

**Invest Europe's response to MEP Pascal Canfin's
Consultation on EU-Inc.**

This document addresses only the consultation questions for which answers have been provided.

As we wait for a 48h timeline for company creation in the EU Inc framework, do you see any potential obstacles, notably at local level, that we should be aware of? Are there some specific areas which should get a derogation for ex-post checks, after the company has been created? (such as anti-money laundering controls)

Answer:

The modern use of notaries and the digital-by-default processes across the company lifecycle are particularly welcome features of EU-Inc. and should be preserved.

We do see that applying these new rules may present challenges in some Member States (i.e., Germany) where current practices are extensive and complex, or concerns around compliance requirements arise, including anti-money laundering (AML) controls, which often rely on manual and in-person screenings.

However, the most effective way to safeguard the 48-hour incorporation timeline is not to systematically shift checks to an ex-post phase, postponing the burden. Even if limited, relying on risk-based ex-post checks as a default approach would risk undermining the trust and legal certainty the framework promises.

Instead, the priority should be to replace manual, physical bureaucratic steps. In this sense, a centralised, automated EU digital infrastructure, combining automated cross-Member State eligibility checks and the immediate transmission of data to transparency registers at the point of incorporation, offers a more robust and scalable solution, while maintaining high security standards.

The European Commission sets up a European Stock Options (ESOs) plan as part of the EU Inc (Art78/79). The moment of taxation is harmonised to the moment when the warrants are disposed of. What issues could you see arising if it is not treated as capital gains in all Member States?

Do you have any specific positive or negative comments on the details of the possible warrants, as detailed in articles 78 and 79? For instance, the European Commission restricts the ESOs to people with less than 25% of the voting rights.

In some European countries, the issuance of ESOs are limited to the first years of the life of a company (15 in France, for instance). What limit, if any, would you see to cap the EU-ESOs' issuances, knowing that the absence of such a cap could raise fiscal questions to some Member States on the avoidance of taxable wages?

Answer:

Regarding the formulation of the question, it should be clarified that the moment of taxation is not when the warrants are disposed of. Based on Article 79(2), the taxable event occurs when the shares obtained by exercising the warrant are disposed of. This distinction is important for the correct interpretation of the regime, as this is to prevent employees from being taxed on unrealised income, aligning with the interests of the (cross-border) employee with the long-term success of the company.

As regards the design of the European Stock Options (ESOs) plan, the requirement under Article 78(3)(c) to observe a 24-month waiting period should include an exception in the case of an exit occurring within this period. It would be appropriate to waive this requirement where an exit takes place. Such an “exit” could be defined, for example, as an event in which more than one-third of the voting rights and value of the EU-Inc. is transferred to one or more new shareholders. This would ensure that employees are not prevented from realising value in circumstances where a liquidity event occurs earlier than expected.

With respect to Article 78(4), which provides that warrants shall be non-transferable and issued for no consideration, it is unclear whether the payment of consideration at issuance would automatically disqualify the warrants. In the interest of preserving flexibility and ensuring alignment in practice, it would be preferable to remove the requirement that warrants be issued for no consideration.

Article 78 does not appear to introduce any limitation linked to the age of the company issuing the ESOs (i.e., unlike the 15-year age limit in France, as per the ESO regime for startups “bons de souscription de parts de créateur d’entreprise” (BSPCE)). This approach should be maintained. Imposing an age-based restriction, such as limiting eligibility to companies within their first years of existence, would not be justified, especially given the current objective of supporting innovative and growing companies across their lifecycle. Companies that are more mature may still be innovative and require ESOs to attract and retain talent, including at later stages of growth where companies transition to scaleup phases and require more structured incentive schemes, particularly in a context where European companies face strong competition from jurisdictions such as the US, where stock option frameworks are simpler and more established.

More generally, the preferable approach would be not to introduce additional limitations for qualifying ESOs. If limitations are deemed necessary, the existing conditions (such as the 25% voting rights threshold (or even a lower threshold) and the 24-month holding period) do not appear overly restrictive, provided that the latter includes an exception in case of an exit.

