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CCBE position paper on the 'EU Inc.' Corporate Legal Framework under the 28th Regime

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Executive Summary

The Council of Bars and Law Societies of Europe (CCBE), representing the Bars and Law Societies of 46 countries and, through them, more than one million European lawyers, welcomes the overall objective of establishing an optional European corporate framework as part of the broader "28th regime" initiative, aimed at facilitating cross-border activity fostering business initiatives with a simpler unified incorporation procedure and reducing fragmentation within the internal market. A framework such as 'EU Inc.' has the potential to support companies, particularly in their early stages, operating across jurisdictions and to contribute to the further development of the Single Market. At the same time, the current design of the 'EU Inc.' proposal raises several significant legal, structural and practical concerns which require careful consideration during the legislative process. The present contribution sets out the CCBE's principal observations regarding the proposed regime, particularly in relation to legal certainty, corporate governance, creditor and shareholder protection, the interaction with national law, and the role of legal professionals.

1. Balance between simplification and legal certainty

A first point relates to the balance between simplification and legal certainty. While the proposal relies on fast-track, digital and standardised procedures, it appears to be built on a model of limited ex ante verification. This approach raises concrete questions as to how essential elements such as the identification and verification of founders and beneficial owners, the authority and capacity of persons acting on behalf of the company, compliance with anti-money laundering and sanctions requirements, and the legality of the incorporation process will be effectively ensured in practice. Preventive verification mechanisms constitute a fundamental component of company law systems across Member States and play a key role in ensuring reliability, preventing abuse and reducing the risk of subsequent disputes. From the perspective of legal practitioners, these mechanisms are not merely formal requirements but constitute an essential safeguard for the integrity, predictability and reliability of the corporate framework.

In this respect, the authorities and professionals entrusted with preventive legality control should include qualified legal professionals, including lawyers. The involvement of lawyers contributes not only to compliance, but also to the proper interpretation and application of company law rules in increasingly complex cross-border situations. In this context, while the proposed maximum registration fee of 100 euros appears intended to cover administrative incorporation costs, the combination of accelerated incorporation timelines, digitalisation and meaningful preventive legality control nevertheless raises legitimate questions as to how sufficiently robust verification and compliance mechanisms can be effectively ensured within the envisaged framework.

2. Interaction between EU rules and national law

Another structural issue concerns the interaction between the Regulation and national law. The proposal relies on national rules for matters not expressly covered by the proposed Regulation, but it does not sufficiently clarify how the boundary between EU law and national law is to be determined, nor what precisely constitutes a matter "covered" by the Regulation. In the absence of sufficiently clear criteria, there is a tangible risk of divergent interpretations and applications across Member States, leading to variations in the legal regime applicable to 'EU Inc.' companies depending on their place of registration. This risk undermines the objective of establishing a coherent, predictable and genuinely harmonised European corporate framework.

It is also important that the draft template articles of association be available and sufficiently developed before the Regulation is finalised, given the central role which the articles of association are expected to play within the proposed framework. Without greater clarity regarding the relationship between the Regulation, the articles of association and residual national law, the proposal risks reproducing rather than reducing fragmentation and may encourage regulatory competition between Member States. It may also incentivise the drafting of excessively extensive articles of association aimed at excluding, to the greatest extent possible, the application of otherwise applicable national rules.

More fundamentally, where essential elements of the corporate regime remain dependent on identifying the relevant "nearest" national legal form, applicable national procedural rules, registry practices and domestic judicial interpretation, the proposed framework risks reproducing rather than reducing fragmentation. In such circumstances, 'EU Inc.' may not operate as a genuinely autonomous European legal form, but rather as an additional regulatory layer superimposed on divergent national systems. To ensure that the objective of simplification is effectively achieved, the Regulation should more clearly and exhaustively define the matters governed directly by EU law and limit recourse to national law to expressly enumerated residual areas only. Core elements such as incorporation, legal personality, governance structure, shareholder rights, directors' duties, creditor safeguards, share transfers and liquidation should, wherever possible, be governed by sufficiently autonomous and comprehensive EU rules.

3. Company identification and reliability of information

Concerns arise regarding the adequacy and clarity of the safeguards relating to company identification and the reliability of company information in a cross-border environment. The proposal does not sufficiently clarify how company names are to be verified, protected and coordinated across jurisdictions, nor how risks of duplication, misleading similarities or confusion between entities are to be effectively prevented in practice.

4. Allocation of liability and corporate governance framework

The internal organisation of 'EU Inc.' raises important questions concerning corporate governance, allocation of liability and shareholder protection. The proposal adopts a highly flexible approach, including a limited role for intermediaries and simplified governance arrangements. This flexibility may facilitate incorporation and operation, but it can also provoke uncertainty regarding the effective allocation of responsibilities within the company and the adequacy of safeguards in situations involving fraud, abuse or misuse of the corporate form. From the perspective of legal certainty, the relationship between directors' liability, shareholders' rights and the broader system of corporate accountability requires further clarification.

Certain mechanisms affecting minority shareholder protection similarly require closer examination. Article 52, both in relation to the scope of the remedies available and the apparent limitation of judicial discretion in adapting such remedies to the circumstances of the case, risks acting as a significant disincentive to venture capital and other forms of investment in 'EU Inc.' companies. Concerns may also arise regarding the allocation of liability for the exit price, particularly in relation to remaining shareholders, and the absence of balanced exclusion mechanisms in cases of serious shareholder misconduct.

Additional consideration should be given to the reliability and legal security of shareholder ownership records and share transfer systems. Where shareholder status and transfer validity depend primarily on company-controlled digital registers, risks may arise in relation to evidentiary certainty, manipulation, minority shareholder protection and compatibility with broader capital market structures. The framework would benefit from considering independent oversight, authorised third-party registrars or other regulated record-keeping safeguards capable of reinforcing investor confidence and legal certainty.

5. Creditor protection

Creditor protection remains an important area of concern within the proposed 'EU Inc.' framework. The absence of a formal minimum capital requirement reflects developments in several national legal systems, and minimum capital alone is not necessarily an effective creditor protection mechanism, but its removal cannot be regarded as neutral unless accompanied by a coherent and sufficiently robust alternative framework of safeguards. In its current form, the proposal does not sufficiently demonstrate how creditor protection will be ensured in a consistent, reliable and legally predictable manner across Member States, particularly where companies face financial difficulties.

Minimum capital has often been criticised as economically arbitrary or insufficient in itself, but abandoning it without replacing it with robust dynamic protections may significantly increase risks of undercapitalisation, opportunistic limited liability abuse and externalisation of insolvency risks onto creditors, employees and public authorities.

