

## ETAF Statement

### Proposal for a Regulation on the 28<sup>th</sup> regime corporate legal framework

The European Tax Adviser Federation (ETAF), representing the interests of more than 280,000 regulated tax advisers across Europe, would like to thank the European Commission for the opportunity to provide feedback on the [proposal](#) for a Regulation on the 28<sup>th</sup> regime corporate legal framework (COM (2026) 321), or the so-called “EU Inc.”, published on 18 March 2026. In that regard, it is important to note the prominent role of tax advisers as not only the primary point of contact for comprehensive tax assistance but also for business management advice. This applies to the formation of a company, its day-to-day operations, and the event of insolvency.

The proposed Regulation introduces, under article 114 of the Treaty on the Functioning of the European Union (TFEU), an optional harmonised legal form of limited liability company to be recognised in all Member States and governed by a single set of EU corporate rules (see Chapter I of the proposal). The proposal provides for fully digital company formation and operations, including registration within 48 hours through an EU central interface connected to Business Registers Interconnection System (BRIS) (see Chapter II), the automatic issuance of TIN and VAT numbers under the “once-only” principle (see Chapter II and Chapter IV), and harmonised rules on governance, financing, share transfers and insolvency procedures (see Chapters V-VII). It also aims to facilitate cross-border business activity and investment while ensuring consistency with existing EU company law, administrative cooperation and AML frameworks, including through the exchange of information with beneficial ownership registers (see explanatory memorandum, pp. 3-5 of the proposal).

According to the [impact assessment](#) for this proposal, the estimated overall administrative burden reduction is between €328 million and €440 million for an estimated 308,000 EU Inc. companies over 10 years. ETAF therefore sees merit in the objective of creating a simplified European corporate framework capable of supporting businesses that operate across multiple Member States and strengthening the functioning of the Single Market. However, several elements of the current “EU Inc.” proposal still raise substantive legal and operational concerns, which in ETAF’s view should be further assessed and refined as discussions progress.

The present contribution sets out ETAF’s feedback, including concerns, regarding the proposed regime, particularly in relation to the risks of abuse and regulatory arbitrage, the simplified insolvency procedure for innovative start-ups, the interaction between the digital EU power of attorney and sector-specific authorisation frameworks, the tax provision on the EU employee-stock option plan, and the delimitation between EU and national law.

## 1. Risks of abuse

The EU Inc. proposal introduces a harmonised, fully online incorporation procedure designed to reduce administrative burden and encourage cross-border business activity within the Single Market. However, the design choices underpinning the framework, notably the 48-hour registration window (article 16), the absence of minimum capital requirements (article 62(1)), the limited substantive identity verification at incorporation (articles 13-14), and the company-controlled share register with online transfer capability (articles 53-54 and 59(5)), leave EU Inc. vulnerable to exploitation as a letterbox entity.

In particular, the framework operates on a model of limited ex ante verification. Articles 13 and 14 impose no requirement to verify the identity, authority, or capacity of founders and beneficial owners beyond what can be submitted digitally, and the short registration deadline under article 16 leaves competent authorities with very limited time to conduct meaningful review. Furthermore, the interaction between the Regulation and existing AML frameworks remains unclear, including with respect to the obligation on financial institutions and other obliged entities to conduct customer due diligence; the process appears to rely on digital procedures and register checks rather than equivalent substantive control mechanisms.

AML systems specifically rely on friction points to detect suspicious activity before funds are moved or ownership is concealed. Article 54(1) places the digital share register entirely in the hands of the EU Inc. company, and articles 59(1)-(5) permit shares to be transferred fully online without a notarial deed, with Member States expressly prohibited from requiring otherwise. By removing these gatekeepers from the process, the framework is exposed to a layering risk through rapid share transfers, whereby beneficial ownership can change multiple times in rapid succession with no independent record and no AML-obliged professional present at any stage.

Under the once-only principle (article 20), company information submitted at incorporation is automatically transmitted to the authorities responsible for issuing the TIN, VAT identification number, social security registration, and beneficial ownership registration. While ETAF welcomes this approach in principle, the lack of safeguards at the point of incorporation creates a significant vulnerability: where false information is provided at registration, it is simultaneously disseminated to the tax authority database, the VAT register, and the beneficial ownership register, all before the 48-hour incorporation window under article 16 has closed.