Regarding Article 79(4), as different countries apply more favourable tax regimes for ESOs for SMEs or startups and scaleups, consideration should be given to ensuring that EU-ESO warrants and the underlying shares benefit from a tax treatment that is not less favourable than the most favourable regime applicable to employee stock options or similar instruments under national law. We suggest amending Article 79(4) as follows: *Member States shall ensure that the warrants issued under EU-ESO and the resulting underlying shares are subject to a tax treatment that is not less favourable than **the most favourable tax regime** applicable to employee stock options or similar instruments under their national law, ~~provided all legal requirements are met~~ **irrespective of whether the warrants issued under the EU-ESO and the resulting underlying shares meet all requirements for purposes of such domestic favourable tax regime for employee stock options or similar instruments.***

Finally, in order to minimise mismatches in cross-border situations, it would be useful for Article 79 to include a provision clarifying that Member States should apply their double taxation treaties in accordance with the latest version of the OECD Model Convention and its Commentary when determining taxation rights in relation to income arising from EU-ESOs, as follows: ***In determining the taxation rights of the income described in paragraph 2, Member States shall apply their double taxation treaties concluded with other Member States in accordance with the latest version of the OECD Model Convention and the accompanying Commentary.***

In some countries in Europe, employee participation at the board level of decision is mandatory once a certain threshold of employees is reached. To avoid any circumvention of these rules, the EU Inc status needs to account for these local specificities.

Would it discourage you from choosing the EU Inc status if you were forced to transform your branch in a subsidiary once a threshold of employees is reached, in countries applying such rules, to apply the employee participation rules at the local level? For instance, that could mean transforming your German branch in a subsidiary once you pass 500 employees.

Answer:

Board-Level Employee Representation (BLER) is unlikely to discourage EU-Inc. adoption for the majority of companies in the PE/VC investment universe by count. However, forced transformation across Member States could act as a deterrent for larger, PE-backed groups, particularly buyout-backed companies, seeking to use EU-Inc. as a scalable cross-border structure.

As per Invest Europe's data, in terms of company count, in 2024, most PE-backed firms remain below relevant BLER thresholds, especially in venture capital, where exposure is negligible.

- All PE: 70.8% have fewer than 100 employees; 93.1% have fewer than 750 employees; 94.7% have fewer than 1000 employees.
- Buyout: 34.2% below 100, 80.0% below 750, 84.1% below 1000.
- Growth: 53.0% below 100, 90.0% below 750, 92.5% below 1000.
- VC: 92.6% below 100, 99.6% below 750, 99.8% below 1000.

However, the picture changes when looking at investment amounts. A disproportionate share of invested capital is concentrated in larger companies, an effect that is particularly pronounced in buyout, where a small subset of large companies accounts for most of the capital deployed:

- All PE: 29.2% of companies have more than 100 employees, representing 83% of investments; 6.9% of companies have more than 750 employees, representing 49.1% of investments; 5.3% of companies have more than 1000 employees represent 43.5% of investments.
- Buyout: 65.8% of companies have more than 100 employees, representing 91.7% of buyout investments. 20% of companies have more than 750 employees, but they represent 60.3% of buyout investments; 15.9% of companies have more than 1000 employees, but represent 54.3% of buyout investments.
- Growth: 47% of companies have more than 100 employees, representing 76.5% of Growth investments; 10% of growth companies had more than 750 employees, but they represent 31.3% of growth investments; 7.4% of companies have more than 1000 employees, representing 23.4% of growth investments.
- VC: 7.3% of companies have more than 100 employees, representing 36.6% of VC investments; less than 1% of companies have more than 750 employees, representing less than 6% of VC investments; less than 1% of companies have more than 1000 employees, representing only 4.2% of VC investments.

When looking at the geographic distribution of average investment activity over the period 2024-2020 and 2019-2015, we can see that this is highly concentrated in a small number of Member States, notably France, Germany, the Netherlands, Italy, and Spain. BLER relevance in countries with low thresholds (i.e., Denmark, Sweden) could affect many PE-backed firms considering the employee thresholds and the investment universe, but countries with thresholds above 100 employees (i.e., France, Germany, the Netherlands) as well as countries with mandatory BLER only for public/state-owned entities (i.e., Spain) and countries with no statutory BLER (i.e., Italy)

represent the vast majority of both companies by count but also investments likely affecting only a small subset.