In this respect, creditor protection should not rely solely on entry conditions at incorporation, but on a broader life-cycle system of safeguards. The Regulation should therefore more clearly consider complementary mechanisms such as solvency- and balance-sheet-based distribution tests, restrictions on unlawful distributions, directors' liability for wrongful or fraudulent trading, early-warning obligations in the vicinity of insolvency, enhanced transparency and disclosure duties, safeguards against abusive related-party transactions, and effective clawback or enforcement mechanisms. Without a coherent substitute architecture, the combination of simplified incorporation, zero minimum capital and cross-border flexibility may undermine trust in the framework and weaken creditor confidence.

6. Liquidation and insolvency framework

The provisions on liquidation and insolvency raise important concerns as regards legal certainty, creditor protection and procedural integrity. The proposal only partially harmonises liquidation and insolvency matters, while leaving significant core elements to national law and again leading to variations in the legal regime applicable to 'EU Inc.' companies depending on their place of registration, which may undermine the objective of creating a coherent European corporate form. In addition, the scope and functioning of the proposed simplified insolvency procedures for 'EU Inc.' startup companies remain insufficiently clear, particularly given that Chapter X applies only to "innovative startups", a category defined outside the Regulation. The conditions for the application of these procedures, the level of independent supervision involved, and the possibility, in certain cases, of proceeding without the involvement of an insolvency practitioner raise legitimate concerns regarding creditor protection, procedural fairness and the risk of abuse.

Simplification and digitalisation may improve efficiency, but the proposal does not yet sufficiently demonstrate that these mechanisms provide an adequate substitute for traditional safeguards relating to independent supervision, verification of claims, equality of creditors, directors' accountability and avoidance of abusive conduct. Greater clarity is therefore needed regarding the interaction between the proposed EU rules and national insolvency law, as well as stronger autonomous safeguards for liquidation and insolvency, particularly in light of the broader flexibility of the 'EU Inc.' model and the absence of minimum capital requirements.

7. Role of legal professionals

While the initiative represents an important step in the development of a European corporate framework, further work is required to ensure that 'EU Inc.' combines procedural efficiency with legal robustness, effective safeguards and coherent governance arrangements. **In this context, the involvement of qualified legal professionals should be understood as an important safeguard contributing to legality verification, legal certainty and the proper functioning of the corporate framework. Lawyers bring essential expertise at the formation stage, including in relation to preventive control, legality checks, founders' rights and obligations, and internal governance.** Their role remains equally important throughout the company's life cycle. Integrating appropriate legal expertise into the operation of 'EU Inc.' companies is therefore not in tension with efficiency but contributes to ensuring that simplification and digitalisation do not come at the expense of legal reliability and confidence in the framework.

More broadly, the success of 'EU Inc.' will depend on its ability to provide a system that is not only fast and flexible, but also coherent, legally sound and capable of inspiring trust across all Member States. The effectiveness and credibility of the proposed 'EU Inc.' framework will depend on its ability to combine simplification and digitalisation with legal certainty, coherent governance structures, effective safeguards and consistent application across Member States. In this respect, it remains essential to ensure that the objective of facilitating cross-border business activity does not result in increased legal fragmentation, regulatory uncertainty or weakened protection mechanisms within the internal market.

The observations analysed below further develop the CCBE's position in relation to four principal areas of the proposed Regulation: the relationship between the Regulation and national law; incorporation and capitalisation; shareholder and creditor protection and directors' liability; and closure, liquidation and insolvency.

The CCBE remains available to contribute constructively to the ongoing discussions, drawing on the practical experience and expertise of legal practitioners across Europe, with particular attention to ensuring legal certainty, effective safeguards and confidence in cross-border business activity in the Single Market.

The relationship between the Regulation and national law

The proposed Regulation sets out the relationship between the Regulation and national law. It provides (Article 4) that ‘EU Inc.’ companies shall be governed by the Regulation and by their articles of association, which shall comply with it. “Matters that are not covered” by the Regulation or by the articles of association shall be governed by national law, including the provisions transposing Union law, which apply to the relevant national legal forms in the Member State in which the ‘EU Inc.’ has its registered office. Member States shall designate the relevant national legal form referred to in Article 4(2), the provisions of which shall apply to ‘EU Inc.’ companies.

The proposed Regulation also provides (Article 103) that, unless objectively justified and proportionate, Member States shall treat ‘EU Inc.’ companies no less favourably than other limited liability companies formed in accordance with their national law in any aspect of their activities and operations. The provision further prohibits Member States from adopting or maintaining specified criteria, measures or requirements with regard to ‘EU Inc.’ companies whose registered office is located in another Member State.

Whilst offering certain protections against less favourable treatment, the fact that an ‘EU Inc.’ remains subject to aspects of national company law, as well as national rules in other areas, means that there may ultimately be 27 different versions of the ‘EU Inc.’ framework in practice.

Although it may not be desirable to establish an excessively detailed and exhaustive European company law regime for ‘EU Inc.’ companies, the extent to which national law continues to apply is likely to remain uncertain for many years. Issues such as shareholder liability, directors’ duties and liability, capital maintenance and creditor protection are only some examples of matters where uncertainty may arise. Certain companies may seek to take advantage of such uncertainties, not only for legitimate purposes.

Matters covered by the Regulation

It is not sufficiently clear how the proposed Regulation is intended to operate in practice and, in particular, how the notion of a “matter” being “covered” by the Regulation should be interpreted. For example, the Regulation sets out provisions relating to the name of an ‘EU Inc.’ company which must comply with certain requirements under Article 6. It is unclear whether this should be interpreted as meaning that any national law provisions concerning company names cease to apply entirely, or whether national rules applicable to the relevant national legal form continue to apply insofar as they are not expressly reflected in Article 6.

Where the Regulation explicitly provides that a matter shall continue to be governed by applicable national law, the position is somewhat clearer. This is, for example, the case with directors' liability towards third parties, which is not covered by Article 44 of the Regulation. However, even in such cases, uncertainties remain. Belgian company law, for instance, provides for a monetary cap on directors' liability both towards the company and towards third parties (Article 2:57 of the Belgian Code on Companies and Associations). It remains unclear whether directors of an 'EU Inc.' would also benefit from such limitations where liability is invoked by the company itself. Constitutional principles of equal treatment within Member States may also become relevant in this context, particularly where directors of an 'EU Inc.' are treated differently from directors of the corresponding national legal form.

Similarly, Article 44 of the Regulation sets out directors' duties "without prejudice to further obligations that may apply in specific situations". This suggests that national rules concerning directors' duties may continue to apply in parallel with the duties set out in the Regulation. However, it remains unclear whether national provisions addressing similar matters to those already regulated by Article 44, such as duties to act in good faith, in the company's interests or with reasonable care, skill and diligence, continue to apply where the Regulation already addresses those matters. For example, where national law applies both objective and subjective standards in assessing directors' conduct, it is uncertain whether such standards would apply to directors of an 'EU Inc.'.

