – as proposed by the German Federal Government – would create new uncertainties, lead to delimitation problems, increase administrative burdens, and slow down growing companies in particular.

Employee Participation in Cross-Border Conversions Is Already Regulated at EU level

The EU Inc. remains mobile within the Single Market. Companies can operate in other Member States and establish branches there without changing the law applicable to employee participation. The registered-office principle combines this flexibility with clear and reliable rules. In the case of cross-border conversions,

mergers or divisions, this principle remains in place. The proposal refers to established procedures under the existing Company Law Directive (EU) 2017/1132. These provide protection for employees without the need for new employee participation rules.

Leave Individual and Collective Labour Law with the Member States

The Commission's approach must be maintained: no new European rules for individual employment contracts should be introduced; instead, the existing conflict-of-law rules should apply. The current provisions of European private international law, in particular Article 8 of the Rome I Regulation (Regulation (EC) No 593/2008), already provide a balanced solution: where no choice of law has been made, the law of the country in which or from which the employee habitually works applies. Only in exceptional cases does another law apply where there is a closer connection with a particular country. These rules enable freedom of contract while ensuring that employees remain protected and that clear jurisdictions apply.

The same rightly applies to the coordination of social security systems: established European rules, in particular Regulation (EC) No 883/2004, ensure clear cross-border responsibilities and guarantee individual protection. Additional provisions for the EU Inc. are unnecessary.

In collective labour law, the Commission likewise rightly proposes no new rules. Responsibility should remain with the Member States. Collective bargaining autonomy and social partnership function at national level and are based on established structures. New European requirements would not strengthen these systems, but would complicate them.

Targeted Strengthening of Employee Stock Ownership

The Commission proposal provides, through a European model for employee stock ownership (EU employee stock plan (EU-ESO)) in Article 78, a smart instrument that allows employees – where desired – to participate in the company's success. This enables companies to attract and retain talent more easily. Fast-growing companies in particular depend on flexible participation instruments in order to compete internationally for talent. This should never be regarded as a substitute for wages and salaries, but always as a supplement. The rules on employee stock ownership must remain flexible: companies should be able to determine key parameters themselves, such as exercise conditions or minimum holding or vesting periods. Further rigid requirements in the Regulation text would reduce the attractiveness of such instruments.

The Commission's tax proposals to tax income from EU-ESOs only at the time of disposal of the shares (Article 79) are correct. They reduce complexity and avoid liquidity problems that may arise where taxation occurs upon exercise of the option (the "dry income" problem resulting from treatment as a taxable benefit in kind). The Commission's recommendation to treat income from EU-ESOs as capital income is also correct, as it contributes to simplification and greater international comparability.

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