### ETAF therefore recommends the following:

- **Introducing mandatory and EU-wide uniform AML identity checks prior to registration:** The framework should introduce mandatory and EU-wide uniform AML identity and legitimacy checks before an EU Inc. can be registered. Digital procedures and register checks alone are insufficient to ensure effective prevention of money laundering.
- **Ensuring independent oversight of digital share transfers:** The Regulation should be amended to avoid allowing EU Inc. companies to create and maintain their digital share registers entirely by themselves. Shareholder information should be subject to appropriate independent verification to ensure effective AML compliance.

- **Amending the 48-hour registration deadline to working days or “without further delay”:** The blanket 48-hour deadline for incorporation set out in article 16 of the proposal risks rendering ex ante verification difficult in practice. It is recommended to replace the fixed deadline with the recognised legal standard of registration “without further delay,” or alternatively to measure the deadline in working days rather than calendar hours, so as to ensure that competent authorities can carry out a thorough review of the information submitted before registration is completed.
- **Extending AML controls across the full lifecycle of the company:** AML oversight cannot be limited to beneficial ownership databases. Structured risk assessments must be carried out at the point of incorporation and again at dissolution, supported by a supervisory framework capable of identifying abuse at an early stage and preventing asset dissipation.

## **2. Lack of safeguards and independent oversight in the simplified winding-up procedure (Chapter X)**

According to recital 67 of the proposal, the policy choice for having a simplified insolvency procedure in Chapter X (articles 88-102) for innovative start-ups is the recognition of their “*specific needs in financial distress, in particular the need for faster, simpler and affordable procedures*”. While ETAF recognises the legitimacy of reducing unnecessary barriers to business activity, the design of these provisions raises concerns regarding the risk of abuse, creditor protection, and the role of regulated professionals.

### **Unclear definition and scope of “innovative start-up” (article 88(1))**

First and foremost, the scope of the simplified insolvency proceedings is limited to “innovative startups” as per article 88(1) of the proposal, for which the term is only defined in a non-binding [Recommendation](#) issued by the Commission,<sup>1</sup> leaving significant discretion to the Member States on the interpretation of such a term. From the perspective of the tax advisory profession, the proposed special treatment of insolvent “innovative start-ups” raises significant questions of delimitation, leading to considerable legal uncertainty regarding the procedure’s applicability. Furthermore, there is a risk of “forum shopping,” as companies could relocate their registered office to Member States that apply lenient criteria for access to the simplified procedure.

### **Grounds for insolvency and distinction from restructuring proceedings**

The proposal (see article 89 of the proposal) provides for insolvency as the sole criterion for the simplified procedure. However, a company may be over-indebted without being immediately insolvent. This is particularly so in the case of innovative start-ups, given the typical financing structure, such as the high importance of intangible assets. Thus, it would be appropriate to also consider over-indebtedness, at the very least where the going-concern forecast is negative, as grounds for opening proceedings.

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<sup>1</sup> The European Commission defines an innovative startup as an innovative enterprise that is autonomous, under 10 years old, has fewer than 100 employees, and has a turnover and/or balance-sheet total not exceeding € 10 million.

If, on the other hand, there are realistic prospects for reorganisation or continued operation, recourse should always be made to existing restructuring or reorganisation proceedings. Otherwise, there is a risk that companies worth preserving from an economic perspective will be wound up prematurely.

#### **Waiver of the insolvency practitioner and conflict of interest (article 90(2)):**

Article 90(2) of the proposal provides that a debtor may request that an insolvency practitioner not be appointed, provided that the company has an up-to-date balance sheet and has submitted its most recent annual statements. Such a threshold is typically easily met, and often not suitable for the case at hand. Innovative companies in particular often have complex structures, for example, regarding cross-border activities, tax liabilities, intangible assets or unclear creditor structures. In such circumstances, foregoing independent, competent supervision of the proceedings leads to significant risks, particularly with regard to the identification and valuation of assets, the verification of claims, and potential liability and avoidance claims. In this context, the provision of a 'current balance sheet' and the 'most recent statutory annual balance sheet' is not a sufficient criterion for deciding not to appoint an insolvency administrator. At the very least, a current business analysis and/or a current liquidity status would also be required here.

#### **Limited protection of creditor rights and short opposition window (article 95):**

Furthermore, the arrangement for the determination of claims set out in article 95 of the proposal gives cause for concern. Notably, the transfer of responsibility for drawing up the list of creditors to the debtor gives rise to a conflict of interest. Additionally, the safeguarding of creditor's rights is largely shifted onto the creditors themselves, who must take action against incomplete or incorrect information within just 30 days from receipt of individual notice or publication of the opening of proceedings in the insolvency register. This represents a considerable practical burden, particularly in cross-border situations. The issue is also further compounded by the shortening of the legal remedy under article 95(5) of the proposal.