A Member State may also recognise general procedural principles relating to shareholder meetings and the right of interested parties to be heard. Article 48(2) permits written resolutions where the required majority of shareholders holding eligible voting rights has signed the resolution, provided that written resolutions are permitted under the articles of association. Article 48(3) requires the proposed resolution to be sent or made available digitally to all shareholders, but does not expressly provide for any right to prior deliberation. This may conflict with certain generally recognised procedural principles in some Member States. If written resolutions are considered a "matter covered" by the Regulation, such national principles may cease to apply. Conversely, if the Regulation is interpreted as not fully covering such procedural guarantees, national principles may continue to apply.

It is therefore important that the Regulation clarifies what is meant by a matter being "covered" by the Regulation. Without such clarification, Member States, and potentially national courts, may adopt divergent and strategic interpretations. Some may interpret the concept broadly, thereby preserving a lean and flexible regime capable of attracting incorporations and investment, while others may interpret it narrowly so as to maintain the application of extensive protective national company law rules. Such regulatory divergence risks producing substantial variations between ‘EU Inc.’ companies across the Union, thereby undermining the objective of creating a coherent European corporate framework.

Relationship with the articles of association

The Regulation requires the articles of association to comply with the requirements of the Regulation. However, it is still not clear whether the articles of association must also comply with mandatory provisions of the applicable national law insofar as such provisions relate to the articles of association.

Article 7(2) provides that the articles of association shall cover at least the matters specified in the Annex to the Regulation. It is unclear whether the use of the standard EU template articles of association is intended to exclude the application of national rules that would otherwise apply to articles of association, or whether national law would continue to apply insofar as it concerns matters not expressly addressed by the standard template.

Similarly, where an ‘EU Inc.’ adopts non-standard articles of association, it is unclear whether the company may include provisions intended to exclude or derogate from otherwise applicable national law provisions. Such an interpretation may arguably follow from Article 4(2), which limits the application of national law to matters not covered by the Regulation or by the articles of association. This issue requires clarification.

It is therefore particularly important that the standard template articles of association be made available at an early stage and, in any event, before the Regulation is adopted, so that the relationship between the Regulation, the articles of association and national law can be properly assessed rather than left to subsequent implementing acts.

Difficulties in determining the relevant national legal form

It may not always be straightforward for Member States to determine the “relevant national legal form” referred to in Article 4(3) of the Regulation.

For example, in Belgium, the BV/SRL is the most flexible limited liability company form and may therefore appear to be the most appropriate “default” national form for the purposes of the ‘EU Inc.’. However, the BV/SRL has no capital requirement and therefore contains no rules relating to capital establishment, maintenance or protection. Whilst an ‘EU Inc.’ may itself be established without capital, an ‘EU Inc.’ structured with capital may consequently fall outside any meaningful national capital protection regime if the BV/SRL is designated as the relevant national legal form. Further clarification would therefore be helpful as regards the meaning and operation of the concept of the “relevant national legal form”. Consideration could also be given to allowing Member States, in appropriate circumstances, to designate more than one relevant national legal form for different purposes.

Similar issues may arise in other Member States. In France, for example, the SAS (‘’Société par Actions Simplifiée’’) is a highly flexible corporate form and may appear to be the most appropriate national reference form for the purposes of the Regulation. The SAS cannot go public and ask for listing on a regulated market. In France this is currently only possible for SA (Sociétés Anonyme) which must have a minimum capital and there are other provisions which apply. Under the Regulation, an ‘EU Inc.’ company can seek admission to trading of its shares on a multilateral trading facility provided it complies with the applicable requirements under Union and national laws. It may also seek admission to trading in a regulated market if the Member State has provided for this. In such circumstances, it is unclear whether the continued application of provisions governing the SAS would remain appropriate.

Comparable difficulties may arise in other Member States where the designated national legal form may not correspond to the operational characteristics of the relevant ‘EU Inc.’. This may be the case, for example, in jurisdictions such as Bulgaria, where relevant company law features may be distributed across different domestic company forms. Further clarification would therefore be useful as to whether, and to what extent, the identification of the “relevant national legal form” may operate in a functional or issue-specific manner rather than through exclusive reference to a single national company form.

Providing more information centrally

It would be helpful if Member States were required not only to designate the relevant national legal form, or forms where appropriate, but also to identify and maintain an updated list of the national statutory provisions applicable to ‘EU Inc.’ companies.

It should also be recognised that company law systems are not based solely on statutory provisions, but also on general principles, doctrines and judicial interpretation. Greater transparency in this respect would assist companies seeking to establish an ‘EU Inc.’ in identifying the applicable legal framework and assessing the implications of choosing a particular Member State as the place of registration.

Such transparency would also assist the Commission in monitoring whether the concept of “matters not covered” by the Regulation is being interpreted consistently across Member States and in accordance with the objectives of the proposed framework.

It would additionally be helpful if Member States were required to notify:

i. the employee participation rules applicable in the Member State which may apply pursuant to Article 12;
ii. whether the Member State permits an 'EU Inc.' to seek admission to trading on a regulated market pursuant to Article 60.

Case law relating to the 'EU Inc.'

A further issue concerns the development and accessibility of case law relating to the 'EU Inc.'. The establishment of a specialised European court exclusively competent for disputes concerning 'EU Inc.' company law does not appear realistic, particularly given the continuing relevance of national law within the proposed framework.

The Commission's suggestion that Member States consider designating specialised judicial chambers or courts competent to deal with 'EU Inc.' disputes, appears to be a good proposal. However, attention should also be given to establishing a system through which national case law relating to 'EU Inc.' companies could be centralised and made readily accessible throughout the Union, thereby contributing to greater consistency, legal certainty and predictability.

Lifting the corporate veil

Article 3(a) provides that shareholders of an 'EU Inc.' shall not be liable for the obligations of the company. In common law (and other) jurisdictions, the principle of separate legal personality may exceptionally be set aside in cases involving fraud, illegality, abuse or comparable circumstances through doctrines commonly referred to as "lifting" or "piercing" the corporate veil or '' abuse of majority''.

It is not entirely clear whether Article 3(a), read together with Article 4, is intended to exclude or limit the application of such principles under national law. Given the fundamental importance of such doctrines in preventing abuse of the corporate form, greater clarification would be desirable.

Incorporation and Capitalisation

The proposed framework for the 'EU Inc.' aims to establish a simplified and harmonised regime for company formation across the Union. While this objective is welcome, the success of the initiative will depend not only on the speed of incorporation procedures, but also on the clarity, legal certainty, internal coherence and proper interaction of the regime with national laws. Certain provisions relating to incorporation therefore require targeted adjustments to ensure that simplification does not result in legal uncertainty, structural risks or avoidable litigation.

