

**FDecrypt: the 28th Regime
Corporate Legal Framework - EU Inc.
and the definitions of innovative enterprise,
startup and scaleup**

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The concept of a "28th regime", a harmonised EU corporate legal form to operate alongside the 27 national company law frameworks, emerged from advocacy by Europe's startup community, legal practitioners and policymakers, including Enrico Letta's "Much more than a market" report in 2024. Fragmented company law has been identified as a critical barrier to cross-border growth and competitiveness for a long time now.

France Digitale has championed this initiative for many years through multiple position papers and stakeholder engagement including our [Manifesto for the 2024 European elections](#), our [call for a 28th Regime](#) in October 2024, our [partnership with the EU-Inc movement](#), our [answer to the Commission's public consultation](#) in September 2025.

In March 2026, the European Commission delivered on this commitment through three complementary instruments:

1. a [Regulation proposal](#) (binding legislation requiring Parliament and Council approval) establishing "EU Inc.", a new optional corporate legal form with harmonised rules governing company formation, operations and closure.
2. a [non-binding Recommendation](#) defining "innovative enterprise," "innovative startup," and "innovative scaleup" across the EU and European Economic Area, providing possible criteria for Member State policies, State Aid and EU funding programmes.
3. an [accompanying non-binding Communication](#) outlining the broader 28th regime framework and complementary measures necessary for its success, including digitalisation initiatives (the European Business Wallet, AI-powered translation services), access to finance reforms, cross-border talent mobility rules and harmonised taxation schemes (Head Office Tax system and BEFIT initiative). The Communication also recommends that Member States establish specialised courts to handle EU Inc. disputes, ensuring predictable legal interpretation across the Union.

Executive summary:

France Digitale's position on the EU Inc. proposal

We warmly welcome the Commission's proposal as it fulfils long-standing demands from Europe's startup ecosystem, which we have been championing throughout the years. The EU Inc. proposal represents a breakthrough for European entrepreneurs. For the first time, founders can incorporate a company in just 48 hours, entirely online, at a cost below EUR 100, removing the bureaucratic barriers that have fragmented the European market. By applying the once-only principle and eliminating minimum capital requirements, the proposal reduces administrative friction at the critical stage of business creation.

The EU Inc. framework is open to all non-listed companies, whether formed from scratch or through domestic conversions, mergers or divisions. This broad applicability ensures maximum impact across the entire European entrepreneurial landscape and we welcome it.

We fully support the fast-track formation procedure and will actively engage with the European Parliament and the Council to strengthen enforcement provisions and resist dilution of the 48-hour timeline and EUR 100 cost cap. The abolition of in-person formalities and mandatory intermediary involvement in share transfers constitute genuine advances in operational efficiency, reducing both time and cost for capital operations essential for cross-border fundraising. We strongly advocate for robust enforcement of the once-only principle and cross-border consultation duty, ensuring these are binding Member State obligations with explicit consequences for non-compliance.

Regarding the harmonised EU Employee Stock Option Plan, we warmly welcome taxation timing harmonisation at share disposal. While we would ideally have sought full capital gains harmonisation, we accept this limitation at this stage, given the legal basis chosen. This legal basis allows for the text to be a Regulation, thus ensuring full harmonisation and faster adoption, while avoiding unanimity in the Council. However, the scheme's practical utility remains limited without characterising EU-ESO income uniformly as capital gains across Member States. We support the EU-ESO as a necessary foundation and call for the Commission to propose a separate binding instrument in parallel with EU Inc. adoption to address the employment income versus capital gains distinction, leveraging momentum from the EU Inc. adoption and building on the BEFIT corporate taxation initiative.

The proposed name "EU Inc." has generated debate, with some stakeholders preferring a Latin denomination to reflect European heritage and distance the framework from perceived American corporate culture. France Digitale's position is clear: **the nomenclature must function as a recognisable European brand** enabling entrepreneurs and investors to immediately identify the legal form and its harmonised features. The nomenclature debate must not become a vehicle for prolonged negotiation. We call for rapid agreement on the name to **preserve political momentum and redirect negotiation resources towards substantive issues and swift adoption of a functional framework**.