Overall, transformation of a branch in a subsidiary once a threshold of employees is reached is unlikely to deter EU-Inc. adoption for most VC- and smaller growth segments-backed companies. Nonetheless, it could represent a meaningful constraint for larger companies, those most likely to scale across jurisdictions and account for a significant share of total investment.

Forced transformation to a subsidiary for affected companies would undermine the "register once, operate everywhere" promise of the EU-Inc. proposal by reducing the flexibility typically offered by branch-based cross-border models. If host Member States could force local re-incorporation, it could result in the "Delaware default" continuing, as founders and investors would lack a single, predictable corporate framework that scales with them. The issue, specifically, relates to: increased governance burdens and complexity, and reduced flexibility compared to branch-based cross-border models. While local labor and codetermination rules should be respected and applied locally at the operational level, the corporate form itself should remain stable to be effective for scaling.

More broadly, this should be understood in the context of persistent Single Market fragmentation. Differences in local regimes remain a structural barrier to scaling across borders. EU-Inc. should not be seen as an endpoint, but as a first step towards deeper integration. However, its success would signal that meaningful harmonisation is possible and could pave the way for further progress in areas where fragmentation continues to weigh on Europe's competitiveness.

The European Commission's proposal allows EU Inc companies to seek admission to trading their shares on regulated markets, where Member States provide for that possibility. It would be a positive signal sent by the EU if startups could go through their entire lifecycle in the EU, including possible IPOs, without reverting to their national status. If these companies respect the full set of legislation that is applied to listed companies (such as the Shareholders' Rights Directive), do you see any reasons to be against this proposal?

Answer:

Allowing EU-Inc. companies to go through their entire lifecycle, including exits, and especially IPOs, without reverting to their national status would be a positive and strong signal. Provided that EU-Inc. companies admitted to trading comply with the EU legislation applicable to listed companies, they should be able to access public markets. This would support continuity across the company lifecycle, contributing to greater coherence, predictability and attractiveness of the European financing ecosystem, thus addressing some of the structural challenges currently affecting exit opportunities in Europe, and supporting the EU's broader innovation, competitiveness and capital markets integration objectives.

Currently, the exit environment is perceived as difficult by the private capital industry, according to the European Investment Fund's (EIF) ["EIF Equity Survey 2025"](#) redacted with the support of Invest Europe, as well as the report ["The Insight: State of the European Private Equity Industry 2025"](#) from Arthur D. Little and Invest Europe.

Among the top five business challenges for startup investors, the exit environment remains a major concern, together with fundraising and capital availability. In 2025, it was the third top challenge, in 2024, it was the top challenge, and in 2023, the second most important. For growth investors, the exit environment ranked fourth in 2025 and 2024 and third in 2023.

At portfolio company level, from an investor perspective, securing financing and liquidity remains the most important challenge for startups and a greater one compared to other operational matters, followed by customer acquisition and retention. This is less so the case for growth companies, where geopolitical tensions place relatively greater strain on companies.

In particular, among the different exit routes, the limited depth and attractiveness of public markets is one of the most relevant current challenges. IPOs are often and increasingly seen as costly, slow and administratively burdensome, making going public complex. This constrains exit options for investors and reduces the overall attractiveness of investing in high-growth European companies. In practice, many companies choose to list outside Europe. At the same time, for a number of strategic sectors that are high on the European innovation and competitiveness agenda, IPOs remain one of the key exit routes.

[Invest Europe's data](#) corroborates the market sentiment. According to Invest Europe's data on divestment market statistics at cost in the EU27 – meaning the total amount divested is equal to the total amount invested before, according to the country of portfolio company regardless of the location of the private equity firm – in 2024, the biggest exit routes were sale to another PE firm and trade sales. Public offerings were the third exit route. However, representing a portion of exits far smaller compared to the other two. In addition, despite the fact that IPO exits improved in 2024, the 2020-2024 average amounts divested by public offerings was only €1.9bn, versus €4.4bn in 2015–2019 (a 56% decline), and the number of companies exited via the same route was 173 versus 246 (a 30% decline).