#### **Unsuitability of electronic asset auctions for start-up asset profiles (articles 96-97):**

Moreover, the electronic auction mechanism established under articles 96-97 of the proposal is equally problematic. Whilst such a mechanism may be suitable for standardised assets, there are considerable doubts as to its suitability for typical start-up assets such as IP, proprietary data sets or trade secrets. These assets typically require prior due diligence and individual valuation procedures. A purely automated realisation process, at this moment in time, cannot meet these requirements and carries the risk of significant losses in value. Accordingly, appropriate safeguards should be put in place, particularly minimum requirements for valuation and the provision of information prior to realisation.

#### **Unclear role and liability of regulated professionals in simplified proceedings:**

It is also important to note that in a number of Member States, tax advisers participate in insolvency proceedings in the capacity of appointed practitioners, court-appointed experts, or equivalent roles defined under national law. This framework, established in Chapter X, notably

the combination of optional proceedings without an insolvency practitioner, standardised procedures, and a lack of clear procedural safeguards, creates considerable ambiguity regarding the role and responsibilities of regulated professionals in simplified proceedings. Without a clear regulatory framework governing their involvement, advisers risk being placed in a position where they are expected to facilitate the closure of proceedings without adequate procedural safeguards or defined professional obligations. A framework under EU law governing the involvement and accountability of such professionals would therefore be necessary.

**ETAF therefore recommends the following:**

- **Broadening the scope of simplified insolvency proceedings to all EU Inc. companies (article 88(1)):** extending the scope of the simplified insolvency proceedings to all EU Inc. companies, irrespective of whether they qualify as innovative start-ups under national interpretation, would ensure a uniform and predictable framework across the Single Market and eliminate the incentive to relocate registered offices to Member States applying the most lenient criteria.
- **Extending the grounds for simplified insolvency proceedings to include over-indebtedness and safeguarding restructuring alternatives (article 89):** Given the typical financing structures and balance sheet composition of innovative start-ups, it is recommended to include over-indebtedness as a ground for opening simplified proceedings, at the very least where the going-concern forecast is negative. Where realistic prospects for reorganisation exist, recourse should always be made to existing restructuring or reorganisation proceedings to avoid the premature winding-up of companies with genuine prospects of recovery.
- **Limiting the conditions for waiving the appointment of an insolvency practitioner (article 90(2)):** the derogation under article 90(2) should be significantly restricted, particularly in cases involving cross-border structures, outstanding public law debts, or material intangible assets. At a minimum, a current business analysis and liquidity statement should be required before the waiver can be granted. Where the waiver is permitted, a model combining debtor-led management with independent supervision, such as in the form of a trustee, should be provided for to ensure that creditor interests are adequately safeguarded.
- **Extending the 30-day claims lodgement deadline and preserving unrestricted access to legal proceedings (article 95):** To strengthen creditor protection, creditors should be permitted to lodge claims after the expiry of the 30-day deadline under article 95(3), particularly in cross-border situations where reliance on public registers alone places a disproportionate burden on creditors. Furthermore, the restriction on legal remedies under article 95(5) should be removed to ensure that all parties retain unrestricted access to judicial proceedings and a full judicial determination of disputed claims.
- **Establishing a clear framework for the involvement and accountability of regulated professionals in simplified proceedings (Chapter X):** The framework in Chapter X should establish clear rules under EU law governing the conditions under which regulated professionals, including tax advisers, may be called upon to participate in simplified winding-up proceedings, together with the rights, obligations, and liability framework that applies to their involvement.
- **Ensuring the suitability of electronic asset auctions for start-up asset profiles (articles 96-97):** the electronic auction mechanism should be accompanied by safeguards ensuring that assets that require prior due diligence (e.g., IP portfolios) are subject to appropriate assessment before realisation.

### 3. Concerns regarding the tax treatment of warrants and cross-border employment under the EU-ESO scheme

Articles 78 and 79 introduce an EU employee stock option plan (EU-ESO) under which an EU Inc. may issue warrants to eligible persons. Article 79(2) defers the taxable event to the point of disposal of the shares obtained by exercising the warrant, so that income is not deemed to arise at grant, vesting, or exercise. Article 79(3) defines the taxable income as the difference between the fair market value of the shares at disposal and their acquisition price, subject to taxation in accordance with national law. Recital 58 confirms that Member States retain full discretion over the characterisation of that income and the applicable rate. The accompanying [Communication](#) encourages Member States to treat the income as capital gains rather than employment income, but this is not binding.