Some Member States have voiced legitimate concerns that the EU Inc. framework could encourage "**forum shopping**", meaning companies relocating to Member States with the least stringent rules, or trigger a "**race to the bottom**" as jurisdictions compete by weakening protections. The reality is that forum shopping on tax and labour law will persist regardless of the EU Inc. legal form because these issues reflect genuine divergences in Member State policy choices. However, the EU Inc. does not worsen this situation. Startups and scaleups typically establish physical presence across multiple Member States based on market opportunity and talent availability rather than incorporation jurisdiction. A company registered in Luxembourg for tax reasons will still need operational entities in France, Germany and other Member States to serve those markets and comply with local employment law. The EU Inc.'s cross-border flexibility actually supports this multi-jurisdictional operational reality, making it easier to manage rather than incentivising artificial relocation. The genuine forum shopping risks stem from unharmonised tax and labour law itself, issues requiring separate and parallel solutions. We strongly support accelerated progress on BEFIT (corporate taxation harmonisation) and the Fair Labour Mobility package to address these root causes. However, we argue that delaying the EU Inc. to resolve tax and labour divergences is counterproductive. The EU Inc. should advance rapidly, while simultaneously tackling tax and employment law harmonisation through dedicated instruments.

Beyond the EU Inc. framework, complementary measures remain essential. The fragmentation of employment and tax law creates unsustainable compliance burdens for cross-border expansion. We call for a **one-stop-shop in each Member State, a single point of contact for employment, tax and legal formalities designed especially for EU Inc. companies**. We support the Commission's BEFIT and Head Office Tax System initiatives and call for rapid implementation.

A critical barrier to EU Inc. effectiveness is "gold-plating": the additional requirements Member States impose when transposing EU legislation. We recommend **expanding the passporting principle**: companies meeting EU requirements in their Member State of establishment should operate elsewhere in the EU without resubmission, following the GDPR country-of-origin logic.

Finally, legal clarity is fundamental to success. **The Commission should establish a multilingual platform listing national procedures and resources relevant to the EU Inc. companies** (example of local contracts, information on taxes, etc.), **with Member States responsible for providing this information.**

While the EU Inc. is a pivotal step forward, complementary measures remain essential, including a **public procurement reform** that enable startups to participate and prioritise European actors, a genuine **Savings and Investment Union** and **competition rules that account for global competitive dynamics and reward innovation**, ensuring European companies can scale to compete globally.

Here below is France Digitale's analysis and position on these three key documents:

I - The proposal for an EU Inc. corporate legal framework

Fast-track formation and registration

What the Commission proposes

The Commission introduces an accelerated procedure allowing EU Inc. registration within 48 hours maximum at a capped cost of EUR 100 via a centralised EU interface integrated into the BRIS system. Founders use multilingual standardised templates and submit their information once only to the business register of their chosen Member State or to the centralised EU platform. All registration procedures are conducted entirely online, with preventive control completed by Member States within 48 hours when using standardised EU templates, or within five working days for bespoke articles of association. eliminates the need for in-person formalities and founders will no longer be required to take appointments with notaries or intermediaries. The once-only principle ensures this information is automatically transferred to tax authorities, social security bodies and beneficial ownership registers without resubmission.

Context and implications

This is precisely what France Digitale has been demanding for: eliminating fragmentation across the 27 national regimes where company formation takes between three and 30 days, costs between EUR 50 and EUR 500 and requires navigating between notaries, registers and divergent procedures. For instance, in Germany or Belgium, physical presence before a notary was mandatory; with EU Inc., it will not. The EUR 100 cost cap also removes the substantial margins applied by certain registers. However, obstacles remain: some Member States fear reduced register revenues and certain notarial professions worry about lost business.