When looking at different market segments:

- IPO activity remains largely buyout-led. However, even buyout has lost ground: the 2020-2024 average amounts divested by public offerings was €1.3bn versus €3.6bn in 2015-19 (a 64% decline).
- Growth has remained quite stable, with flat average amounts divested by public offerings between the 2020-2024 and 2015-19 (at around €0.4bn).
- VC remains the weakest segment: the 2020-2024 average amounts divested by public offerings was €0.17bn versus €0.25bn in 2015-19 (a 31% decline).

Importantly, fundraising, investment and divestment are all part of the same lifecycle. While exit conditions have recently become somewhat more manageable, expectations regarding exit opportunities remain limited, affecting the entire investment cycle.

The current challenges affecting IPOs are often rooted in long-standing regulatory frameworks that do not sufficiently accommodate the evolving financing needs of private companies. These constraints ultimately impact the ability to fundraise, invest and exit.

In this context, the EU-Inc. proposal does and should continue to reflect this ecosystem-wide, lifecycle perspective. High-growth, innovative companies, precisely those targeted by EU-Inc., evolve rapidly, and any framework designed to support them must evolve with them. For the PE/VC ecosystem, and thus for access to finance more broadly, this implies a regime whose eligibility criteria and features remain workable across different stages of growth, from early-stage development to scale-up, and that allow companies to plan effectively for all potential exit routes, including IPOs.

Do you see any specific information that should be specified within the templates that will allow for the fast-track creation of an EU Inc?**Answer:**

It is important to ensure that the level of detail required in the annex remains fully compatible with the objective of rapid incorporation, as adding complexity at this stage could undermine the feasibility of the proposed accelerated timeline.

Article 7 and the official Annex of the EU-Inc. proposal, in fact, focus on the basic data required for legal incorporation, the standing data for a company to exist legally and necessary to achieving the objective of a 48-hour company creation timeline. In this sense, the list is well designed to support a fast and standardised company creation process.

It is clear that the annex does not cover the full range of provisions that articles of association will typically include over the life of a company and across its financing cycles. This, however, as stated above, is not its purpose. The annex should be understood as a limited incorporation template, not as a comprehensive set of constitutional rules.

As companies grow and attract investment, their governance framework becomes more detailed and evolves over time. When a company develops, the articles of association become a tool for enforcing best practices in professional conduct and maintaining transparency between shareholders and management.

The [Invest Europe Handbook of Professional Standards](#) highlights that the articles of association form only one component of a broader set of investment and governance documents typically used in practice, part of the “investment agreement”. As per the Handbook, investment agreements are defined as a set of agreements relating to the acquisition of a portfolio company by the fund. They typically include a Share Purchase Agreement, regulating the actual purchase of interests in the company, and ancillary agreements, such as a Shareholders Agreement, setting out the understanding among the portfolio company’s shareholders with respect to the management and governance of the portfolio company post transaction. Investment agreements can also include the arrangements with the management of the portfolio company, articles of association of the portfolio company, shareholder loan agreements, investor rights’ agreements and other such agreements between the portfolio company shareholders.

These documents typically address a range of matters, such as share transfer restrictions, pre-emption rights, board and shareholder consents, management incentives, funding obligations or exit provisions, that go well beyond the elements included in the proposal’s annex. However, companies should be incorporated quickly, using simple or model articles and subsequently adapt their governance arrangements as they grow and enter investment phases.

The current approach strikes the right balance. The annex should remain a simple, standardised and fit-for-purpose incorporation tool.

For which reason would you judge the creation of an EU Inc registry (Art 34) necessary on top of the Interface that will already aggregate the information of EU Inc companies?**Answer:**

The EU central interface constitutes an important first step in improving access.

By its nature, however, it remains an aggregation layer built on national registries, which may continue to differ in terms of data formats, quality, and update practices. As such, the development of a central digital register for EU-Inc. companies would serve a distinct and complementary objective. It would enable the establishment of a single, standardised system, a unified point of interaction.

This, in due time, as suggested in the European Commission’s proposal and given the complexity involved, will contribute to a more efficient and user-friendly corporate infrastructure at EU level, as well as ease cross-border operations, which is the core objective of the EU-Inc. regime.