Company names and cross-border identification

With respect to Article 6 on the name of the 'EU Inc.' company, the requirement under paragraph 1(e) that the name be "sufficiently different from names of companies registered in any Member State as an EU Inc. and from names of any other companies available via the Business Registers Interconnection System ('BRIS')" lacks sufficient precision to ensure the effective prevention of conflicts at the registration stage, as the wording does not clearly exclude the possibility that identical or confusingly similar names may nonetheless be accepted.

For the purposes of Article 6(1), the requirement that the company name be "sufficiently different" shall be assessed by reference to company names visible through the Business Registers Interconnection System (BRIS). This provision shall not prevent competent national authorities from refusing registration or subsequently requiring the change or removal of a company name that is misleading, abusive, or confusingly similar under applicable national law.

This concern is reinforced by Article 6(2), which provides that "registering a company name shall not affect any claim another person may have regarding the improper use of a name contrary to Union or national law", thereby confirming that the system relies, at least in part, on ex post enforcement, an approach which is not satisfactory in practice since it would place an undue burden on companies already registered, requiring them to initiate legal proceedings in order to safeguard their rights, an outcome which is incompatible with the objective of legal certainty and should therefore be avoided.

For this reason, conflicts relating to company names should be effectively prevented at the stage of registration through the introduction of a more robust and well-defined ex ante verification mechanism, capable of ensuring that identical or confusingly similar names are not registered, which is particularly important in a system relying on BRIS, where the risk of cross-border inconsistencies is inherently increased.

In parallel, it must be ensured that national authorities retain the competence to refuse, and, where necessary, remove or correct, registrations that conflict with pre-existing rights, so that the framework does not lead to situations in which a name is accepted despite a clear conflict, thereby exposing third parties to avoidable disputes and undermining confidence in the system.

In this respect, the interaction between Article 6(2) and Article 6(4), which provides that "Member States shall not apply rules that unduly interfere with the lawful registration and use of that name throughout the Union", requires clarification, as, in its current formulation, Article 6(4) may be interpreted as limiting the ability of Member States to apply necessary safeguards; it should therefore be explicitly clarified that this provision does not prevent Member States from ensuring that abusive, identical or misleadingly similar names are not registered or maintained, in accordance with Union and national law.

Furthermore, Article 6(3), which provides that "a branch of an EU Inc. company shall have the name of that company which may be completed by the branch indication", should be reviewed in light of the same considerations, since, in its current form, it does not address the risk of confusion arising at branch level and may allow for situations in which identical or similar names are used in a manner that undermines legal clarity.

Articles of association and language requirements

Article 7(5) does not provide for any review of the English version where non-standardised articles of association are used. To prevent inaccurate, incomplete, or misleading versions from circulating, it may be advisable to require a translation by a certified translator. Otherwise, translations will in future be produced solely using tools such as DeepL or AI.

Registered office and genuine link requirements

As regards Article 9 on the registered office, paragraph 1 provides that "an 'EU Inc.' shall have its registered office and its central administration or principal place of business in the Union", a formulation which allows for a separation between the registered office and the place of effective management and which, in turn, raises concerns as it does not require any substantive connection between the company and the Member State of registration.

The absence of a requirement for a genuine link may facilitate the establishment of companies without any real economic presence, thereby creating a risk of "letterbox companies" and enabling regulatory arbitrage, including the circumvention of national rules, for example in areas such as co-determination, and it is therefore appropriate to consider introducing a requirement ensuring a genuine link between the 'EU Inc.' and the Member State of registration, which could be achieved by requiring that the registered office correspond to the place of effective management or to a demonstrable and substantive business presence, including, where appropriate, evidence of access to premises or operational activity, thereby strengthening the credibility and reliability of the framework. At the time of incorporation, the directors shall certify that this requirement is met. Any intentional misrepresentation shall give rise to directors' liability under this Regulation.

Prior authorisations and regulated activities

The interaction between the incorporation regime and activities subject to prior authorisation must be addressed, since in several Member States certain regulated professions and sectors require approval by a competent authority prior to registration, and the application of a very tight incorporation timeline would not be compatible with such requirements; the Regulation should therefore explicitly allow for exceptions where prior authorisation is required under Union or national law.

Payment mechanisms and capital contributions

The wording of Article 11 is unclear as to the scope of the term 'payments'. It is not evident whether it is limited to procedural costs or whether it also encompasses the payment of share capital where the articles of association provide for a specified amount of capital.

Article 11(2) states that 'payments can be made online to a bank account of a bank operating in the Union'. If this applies to the payment of share capital, it would appear to allow such capital to be paid into an account held with a bank operating in a Member State other than the Member State of establishment.

Preventive control and the role of legal professionals

With regard to Article 14 on preventive control, paragraph 1 currently provides that "*the articles of association [...] shall be subject to preventive administrative, judicial or notarial control, or any combination thereof*", and while the principle of ex ante verification is appropriate, the provision is unduly restrictive in that it does not include lawyers among the competent actors, despite the fact that preventive control is intended to ensure the legality of the incorporation process, including the verification of formal requirements, legal capacity, and the proper constitution of the company, functions which are not inherently limited to administrative, judicial or notarial bodies.

In a number of Member States, lawyers are entrusted with responsibilities that directly contribute to the legality and reliability of company formation, including the preparation and verification of constitutive documents, and their role, which extends across the entire lifecycle of companies, makes them particularly well placed to ensure consistency and compliance from incorporation onwards; the provision should therefore be revised to allow Member States to designate lawyers as competent authorities for preventive control.

A suitable amendment would be: "*Member States shall ensure that the articles of association at the time of the formation of the 'EU Inc.' and any amendments to the articles of association are subject to preventive administrative, judicial, notarial or legal professional control, or any combination thereo*f", a formulation which reflects the diversity of national systems and ensures that existing legal structures are accommodated without imposing any obligation on founders or affecting the organisation of preventive control at national level.

It should also be made clear that any involvement of lawyers in preventive control must fully respect legal professional privilege, lawyer-client confidentiality and the applicable deontological rules governing the legal profession.

Incorporation timeline and cross-border verification

The very tight incorporation timeline was already mentioned above: With regard to Article 14 (d) how can it be ensured within the 48-hour timeframe that in cases such as the incorporation of an EU Inc. by a foreign (for example US based) company, that the company's legal representatives have the necessary legal capacity and have authority to represent the company? Legality check presupposes an understanding of the relevant foreign legal framework.