France Digitale's stance

We fully support the EU Inc. fast-track formation procedure as it directly addresses our long-standing demand for eliminating fragmentation across national regimes, though we acknowledge that real impact depends on effective Member State implementation despite industry resistance.

Thus, we will continue to actively engage with the European Parliament and the Council of the EU during the negotiations to strengthen enforcement provisions, resist dilution of the 48-hour timeline and EUR 100 cost cap in order to make sure that the text's ambition is not undermined by national exceptions or delays.

Company structure and governance

What the Commission proposes

The EU Inc. is structured as a limited liability company governed by standardised or bespoke articles of association. It requires a board of directors comprising one or more directors, with at least one resident in the Union, appointed by the general meeting. Shareholders retain flexibility to determine the company's organisation through the articles of association, including the right to hold shareholder and board meetings entirely online. Minority shareholders receive withdrawal rights in cases of flagrant prejudice, whilst employee participation remains subject to Member State rules with safeguards applicable to cross-border operations.

Context and implications

This framework closely mirrors the *French Société par Actions Simplifiée (SAS)*, a proven model combining founder flexibility with investor protection. The SAS's success in France, where it has become the dominant form for startups and scaleups, demonstrates that simplified governance structures attract entrepreneurs without compromising creditor or worker safeguards. Like the SAS, the EU Inc. allows shareholders to customise governance via articles rather than imposing uniform rules, reducing bureaucratic friction while enabling companies to adapt structures to their stage and needs.

France Digitale's stance

France Digitale supports the flexible governance model as responsive to startup needs and aligned with the proven French SAS model.

Capital and financing framework

What the Commission proposes

The EU Inc. requires only EUR 1 symbolic minimum capital with no mandatory paid-in share capital at incorporation. Shares carry no nominal value unless specified in articles, do not represent a capital fraction and carry one vote by default unless otherwise stipulated. Multiple share classes with distinct voting or economic rights are permitted, enabling founders to structure investments flexibly. All distributions, share acquisitions and redemptions are subject to balance sheet and solvency tests ensuring company viability. Share transfers execute fully online without intermediaries and the digital share register records all ownership changes. Companies may access SME growth markets and Member States may permit access to regulated markets without requiring legal conversion.

Context and implications

This framework directly tackles the fragmentation that hampers cross-border investment. France Digitale members have long suffered from divergent capital rules across Member States creating unnecessary complexity and cost. The abolition of minimum capital and par value aligns with European startup practices and removes barriers to early-stage fundraising, a critical pain point. The digital share register and online transfers eliminate intermediary fees and delays, particularly benefiting repeat fundraising. However, implementation depends on robust digital infrastructure; poorly designed systems could recreate friction. Multilingual interfaces and real-time transfer settlement should be genuinely seamless across borders.

France Digitale's stance

We strongly support this framework as it removes artificial barriers to investment and growth. We will continue to defend the zero/symbolic capital provision against potential calls for higher thresholds. We will also advocate for mandatory real-time share transfer settlement and clear technical standards for the digital registers to ensure the promise of "frictionless" transfers genuinely materialises in practice and across borders.

Employee incentives and talent attraction: EU Employee Stock Option Plan (EU-ESO)

What the Commission proposes

The EU Inc. introduces a harmonised EU Employee Stock Option Plan (EU-ESO) allowing companies to issue warrants to employees and board members. Taxation is deferred until shares obtained by exercising warrants are sold, eliminating "dry tax" charges where employees paid tax without actual income. The scheme operates uniformly across Member States, simplifying cross-border talent recruitment and retention.

Context and implications

This measure directly addresses a long-standing demand by France Digitale: making equity compensation viable across borders. Currently, employee stock options face wildly divergent tax treatments. In France, the BSPCE (Bons de Souscription de Parts de Créateur d'Entreprise) regime offers preferential taxation but applies only to specific company types and employees. German and Nordic regimes differ substantially, creating complexity for multinational teams. The EU-ESO's deferred taxation aligns with startup realities where employees take below-market salaries in exchange for equity upside, avoiding situations where tax liability exceeds actual income.