The functionalities that deliver clear and immediate value to companies, ensuring interoperability with national systems and avoiding unnecessary duplication in the early stages should be prioritised right now, building on the central interface.

The European Commission creates a specific framework for companies that are ‘innovative startups’ for their insolvency procedures, however this framework seems to be for a small subset of companies. What are the specific issues on the insolvency questions that could deter an investor to invest in a European startup? Is the lack of harmonisation in the field a real attractiveness problem for the ecosystem?

Answer:

The European Commission’s intention to create a specific insolvency framework for “innovative startups” under EU-Inc. responds to a real need, it aligns closely with the core principles and specific mechanisms that PE/VC investors need: shorter, more efficient, and less court-led insolvency processes. However, it risks being too narrow in scope relative to the issues that most affect investment decisions.

From a PE/VC perspective, what matters is not the existence of failure, but how failure is managed. Across Europe, insolvency frameworks remain fragmented, slow, and often costly. This creates several concrete deterrents to investment. First, lengthy and unpredictable procedures delay the recovery of capital and impair fund performance. Second, high administrative costs, including the involvement of insolvency practitioners even in straightforward cases, reduce recovery rates, particularly for smaller companies. Third, outcomes remain difficult to anticipate, with differences in creditor hierarchies, judicial practices, and timelines across Member States. Fourth, strict or unclear director liability regimes can encourage delayed filings, ultimately increasing value destruction. Together, these factors increase uncertainty and reduce the attractiveness of investing in European companies, particularly in cross-border portfolios.

Importantly, [Invest Europe’s data](#) shows that failure, and the associated economic impact, is not limited to venture-backed startups. Write-offs in recent years have reached significant levels (€1.8bn in 2024 and €1.9bn in 2025), spanning hundreds of companies across the investment spectrum (500 companies and 519 companies respectively). While VC accounts for a large number of cases, write-off values are not constrained to these investments:

- buyout dominates write-off value, with larger average losses per company. The average write-off amounts have increased from €0.39bn between 2016-2020 to €0.58bn between 2021-2025 (a 47% increase).
- VC drives most of the company count but at smaller average size. The average write-off amounts have increased from €0.29bn between 2016-2020 to €0.36bn between 2021-2025 (a 24% increase).
- growth sits between the two, the average write-off amounts have increased from €0.22bn between 2016-2020 to €0.27bn between 2021-2025 (a 23% increase).

Moreover, innovation itself, just like failure, cannot be confined to companies defined by size, age, or R&D intensity thresholds. Companies at all stages of development, including growth and later-stage firms, can continue to innovate, develop new technologies, and drive productivity gains. Growth and innovation are often mutually reinforcing, not exclusive.

Value destruction, and therefore the importance of efficient insolvency frameworks, is a system-wide issue rather than one confined “innovative startups”. Limiting EU-Inc. simplified insolvency regimes to such a narrowly defined category risks missing where economic impact is most material. EU-Inc., which aims to support companies throughout their lifecycle, should ensure that both success and failure are treated consistently across it.

Insolvency procedures present, of course, differences based on the complexity of each case. For example, mechanisms such as creditors’ committees may be appropriate for large-scale cases but unnecessary for smaller ones. However, the core principles, speed, simplicity, cost-efficiency, and predictability, should apply broadly.

EU-Inc. could represent a significant step forward if it delivers faster, simplified, and digitalised insolvency processes for all eligible EU-Inc. businesses. Tools such as streamlined winding-up procedures, reduced reliance on intermediaries in straightforward cases, and clear director duties in the vicinity of insolvency – without undermining existing preventive restructuring frameworks – would help lower the cost of failure, and allow for quicker capital recuperation. Just as importantly, a more harmonised approach would improve cross-border predictability, making Europe a more attractive environment for investors.

Article 52 as proposed by the European Commission establishes a special procedure for the withdrawal of a shareholder, if he considers that the company’s affairs are conducted in an oppressive manner. Does the procedure described in the article seem practical, or is it too much power given on a specific set of stakeholders?

Answer:

Mechanisms allowing minority shareholders to exit in cases of genuinely oppressive conduct are already in place in several jurisdictions.