Concluding observations

In conclusion, the overall balance of the proposal, including simplified incorporation procedures, very low capital thresholds, and limited ex ante controls, requires careful consideration, as, while accessibility and efficiency are legitimate objectives, they should not lead to a framework that may facilitate misuse or create systemic risks, and it is therefore essential to ensure that the 'EU Inc.' remains both simple and legally robust.

Protection of Shareholders and creditors and directors ‘liability

As with other aspects of the proposed ‘EU Inc.’ framework, the provisions concerning shareholder and creditor protection and directors’ liability are significantly affected by the lack of sufficient clarity regarding the boundary between EU law and national law. This creates a risk of divergent interpretations and applications across Member States, potentially resulting in different legal outcomes depending on the place of registration. Such fragmentation may in turn encourage forum shopping or the continued preference for particular domestic company forms, outcomes which the proposed framework is intended to avoid.

There is also a risk that the ‘EU Inc.’ may ultimately operate as an additional layer of regulation and administrative complexity superimposed upon existing domestic company law regimes, rather than as a genuinely autonomous and simplified European corporate form. In this respect, core areas relating to shareholder protection, creditor safeguards and directors’ liability should, wherever possible, be governed directly and comprehensively by EU law.

Consideration should therefore be given to establishing a minimum EU-wide baseline concerning director disqualification, including mechanisms for mandatory cross-border recognition, in order to reduce opportunities for regulatory arbitrage. Similarly, the Regulation should provide for minimum safeguards regarding material related-party transactions, including the exclusion of conflicted directors from decision-making, mandatory board approval mechanisms and shareholder approval requirements above appropriate materiality thresholds.

Further consideration should also be given to regulating directors’ liability comprehensively within the Regulation itself rather than leaving significant aspects to national law. The issues identified below in relation to the articles of association may further exacerbate these concerns.

Relationship with the articles of association

It is difficult to assess fully the operation of the proposed framework in the absence of the standard template articles of association. Although the Regulation contains several provisions intended to protect shareholders, creditors and corporate governance interests, a considerable number of matters remain outside the scope of the Regulation and may therefore potentially be addressed through the articles of association pursuant to Article 4.

In certain respects, this flexibility could allow for stronger protection mechanisms, including enhanced minority shareholder safeguards. However, the opposite may equally occur. In particular, it appears unlikely that articles of association would voluntarily strengthen creditor protection where doing so would reduce flexibility for founders or investors. Since national law applies only to matters not covered by the Regulation or by the articles of association, it may be possible in practice to derogate even from mandatory rules applicable to the corresponding national legal form.

Conversely, where a matter is covered neither by the Regulation nor by the articles of association, national law may apply in full, particularly if the concept of "matter covered" is interpreted narrowly. This could lead to situations in which both the Regulation and the protective rules of the relevant national legal form apply simultaneously, provided that such application does not result in less favourable treatment of the 'EU Inc.' under Article 103.

Such outcomes would be difficult to reconcile with the objective of establishing a coherent "28th regime". A preferable approach would therefore be for the Regulation itself to provide more comprehensive protection of shareholder and creditor interests and to define more clearly the relationship between EU law, national law and the articles of association.

Fragmentary approach to directors' liability

The provisions concerning directors' liability remain fragmented. Article 44 addresses directors' liability towards the company but leaves liability towards third parties to applicable national law, insofar as such matters are not covered by the articles of association. This division creates uncertainty and may undermine the coherence of the proposed framework.

Consideration should therefore be given to regulating directors' liability towards third parties directly within the Regulation in order to enhance legal certainty and consistency across Member States.

Simplified insolvency proceedings for innovative start-ups

Additional safeguards appear necessary in relation to the proposed simplified insolvency proceedings applicable to innovative start-ups. In particular, mechanisms should be considered to ensure that instances of fraud, misconduct or abuse involving directors or shareholders are properly referred to competent authorities or judicial bodies, especially in circumstances where no insolvency practitioner is appointed pursuant to Article 90(2).

In this context, greater clarity is required regarding the competent authority responsible for oversight and supervision where insolvency practitioners are not involved, including in relation to the operation of Article 95(3).

- **Comments by reference to specific provisions of the proposed Regulation**

In addition to the general observations concerning shareholder and creditor protection, directors' liability and the interaction between the proposed Regulation and national law, several individual provisions of the proposed Regulation raise further concerns regarding legal certainty, corporate governance, investor protection and the overall coherence of the 'EU Inc.' framework. The following (non-exhaustive) remarks identify provisions which would benefit from further clarification, adjustment or additional safeguards during the legislative process.

Article 2(4) and (20) - Definitions of "shareholder" and "distribution"

Care should be taken to ensure that the definition of "shareholder" does not prevent the regulation of equivalent transactions or arrangements which may indirectly benefit shareholders and thereby circumvent the intended safeguards of the Regulation.

Article 3(a) - Shareholder liability

Article 3(a) establishes the principle that shareholders shall not be liable for the obligations of the company. However, the effectiveness of this principle is reduced by several other provisions of the proposed framework. In principle, shareholders should not incur liability for company obligations except in cases involving fraud or abuse or where liabilities have been expressly and voluntarily assumed.

Article 14(2)(e) - Preventive control relating to contributions to capital

Article 14(2)(e) should clarify the nature and scope of the preventive control mechanisms relating to capital contributions. Excessively formalistic approaches, including mandatory judicial control in all circumstances, may undermine the objective of procedural simplification.

Article 21(4) and (6) -Two-year qualification period for domestic merger or conversion

The rationale for the proposed two-year qualification period applicable to domestic mergers or conversions is not entirely clear. Whilst the provision is not opposed in principle, further clarification would be useful regarding the manner in which the interests of shareholders, creditors and other stakeholders are intended to be protected through this mechanism.

Article 22 - Disqualified directors

The concerns identified above regarding the need for minimum EU-wide standards and cross-border recognition mechanisms in relation to director disqualification are equally relevant in the context of Article 22.

Article 25 - Information available in the business register

Consideration should be given to expanding the categories of information required to be disclosed in the business register or other similar publications, such as in official journals, in the interests of creditor and shareholder protection. For example, disclosure could include information concerning previous director disqualifications, including expired disqualification periods.

Article 29 - Disclosure obligations in business communications

Business communications of the company should additionally identify the directors of the company in order to enhance transparency and accountability.

Article 42(4) - Binding shareholder instructions

Article 42(4), which permits shareholders to give binding instructions in all matters not contrary to Article 4, may create governance concerns and potentially deter investment. Consideration should therefore be given to preserving a residual power for directors to refuse instructions which they have determined in good faith not to be in the interests of the company and its shareholders taken as a whole.

Article 44 - Directors' duties

Article 44 may significantly extend directors' liabilities beyond standards applicable in certain Member States, particularly jurisdictions where directors' liability traditionally arises primarily in cases involving fraud, recklessness, self-dealing or serious misconduct.