The proposal therefore harmonises only the timing of the taxable event, leaving all other substantive questions to national law. It does not address how income from warrants is sourced between jurisdictions for mobile employees, whether withholding or payroll reporting obligations arise prior to disposal under domestic systems, how the tax treatment aligns with social security obligations, whether and when the employer is entitled to a deduction, how treaty relief applies where the employee has moved between jurisdictions, or how fair market value is to be evidenced for illiquid or partially restricted shares. The absence of coordination mechanisms in these areas risks giving rise to double taxation or double non-taxation in cross-border situations.

It is noted that more comprehensive harmonisation would require a legal basis under Article 115 TFEU. Nevertheless, harmonising solely the timing of taxation while leaving income characterisation, rates, and cross-border allocation entirely to national law risks creating a regime that generates as much uncertainty as it resolves, particularly for the mobile employees and cross-border groups the EU-ESO is designed to benefit.

#### **ETAF therefore recommends the following:**

- **Removing the EU-ESO tax provisions and replacing them with a non-binding recommendation (articles 78-79):** While ETAF welcomes the objective of facilitating access to employee stock option plans for innovative start-ups, the current drafting of Articles 78-79 addresses only the timing of the taxable event, leaving income characterisation, applicable rates, and cross-border allocation to national law. In order to avoid unintended consequences for mobile employees and cross-border groups, ETAF suggests that consideration be given to replacing the tax provisions in Articles 78-79 with a non-binding Commission Recommendation to Member States, encouraging a consistent approach to the characterisation and taxation of income derived from the disposal of shares obtained by exercising EU-ESO warrants. Such an approach would more accurately reflect the scope of what can be achieved under the current legal basis.

#### 4. Interaction between the digital EU power of attorney and sector-specific authorisation frameworks

Articles 24 and 31(1) introduce a digital EU power of attorney as a standardised, digitally authenticated instrument authorising a person to represent a company in cross-border company law procedures within the EU, with article 31(3) requiring compatibility with both the European Digital Identity Wallet and the European Business Wallet. ETAF welcomes the high degree of integration and compatibility that this approach offers, and recognises that interoperable wallet infrastructures, reliable digital attestations, and seamless digital representation mechanisms have the potential to bring significant simplifications for regulated professionals and businesses alike. In this regard, ETAF has previously submitted [feedback](#) on the European Business Wallet [proposal](#) to the Commission on 6 May 2026.

However, it must be clarified that the digital EU power of attorney is limited under the current draft to company law matters. Any future or de facto extension of such digital power of attorney mechanisms to other administrative procedures must not result in the bypassing of competent specialist bodies and existing specialist registers that serve as authentic sources in their respective fields. In several Member States, sector-specific authorisation and representation procedures exist for certain areas of law, including tax matters, which incorporate quality assurance mechanisms, scope limitations, and revocation controls that a general wallet-compatible power of attorney cannot replicate. These specialist frameworks must be recognised as the authoritative authentic source in their respective domains and must not be displaced by general digital attestation mechanisms.

Furthermore, as the use of electronic attestations, powers of attorney, and powers of representation via wallet infrastructures becomes easier, the importance of ensuring the up-to-datedness, revocability, specialist competence, and abuse control of those instruments increases correspondingly, as reflected in articles 28(2) and 32(4). Not every existing process can readily be transposed into a wallet infrastructure without a careful procedure-specific risk assessment.

##### ETAF therefore recommends the following:

- **Clarifying the scope of the digital EU power of attorney and preserving sector-specific authorisation frameworks (articles 24 and 31):** The final Regulation should explicitly confirm that the digital EU power of attorney is limited to company law matters. Any extension to other administrative procedures must not result in the bypassing of specialist bodies and existing specialist registers in Member States, which incorporate quality assurance mechanisms, scope limitations, and revocation controls that general wallet-compatible mechanisms cannot replicate.
- **Requiring procedure-specific risk assessments for wallet-based authorisation (articles 28(2) and 32(4)):** Before existing authorisation and representation processes are transposed into wallet infrastructures, a procedure-specific risk assessment should be required to ensure that up-to-datedness, revocability, specialist competence, and abuse controls are adequately guaranteed.