That said, for the mechanism to operate effectively and predictably, greater legal clarity would be beneficial on the determination of “fair value” (Article 52(3)). The provision states that shares are to be acquired at a price determined by the court on the date of service of the application. However, it does not clarify whether this valuation should reflect the company’s situation as affected by the alleged oppressive conduct, or whether it should instead reflect a counterfactual scenario absent such conduct. This distinction could have significant economic implications, particularly in cases where value has been diminished. Clarifying this point would be important to ensure both effective protection for minority shareholders and legal certainty for investors.

The [International Private Equity and Venture Capital Valuation \(IPEV\) Guidelines](#) provide a clear conceptual framework for the concept of fair value that supports the competent courts to remove the impact of the wrongdoing, but keep the normal risks a real investor would price.

The guidelines define fair value through a series of core principles:

- fair value is the price received in an “orderly transaction” between market participants at the measurement date. An orderly transaction is one that assumes exposure to the market for a period to allow for usual and customary marketing activities. It is explicitly not a forced transaction, involuntary liquidation, or distressed sale. Oppressive conduct, such as

stripping the company of a significant proportion of its assets or fundamentally changing its core business, creates an inherently disorderly and distressed environment for the minority shareholder. Valuing the shares based on this “affected” state would be akin to valuing a “distressed” or “forced” sale, which the IPEV guidelines state does not represent fair value.

- fair value must reflect the assumptions of “market participants” acting in their economic best interest. Market participants are defined as being willing to transact, meaning they are motivated but not forced or otherwise compelled to do so. A minority shareholder forced to withdraw because their interests are being “flagrantly prejudiced” is a compelled seller. A valuation that reflects the damage caused by the oppression would reflect a price that a “willing” seller in an “orderly” market would never accept. The guidelines state the goal is to replicate the assumptions parties in an arm’s-length transaction would make.
- In determining fair value, the valuer is instructed to consider the economic substance of the investment, which may take precedence over the strict legal form. When deriving value, the value of the business as a whole (Enterprise Value) should be adjusted for contingencies and relevant factors to arrive at an “Adjusted Enterprise Value”. The economic substance of the shareholder’s interest is its value as a portion of a functional, properly managed enterprise. The oppressive conduct is an external factor that impairs that substance. Under IPEV logic, a court should adjust for these factors to restore the economic substance of the investment.

At the same time, a hypothetical market participant acquiring the minority stake would not be indifferent to the governance context: demonstrated failures in governance, live legal disputes, or a pattern of majority misconduct would independently affect the perceived risk, above and beyond the specific value destruction caused by the oppressive acts themselves. The IPEV Guidelines give courts a clear mandate to look past artificial barriers and find the underlying value that a motivated, independent buyer would pay in a healthy, normal market on a specific day, but this does not mean governance-related illiquidity should be ignored. Fair value should still reflect the additional risk premium a market participant would demand when acquiring a minority stake in a company with demonstrated governance dysfunction.

Taken together, these principles support a calibrated approach to fair value under Article 52(3): the (i) the valuation adopts a counterfactual scenario absent the specific oppressive conduct, and, at the same time, (ii) illiquidity and governance risk discounts intrinsic to the minority position are retained, while those that are a direct consequence of the oppressive conduct are excluded, consistent with the principle that a compelled seller should not bear the economic cost of the oppression.

Additionally, as the procedure would rely on courts both to assess what constitutes oppressive conduct and to determine fair value, it is important to limit divergent interpretations and outcomes across jurisdictions, as these could undermine the objective of a harmonised EU-Inc. framework. In this respect, Recital 81 rightly points to the role that specialised courts or chambers could play in fostering expertise, consistency and efficiency. While Member States retain the competence to organise their own judiciary systems, we encourage the establishment of such specialised courts, alongside targeted judicial training, to ensure that Article 52 – and EU-Inc. more broadly – operates in a coherent and predictable manner across borders.

Any other comments you would like to make?

Answer:

Please refer to [Invest Europe's position paper on the 28th Regime Corporate Legal Framework \(EU-Inc.\)](#), published on 15 May 2026, as well as [Invest Europe's position paper on Tax obstacles for cross-border remote employees](#), published on 20 March 2026.