If such provisions are retained, consideration should be given to incorporating a presumption comparable to the business judgment rule reflected in Delaware law, including a presumption that directors act without self-interest or conflict unless demonstrated otherwise.

Article 46 - Related-party transactions

Although Article 46 introduces safeguards relating to related-party transactions, concerns remain that the possibility for the articles of association to permit approval solely at board level under Article 46(1)(a) may not provide sufficiently robust protection.

Consideration should therefore be given to identifying categories of transactions which should be prohibited altogether, such as loans to directors or the provision of guarantees or security for obligations of connected persons.

Article 47 - Meetings and voting by electronic means

Additional safeguards may be necessary to ensure effective shareholder participation in electronic meetings and to establish minimum standards concerning the electronic communication systems selected by directors.

Articles 49 and 51 - Quorum, minorities and class rights

Consideration should be given to requiring enhanced majority thresholds for certain decisions of particular importance, including solvent winding-up procedures and amendments to the articles of association. Similar concerns arise in relation to Article 51 concerning the protection of class rights. In particular, requiring the consent of each class of shares with inferior rights for the creation of additional share classes may discourage venture capital investment and financing operations where investors are unwilling to grant veto rights to each inferior class.

Article 52 - Shareholders' protection and withdrawal rights

The allocation of liability for payment of the exit price to remaining shareholders should be reconsidered. The company itself should remain the principal obligor, subject to solvency and distribution constraints, unless shareholders have expressly assumed payment obligations contractually.

Maintaining company liability for the exit price may itself discourage venture capital investment. At the same time, the discretion of courts to allocate responsibility for payment by reference to conduct or fault should not be unduly restricted. In several Member States, minority oppression remedies commonly allow courts to order specific shareholders to purchase shares or, alternatively, to order the winding-up of the company. Such judicial flexibility should be preserved.

Article 53 - Digital register of shares

The protection of shareholders requires a reliable and legally secure "source of truth" concerning title to shares. Minimum standards should therefore apply to the operation of digital share registers, including requirements relating to the existence of a single authoritative register, audit trails, identity verification, transfer effectiveness and interoperability. Outsourcing of such systems should only be permitted where these standards are fully satisfied.

Article 56 - Exercise of shareholders' rights

Article 56(6) should clarify that courts may appoint investigators only where substantive grounds exist justifying such appointment, in order to avoid vexatious or abusive use of this mechanism.

Article 60 - Access to public markets

Consideration should be given to introducing minimum capitalisation requirements for ''EU Inc.'' companies seeking access to public markets.

Article 64 - Capital and non-capital share structures

The proposed 'EU Inc.' framework reflects a compromise between capital and non-capital company models. Article 64 illustrates this hybrid structure by permitting shares to be issued against consideration contributed to capital, consideration not contributed to capital, or a combination of both.

As a consequence, there may be ‘EU Inc.’ companies composed entirely of capital shares, entirely of non-capital shares, or of mixed structures containing both categories. This distinction has important implications throughout the Regulation because capital and non-capital shares are subject to different legal treatment in several respects.

For example, contributions relating to capital shares must be fully paid upon issuance under Article 64(4), whereas contributions relating to capital shares may not consist of undertakings to perform work or provide services pursuant to Article 65(1). Similarly, the requirement for an independent expert valuation in relation to in-kind contributions may be waived for non-capital shares under Article 65(5). In mixed structures, such categories may effectively operate as distinct classes of shares pursuant to Article 55.

Article 65(6) - Overvaluation of in-kind contributions

Article 65(6), which imposes liability where in-kind consideration has been significantly overvalued, would benefit from greater precision. Liability should arise only where the shareholder was aware of the overvaluation at the time of contribution.

Articles 65, 76 and 77 - Creditor protection and independent experts

The notion of “independent expert” should be clarified to ensure that it expressly includes statutory auditors, audit firms and equivalent regulated professionals for the purposes of in-kind contribution valuations and capital reduction assurance procedures.

Consideration should also be given to requiring limited disclosure in the register concerning redeemable shares, including the existence of such shares, the relevant class and the basic redemption mechanism.

Article 72 - Distributions

Article 72(4) should not impose joint and several liability where responsibility properly relates to the fault of individual directors.

Article 106 - Penalties

Consideration should be given to extending the scope of Article 106 so as to include additional situations warranting penalties, including circumstances falling under Article 77(5) where directors knowingly authorise capital reductions resulting in assets no longer exceeding liabilities.

Key remarks: closure and insolvency

The proposed Regulation does not sufficiently regulate the ordinary liquidation procedure of an ‘EU Inc.’. This creates a significant gap, as ordinary liquidation is likely to constitute the default procedure leading to the removal of the company from the register. Leaving this matter largely to national law may result in unjustified differences between ‘EU Inc.’ companies depending on their Member State of registration, thereby weakening the objective of a coherent European corporate form. It may also create incentives to misuse the fast-track liquidation procedure, to the detriment of creditors and public authorities, in particular where public-law liabilities remain outstanding. The potential personal liability of directors does not appear sufficient on its own to address these risks. A standard ordinary liquidation procedure should therefore be introduced for ‘EU Inc.’ companies, based on the usual stages of liquidation proceedings, adapted to electronic communication and aligned with the digital features of the proposed Regulation.

Second, the proposed Regulation limits simplified winding-up proceedings of insolvent ‘EU Inc.’ to companies that qualify as “innovative” start-ups. This raises concerns, since it is unclear by whom, on the basis of which criteria and through which procedure such status would be assessed. The availability of simplified winding-up should not depend on an externally defined concept of innovativeness. A more legally certain approach would be to reserve simplified proceedings for genuinely small and simple structures, for example companies with no immovable assets, limited turnover, a limited workforce and no complex creditor structure, as is already reflected in several national systems.

Third, the permissibility of conducting proceedings without an insolvency practitioner requires careful consideration. If such an exception is maintained, it should remain strictly limited and subject to effective supervision by the competent court, authority or other existing body designated under national law. The Regulation should not assume the creation of new administrative structures in Member States, but should ensure that, in the absence of an insolvency practitioner, there is a clearly identified supervisory mechanism capable of protecting creditors, verifying claims and preventing abuse.

Chapter IX - Closure of solvent ‘EU Inc.’ companies

The overall direction of Chapter IX is positive. The introduction of a fast-track liquidation procedure for companies which no longer carry out economic activity and have no assets or liabilities responds to a real practical need and is consistent with the objective of simplifying closure procedures. However, the absence of a comprehensive ordinary liquidation procedure remains a significant gap. The reliance on national law for this purpose may result in divergent outcomes across Member States and may fail to achieve the intended simplification, cost reduction, digitalisation and legal certainty.