## 5. Unclear delimitation between EU and national law (article 4)

Article 4(2) of the proposal states that matters not covered by this Regulation or by the articles of association (AOA) shall be governed by national law. In practice, this provision risks creating multiple national variants of EU Inc., with the applicable legal regime depending on the Member State of registration. Thus, rather than eliminating fragmentation, the proposal may therefore introduce an additional European layer on top of existing national company law systems. This clearly undermines the aim of “*removing key barriers stemming from divergent corporate law that constrain companies in their efforts to attract investors*”. As already cautioned in ETAF’s [introductory statement](#) at the public hearing of the Subcommittee on Tax Matters (FISC) of the European Parliament on 24 February 2026 on the “*feasibility of a 28<sup>th</sup> tax regime and its potential to support EU competitiveness*”, if companies choosing the new regime must still apply national procedures and navigate both EU and national rules, the promised simplification may prove illusory. Thus, having such a default clause in national law under article 4(2) risks resulting not in a single new system but in 27 distinct variants.

### ETAF therefore recommends the following:

- **Clarifying the delimitation between EU and national law (article 4):** The Regulation should define in a more exhaustive manner the matters governed by EU law, limiting recourse to national law to expressly enumerated residual areas only. Without such a clarification, the default to national law under article 4 risks producing not a single harmonised regime but 27 distinct variants, undermining the simplification objective the proposal is intended to achieve.

#### Notes

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#### About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is established as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15 December 2015. It represents more than 280,000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria, Croatia and Portugal. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.

## Annex: Summary of ETAF recommendations

Issue	Concerned article(s)	ETAF Recommendation
<b>Risk of abuse</b>	<b>Articles 13-14, 16, 20, 54, 59(5), 62(1)</b>	<ul style="list-style-type: none"> <li>• Introduce mandatory and EU-wide uniform AML identity and legitimacy checks before an EU Inc. can be registered.</li> <li>• Amend the 48-hour registration deadline to working days or “without further delay” to ensure competent authorities have sufficient time to carry out meaningful ex ante verification before registration is completed.</li> <li>• Extend AML controls to the full lifecycle of the company, with mandatory risk assessments at both incorporation and dissolution.</li> <li>• Ensure independent oversight of digital share transfers: the Regulation should be amended to avoid allowing EU Inc. companies to create and maintain their digital share registers entirely by themselves. Shareholder information should be subject to appropriate independent verification to ensure effective AML compliance.</li> </ul>
<b>Insolvency</b>	<b>Articles 88-102, 90(2), 95, 96-97</b>	<ul style="list-style-type: none"> <li>• Extend the simplified insolvency proceedings to all EU Inc. companies to ensure a uniform framework and eliminate forum shopping risks.</li> <li>• Broaden the insolvency trigger to include over-indebtedness where the going-concern forecast is negative; ensure companies with genuine prospects of recovery are directed to existing restructuring proceedings.</li> <li>• Significantly restrict the derogation under article 90(2), particularly for cross-border structures, public law debts, or material intangible assets; require at minimum a current business analysis and liquidity statement; where the waiver is permitted, provide for independent supervision such as a trustee.</li> <li>• Extend the 30-day claims lodgement deadline under article 95(3) and preserve unrestricted access to judicial determination of disputed claims.</li> <li>• Ensure assets requiring pre-sale due diligence, including IP portfolios, trade secrets, and proprietary datasets, are subject to appropriate assessment prior to realisation under articles 96-97.</li> <li>• Introduce an EU-level framework governing the role, obligations, and liability of regulated professionals, including tax advisers, in simplified winding-up proceedings.</li> </ul>
<b>Taxation of EU-ESOs</b>	<b>Articles 78-79</b>	<ul style="list-style-type: none"> <li>• Remove the tax provisions in articles 78-79 from the Regulation and insert them into a non-binding Commission recommendation to Member States, encouraging a consistent approach to the characterisation and taxation of income derived from the disposal of shares obtained by exercising EU-ESO warrants.</li> </ul>
<b>Digital EU power of attorney and European Business Wallet</b>	<b>Articles 23, 24, 28(2), 31 and 32(4)</b>	<ul style="list-style-type: none"> <li>• Explicitly confirm that the digital EU power of attorney is limited to company law matters; any extension to other administrative procedures must not bypass existing sector-specific authorisation frameworks and specialist registers in Member States.</li> <li>• Require a procedure-specific risk assessment before existing processes are transposed into wallet infrastructures, to ensure up-to-datedness, revocability, specialist competence, and abuse controls are adequately guaranteed.</li> </ul>
<b>Default to national law</b>	<b>Article 4</b>	<ul style="list-style-type: none"> <li>• Define more exhaustively the matters governed by EU law and limit recourse to national law to expressly enumerated residual areas.</li> </ul>