However, a significant gap exists: the proposal does not harmonise whether employee stock option gains are taxed as employment income or capital gains, a distinction with material consequences for tax rates and deductibility. This omission reflects Member State resistance and differences. The Communication encourages Member States to characterise EU-ESO income as capital gains, but this is a non-binding document.

France Digitale's stance

We warmly welcome the harmonisation of taxation timing at the moment of share disposal. Ideally, we would have sought harmonisation of capital gains calculation itself, but this exceeds the legal basis of the EU Inc. proposal. This is a limitation that we accept given that choosing this legal basis and a Regulation rather than a Directive avoids the unanimity requirement in Council, enabling faster adoption while ensuring full harmonisation across Member States. However, without characterising EU-ESO income uniformly as capital gains across Member States, the scheme's practical utility remains limited: a company with employees in five countries still faces five different tax outcomes.

We thus support the EU-ESO as a necessary foundation, but acknowledge that taxation harmonisation is incomplete. **The Commission should propose a separate binding instrument in parallel with EU Inc. adoption to address the employment income versus capital gains distinction. This follow-up measure should leverage the political momentum generated by the EU Inc. adoption and build on the BEFIT corporate taxation initiative.**

Cross-border operations

What the Commission proposes

Founders may incorporate in any Member State, with the EU Inc. automatically recognised across all 27. Registration can occur in any official language of the Member State or of the Union. EU Inc. subsidiaries and branches can be registered easily via the centralised interface using the once-only principle. Cross-border conversions, mergers and divisions follow existing harmonised rules under Directive 2017/1132 with employee safeguards. The EU Company Certificate and digital power of attorney are recognised across borders for all company law procedures and certified documents from business registers require no apostille or legalisation.

Context and implications

This framework realises the core promise of the Single Market for company law. Previously, founders faced divergent incorporation rules, recognition delays and burdensome document certification requirements across borders. The removal of apostille requirements alone eliminates weeks of administrative friction. The automatic recognition of the EU Inc. legal form and the once-only principle for subsidiary formation directly address France Digitale's advocacy.

Information access and transparency

What the Commission proposes

Harmonised EU Inc. company information is publicly accessible via BRIS at the E-Justice portal with multilingual labels and in national business registers. Public authorities must consult this publicly available information through BRIS before requesting companies resubmit data in cross-border procedures. Up-to-date, verified information from business registers is automatically shared with relevant authorities, reducing fraud risks.

Context and implications

This transparency architecture supports trust in cross-border transactions and reduces compliance friction. However, practical implementation risks persist. The recognition of EU Inc. companies across borders is formally guaranteed, but whether public authorities genuinely consult BRIS before requesting documents remains uncertain, especially in Member States with protectionist cultures around business registration. Weak enforcement could make this provision symbolic rather than substantive.

France Digitale's stance

We strongly advocate for the robust enforcement of the once-only principle and the cross-border consultation duty, ensuring these are not treated as optional best practices but binding Member State obligations with consequences for non-compliance, requesting explicit timelines and penalties for Member States that fail to recognise EU Inc. documents or unreasonably delay cross-border procedures.

Closure of solvent companies

What the Commission proposes

EU Inc. companies dissolve via fully digital filing, with the business register instantly updating status. Fast-track liquidation applies to companies with no assets or debts, creditor consent and no pending proceedings, completing within approximately three months. Creditors file claims digitally and may object to the fast-track procedure. Liquidation information is automatically transmitted to authorities without separate resubmission.