Limiting simplification to the narrowly defined fast-track procedure may also encourage attempts to use that procedure in situations for which it is not appropriate. This may prejudice creditors, tax authorities and other public authorities. In this context, the reliance on directors' personal liability for false declarations may be useful but is unlikely to constitute a sufficient safeguard in all cases. An auditor's or experts' confirmation of such declarations may eliminate the risk of director's eventual false declarations.

In order to strengthen legal certainty and reduce the risk of falsified documents being submitted to the Register, the Regulation should also provide for reliable certification of copies of documents submitted to the Register where such documents have not been created in electronic form with a qualified electronic signature. Lawyers should be able to play an important role in this process.

The following observations address specific provisions of the proposed Regulation relating to the closure, liquidation and insolvency of 'EU Inc.' companies. They focus in particular on issues of legal certainty, creditor protection, procedural safeguards and the practical operation of the proposed mechanisms within the broader framework of EU and national insolvency law.

Article 81 - Nullity of the ''EU Inc.''

Article 81(1) correctly limits the cases in which the nullity of an 'EU Inc.' may be declared. This is important for legal certainty and is consistent with the acquis of European company law.

Article 81(2) appropriately enables third parties to challenge a decision declaring nullity. However, the Regulation should clarify that nullity may be declared only by a Court, in exceptional cases expressly provided for by law. Further clarification is also needed as to the relationship between a decision declaring nullity and any decision of the register court concerning the removal of the null 'EU Inc.' from the register.

Article 81(3) provides that the nullity of a company does not affect the validity of obligations entered into by or with the 'EU Inc.' company, which are to remain enforceable notwithstanding the liquidation. It is, however, unclear how this provision would operate in practice in relation to an 'EU Inc.' affected by nullity, and the reference to liquidation is itself ambiguous, given that liquidation, by its nature, normally concerns a validly incorporated company. Greater clarification is therefore required regarding the legal consequences of nullity, in particular vis-à-vis third parties. In this respect, either the relevant provisions of the proposed Regulation should be further developed, or the scope of Article 81(4) should be extended so as to clarify that the national law of the Member State of registration also governs the legal effects of nullity towards third parties.

Article 81(5) aims to protect creditors of a null 'EU Inc.', but its wording remains incomplete. It appears to suggest that creditors may direct claims against shareholders up to the amount of unpaid contributions. This should be clarified in order to avoid uncertainty regarding the scope and basis of shareholder liability.

Article 82 - Digital communication in liquidation

Article 82 should be welcomed insofar as it facilitates electronic communication between the 'EU Inc.', the register court, liquidators and creditors. Electronic communication may accelerate the circulation of documents and reduce unnecessary formalities. It is also appropriate that creditors may submit claims electronically without paper-based or notarial form requirements.

However, where documents submitted electronically were not originally created in electronic form, the Regulation should require reliable certification that copies correspond to the original documents. Lawyers should play an important role in this process, which would help reduce the risk of falsified attachments being submitted to the register

Articles 83 to 87 - Fast-track liquidation

Article 83 introduces a fast-track liquidation procedure subject to the conditions set out in paragraph 1. This approach is positive where the company has ceased economic activity and has no assets, debts or pending proceedings, or where creditors have consented. However, the requirement of consent from all known creditors may itself create practical difficulties and potential risks of abuse.

Article 83(3) introduces joint and several personal liability of the persons managing the company for damage caused by false declarations. This is an appropriate safeguard, but it may not be sufficient in all cases, particularly where management is replaced before liquidation by persons with no assets from which creditors' claims could realistically be satisfied.

Article 83(3) should also be clarified. It refers to liability for a "false or fraudulent declaration of consent under this Article", although the only express reference to consent in Article 83 appears to concern creditor consent. Unless the provision is intended to cover forged or fraudulent creditor consent, the basis for directors' liability in this context is unclear.

Article 83(5) requires the books and records of the 'EU Inc.' to be retained for six years by a person designated by shareholders or by a court. Consideration should be given to imposing additional requirements on that person, particularly in relation to employee documentation and other records requiring long-term safeguarding, with reference where appropriate to the national law of the Member State of registration.

Article 85 allows creditors to oppose the use of the fast-track liquidation procedure and request ordinary liquidation. However, the practical effectiveness of this right is questionable, as the 30-day period from disclosure may be too short in practice.

Article 85(3) provides that, where the claims are well founded, the business register shall refuse the opening of the fast-track procedure. This requires clarification, in particular as to who is competent to determine whether a claim is well founded. Such an assessment should not be left to an administrative register where that body lacks the procedural capacity to evaluate disputed creditor claims.

Article 85(5) provides a mechanism to protect creditors whose claims have not been satisfied in the fast-track procedure, but in practice this protection is limited to claims against former members of the management board. This may be insufficient. The 'EU Inc.' should not be removed from the register while creditor claims remain under consideration. Conversely, claims which were not pursued or submitted within the relevant procedure should not create open-ended uncertainty.

Article 86, which introduces maximum time limits for tax authorities to oppose the completion of the liquidation procedure, should be welcomed from the perspective of procedural efficiency.

Article 87 links removal from the register with the loss of legal personality. However, the provision should better address possible objections by tax authorities in Member States other than the Member State of registration. It should also clarify the relevance of national procedural rules on the finality of the removal decision, in order to protect the interests of creditors and other parties to the proceedings.

Need for an ordinary liquidation procedure

The proposed Regulation does not sufficiently regulate ordinary liquidation, although such a procedure will likely constitute the standard route for ending the existence of many 'EU Inc.' companies. The Regulation should therefore include clearer rules on the conduct of liquidation activities, the distribution of assets, the role of the liquidator, the ranking of creditors and the substantive completion of liquidation.

Winding-up of insolvent ‘’EU Inc.’’ companies

The rationale for limiting simplified winding-up proceedings of insolvent ‘EU Inc.’ companies to “innovative” start-ups raises concerns. Determining whether the activity of a given ‘EU Inc.’ is innovative may be contentious and may require expert assessment, thereby increasing costs and complexity. This concern is further reinforced by the fact that the relevant concept is defined outside the proposed Regulation itself, thereby creating additional risks of legal uncertainty and uneven application across Member States. A more legally certain criterion would focus on the size and simplicity of the debtor’s structure rather than on innovativeness. The simplified procedure should therefore be considered for small and uncomplicated structures, for example where there are no immovable assets, limited turnover, a limited workforce and no complex secured or priority creditor structure.

A proposal on simplified insolvency procedures for small companies had already been considered in the past and was ultimately not adopted. The Commission is now seeking to reintroduce a similar solution. In this context, it appears advisable to revisit the earlier work in this area, including the comments raised and the reasons underlying the rejection of that proposal. While the objective itself is understandable, solutions that appear feasible in theory may prove significantly more difficult to implement in practice.

The permissibility of conducting proceedings without the involvement of an insolvency practitioner, as well as the extent to which - and the conditions under which - debtors should benefit from a stay of individual enforcement actions, require careful and systematic consideration. The appointment of an insolvency practitioner should remain the general rule, while any derogation should be limited to genuinely simple cases and subject to effective supervision and safeguards.

Articles 89, 92 and 93 - Opening of simplified winding-up proceedings

The opening condition is the general inability of the company to pay its debts as they fall due. The application is submitted before the competent court or authority, which must rule without delay.

However, simplified winding-up should not be available solely on the basis of the legal form and “innovative start-up” status. If the procedure is too broadly available, the six-month timeframe may be inadequate for companies with immovable assets, complex creditor structures, secured claims or a significant workforce. This may lead either to hurried asset realisation at undervalue or to conversion into standard liquidation, thereby undermining the efficiency objective.

There is also a risk that companies using other legal forms may seek to convert into an 'EU Inc.' in order to benefit from a more flexible insolvency regime. This risk should be addressed through clearer eligibility criteria and appropriate safeguards.

Article 90 - Appointment of an insolvency practitioner

A distinction should be maintained between the ordinary approach, under which an insolvency practitioner is appointed, and the exceptional approach under which proceedings may continue without one.

The general rule should remain the appointment of an insolvency practitioner, given the technical nature of insolvency proceedings and the need to protect creditors, verify claims, realise assets and ensure compliance with employment, tax, environmental and other relevant obligations.

Article 90(2) provides that there is no obligation to appoint an insolvency practitioner where the 'EU Inc.' innovative start-up demonstrates that it has an up-to-date balance sheet and has submitted its most recent annual financial statements. However, these conditions may often be satisfied and could therefore make practitioner-free proceedings too frequent in practice.

If an exception from the appointment of an insolvency practitioner is retained, it should be subject to stricter conditions and effective supervision by the competent court, authority or other existing body designated under national law. The Regulation should avoid assuming that Member States will create new administrative structures for this purpose. Instead, it should require a clear supervisory function within existing national institutional frameworks. Such an exception should be limited to genuinely simple cases, for example where the company has no employees, has not granted security, has no complex creditor structure and all debts rank equally.

Lodging, verification and admission of claims

Under the simplified procedure, the debtor prepares the list of creditors and claims, while creditors may lodge and contest claims. The 30-day period for creditors to declare or dispute claims may increase the risk of omissions or errors.

The possibility for the court or authority to proceed with uncontested claims while contested claims may include priority or secured claims may also create imbalances between creditors. Greater safeguards are therefore needed to preserve equality of treatment and procedural fairness.

Where no insolvency practitioner is appointed, the risks are even greater. The debtor would effectively be responsible for preparing the creditor list, dealing with claims, realising assets and distributing proceeds. This is problematic given the technical complexity of insolvency rules and the risk of errors, informal arrangements, fraud or disputes. In practice, managers will often require legal assistance, including from lawyers, particularly where claims, security interests and creditor priorities must be assessed.

Article 94 - Stay of individual enforcement actions

A stay of individual enforcement actions is an important feature of collective insolvency proceedings, as it allows debts to be dealt with collectively and helps preserve the value of the insolvency estate. The concern is therefore not with the principle of a stay as such, but with the need to ensure that it operates under clear conditions and is not used abusively.

Article 94 should therefore clarify whether the stay applies automatically or upon a decision of the competent court or authority, the conditions under which it may be granted, its duration, and the safeguards available to creditors. In particular, where a stay is automatic or easily obtained, safeguards should prevent repeated filings and withdrawals of applications for simplified winding-up proceedings for the purpose of obtaining successive stays.

Accordingly, a request under Article 92 should not be capable of being withdrawn in a manner that undermines creditor protection or the collective nature of the proceedings. Withdrawal should be subject to control by the competent court or authority, after hearing interested parties where appropriate and subject to any conditions necessary to prevent abuse.

Article 97 - Realisation of assets through electronic auction

The use of electronic auction systems may constitute a useful technical development and may improve creditor recoveries by opening bidding across Member States. However, the competent authority should retain the ability to use other methods of asset realisation where electronic auction is unsuitable having regard to the nature of the assets or the circumstances of the proceedings.

Articles 96 and 102 - Closure of simplified winding-up proceedings

The possibility for the court or authority to terminate proceedings without asset liquidation where the estate has no assets, where procedural costs would be disproportionate or where encumbered assets have an apparent value lower than the secured debt raises important questions. The concept of “apparent value” is imprecise and may lead to undervaluation or premature closure, to the detriment of unsecured creditors.

The six-month period for completing simplified winding-up proceedings, extendable once, is consistent with the objective of simplification. However, where the period runs from the date of the debtor’s application rather than from the opening decision, the effective duration of the procedure may be significantly reduced. This may be problematic in more complex cases, particularly where asset valuation, creditor verification or employee-related issues require proper examination.

Concluding observations

The liquidation and insolvency provisions of the proposed Regulation contain useful elements, particularly as regards digital communication and simplified procedures for genuinely simple cases. However, the framework requires further clarification and stronger safeguards to ensure that simplification does not undermine creditor protection, procedural integrity or legal certainty.

In particular, the Regulation should include an ordinary liquidation procedure, define the eligibility criteria for simplified winding-up of insolvent ‘EU Inc.’ companies by reference to objective and legally ascertainable factors, preserve effective supervision where no insolvency practitioner is appointed, and ensure that stays of enforcement operate as a proper collective insolvency tool without creating opportunities for procedural abuse.

Conclusion

In light of the observations set out above concerning the relationship between the Regulation and national law, incorporation and capitalisation, shareholder and creditor protection and directors' liability, and closure, liquidation and insolvency, the CCBE welcomes the objective of the proposed 'EU Inc.' framework, but considers that further work is required to ensure that the regime is sufficiently coherent, legally certain and operationally reliable.

The CCBE's principal concern is that simplification and digitalisation should not result in legal uncertainty, fragmentation, weakened safeguards or increased risks of abuse. The proposed Regulation should therefore provide greater clarity on its interaction with national law, more robust preventive control mechanisms, stronger protection for shareholders and creditors, and clearer rules on liquidation and insolvency.

In this context, the role of lawyers should be properly recognised as an important safeguard for legality verification, sound corporate governance, cross-border compliance and the prevention of disputes throughout the lifecycle of 'EU Inc.' companies.

The CCBE remains available to contribute constructively to the ongoing legislative discussions, drawing on the practical experience and expertise of European lawyers.