Context and implications

This provision addresses a genuine startup pain point: closure often proves as burdensome as formation, with divergent Member State procedures causing months of delay and significant cost. The three-month timeline and digital procedures substantially improve on current practice, where liquidation can extend 18 months or longer in some jurisdictions. However, the fast-track pathway applies only to genuinely solvent companies with no assets or debts. The requirement for creditor consent or absence of objections places burden on company founders to notify and manage creditors, which can prove complex in cross-border scenarios where creditors are unknown or difficult to locate. The proposal is silent on electronic creditor notification mechanisms, potentially undermining efficiency gains.

France Digitale's stance

We support the fast-track liquidation framework but acknowledge understandable Member State concerns about creditor protection. **We advocate for expanded eligibility criteria only where robust creditor safeguards are demonstrably in place, including mandatory electronic creditor notification via BRIS, standardised claims forms with reasonable verification timelines and explicit objection procedures with clear timelines.** Pilot programmes in willing Member States rather than forcing uniform implementation could allow practical creditor protection mechanisms to be tested before broader roll-out.

Winding-up of insolvent companies

What the Commission proposes

Simplified winding-up procedures apply exclusively to EU Inc. companies that are innovative startups (fewer than 100 employees, less than EUR 10 million annual turnover or balance sheet total, and less than 10 years of existence). These procedures are swift, cost-effective and fully digital, with creditor claims based primarily on the debtor's written statement (deemed admitted unless contested). Member States establish electronic auction platforms for asset realisation, interconnected via the European e-Justice Portal in all EU languages.

Context and implications

This framework acknowledges a critical insight: standard insolvency procedures designed for mature companies are disproportionately burdensome for early-stage ventures with minimal assets, simple creditor structures and limited administrative capacity. The streamlined process and electronic auctions reduce costs substantially, enabling faster restart and reducing the stigma of failure—important for European innovation culture. However, Member States have expressed significant reservations as simplified procedures may inadvertently disadvantage creditors. The absence of agreement on insolvency among Member States in previous negotiations suggests this provision faces strong political obstacles and may delay agreement on the core EU Inc. framework itself, which we want to avoid.

France Digitale's stance

We support simplified insolvency procedures in principle but acknowledge Member State creditor protection concerns as entirely legitimate and substantive. Removing insolvency matters from judicial oversight creates genuine risks of opportunistic abuse and improper asset disposition. Commercial court systems provide essential creditor protection that cannot be sacrificed for procedural simplification. Given persistent Member State disagreement on insolvency harmonisation and the critical importance of maintaining judicial safeguards, we recommend to address simplified insolvency procedures through dedicated insolvency legislation, separate from the EU Inc. framework. This approach would allow each Member State to implement insolvency procedures within its own judicial framework and legal traditions, ensuring robust creditor protection while preserving the EU Inc. framework's momentum towards rapid adoption.

Next steps

The European Parliament and the Council of the EU need to find an agreement for the final text on EU Inc. to be adopted. The Commission aims to do so by the end of 2026. Within 9 months after the adoption of the text by the co-legislators, the Commission will provide the templates and guidelines needed for the first EU Inc. to be established.

We call for swift delivery of this timeline and for the first EU Inc. companies to be registered as soon as possible, sending a positive signal to the market and contributing to the shift from a fragmented, nationalistic approach to one that embraces and supports truly European champions.

Expected benefits from the EU Inc. framework:

- For companies: 328–440 million € of administrative burden reduction over 10 years; faster, cheaper formation and closure
- For investors: 1,780–2,850 € savings per secondary share transfer transaction; simplified capital increases and digital procedures
- For public authorities: efficiency gains from digital procedures and automatic data transmission; reduced IT costs through existing BRIS infrastructure
- For employees: simplified EU-ESO scheme with favourable tax timing; protected participation rights

II - Recommendation on the definition of innovative enterprises, innovative startups and innovative scaleups

The recommendation is addressed to the Member States, the EIB and the EIF, and it applies within the European Union and the three EFTA countries (Iceland, Liechtenstein and Norway), meaning the European Economic Area.

Innovative enterprise

To be an innovative enterprise, a company needs to fulfil at least one of the following criteria:

- a) R&D costs >10% of its total operating costs or >5% of its total net sales, in at least one of the three preceding financial years
- b) has developed, is developing or will develop products, services or business processes new or substantially improved compared to the state of the art.

R&D costs include:

- personnel costs (researchers, technicians, supporting staff employed on R&D projects)
- the depreciation costs of instruments and equipment corresponding to the life of the R&D projects
- the depreciation costs of buildings and land corresponding to the life of the R&D projects
- costs of contractual research, knowledge and patents
- costs of materials and supplies incurred directly as a result of R&D projects.

Innovative startup

An innovative startup is an enterprise which fulfils all of the following criteria:

- a) it is an innovative enterprise
- b) it is an autonomous enterprise (meaning not controlled at 25% or more by another enterprise). Companies funded by venture capital, private equity and business angel funding are considered as autonomous → this is positive for France Digitale's members.
- c) it employs less than 100 people and its annual turnover or annual balance sheet total is less than 10 million €
- d) it has less than 10 years.

Innovative scaleup

An innovative startup is an enterprise which fulfils all of the following criteria:

- a) it is an innovative enterprise
- b) it is an autonomous enterprise
- c) its annual turnover or balance sheet total exceeds 10 million €
- d) its average annualised increase in the number of employees or in the revenue exceeds 20% over the 2 preceding years
- e) it employs less than 750 people or it is not publicly listed.

France Digitale's position on the Recommendation on the definition of innovative enterprises, innovative startups and innovative scaleups

We welcome these definitions as tools to enable startup and scaleup exceptions across EU law. We call for automatic mutual recognition: companies designated as innovative or startups under national regimes (such as France's JEI status) should be automatically recognised as such at EU level, eliminating duplicative certification procedures.

We urge that proof-of-status procedures be straightforward and low-burden for companies with limited time, financial and human resources. We encourage these definitions to be applied consistently across State Aid, the next Multiannual Financial

Framework, regulatory sandboxes and any other measure that could ease startups' action and growth.

III - Communication: towards a EU Inc. for EU companies

The Commission foresees further measures and advises Member States in its communication about:

Employment/talent: The forthcoming Fair Labour Mobility package will explore the possibility to allow 100% cross-boarder telework for startups and scaleups, applying the social security legislation of the Member State where the employer is located. The upcoming EU Talent Pool Regulation will also facilitate job-matching in the recruitment of non-EU talent.

Taxation: The Commission has proposed a Head Office Tax (HOT) system that would allow SMEs to apply the tax rules of their home country. The Business in Europe Framework for Income Taxation (BEFIT) initiative aims to establish a single legislative framework for corporate taxation in the EU.

Litigation: The Commission recommends Member States to dedicate one specialised judicial chamber or court with the authority to handle disputes on EU Inc. company law.

France Digitale's position on the Commission's Communication

We strongly support the Fair Labour Mobility package enabling 100% cross-border telework for startups and scaleups under the employer's home Member State social security regime, eliminating the current requirement to open local entities for remote work activity. This will also allow startups and scaleups to be able to test a market before potentially opening an office in a new country. For this reason, this measure should be granted to all EU Inc. companies.

We also support the EU Talent Pool Regulation facilitating non-EU talent recruitment, critical for scaling European companies in a competitive global market.

On taxation, we welcome the proposed Head Office Tax system and the BEFIT initiative as essential moves towards genuine harmonisation. We call for rapid and efficient implementation of both instruments, ensuring companies can operate under unified tax frameworks rather than navigating 27 divergent regimes.

Regarding dispute resolution, we acknowledge the Commission's recommendation on specialised judicial chambers but do not prioritise this element in the EU Inc. negotiations. We defer to Member States and judicial authorities on the optimal framework and will focus our advocacy on core business law harmonisation measures.