EU is building its Delaware

Is the EU Inc. that bet?

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European scaleups
—— the Delaware flip is real.

- Fragmentation creates uncertainty, compliance costs, and barriers to cross-border expansion
- Significant number of scaleups operate as “dual companies” with HQs outside the EU and/or relocate to the United States
- Migrant companies raise significantly more venture capital, file more patents and, achieve substantially larger valuations
- See the Impact Assessment Report

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EU Inc. as new legal form and economic enabler.

On 18 March 2026, the Commission published the EU Inc. proposal – an optional, digital first corporate legal form (COM(2026) 321 final).

- Better access to growth capital
- VC-compatible share classes, clean warrant and convertible mechanics, flexible buyback regime, competitive ESOP structures
- Coherent, directly applicable, and uniform framework across Member States

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Digitalisation across the lifecycle.

- Fast-track incorporation within 48 hours - online EU central interface – fast track requires use of EU template for articles of association
- Digital and hybrid shareholder and board meetings
- Digital transfer of shares – no requirement for notarial involvement
- Fast-track liquidation procedures – available under certain conditions

Share classes — no statutory constraints.

- Non-par value shares
- Multiple share classes
- Preferences in profit distribution and liquidation proceeds
- Multiple voting rights or without voting rights
- Veto rights and specific governance rights per class
- Issuance of redeemable shares

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Financing
facilitation of equity funding.

- Share issuance – with contribution to capital or equity not forming part of a legal capital
- In kind consideration for shares – any transfer of determinable value – but undertaking to perform work or supply of services shall not contribute to legal capital
- Non-par value shares to facilitate warrants and convertibles (e.g., SAFE, KISS)

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(Profit) distribution balance sheet/ solvency tests.

(Profit) distribution decoupled from accounting profit. Distribution based on forward-looking tests.

- Balance sheet – total assets must exceed total liabilities and capital following the distribution
- Solvency – company able to pay its debts as they fall due in 12 months following distribution
- Directors jointly and severally liable for damages if the tests are not performed or not performed with due care

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Treasury shares broad flexibility.

- General meeting decides on repurchase — or the board if authorised
- Up to a company-defined maximum. No statutory percentage cap
- Limit – acquisitions out of funds available for distribution — balance sheet and solvency test apply
- Treasury shares may be held, transferred, or cancelled

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Employee equity with tax deferred to actual disposal of shares.

- Warrants to employees and board members
- Min 24-month waiting period from issuance
- No tax at grant, vesting, or exercise — income arises and is taxed only when shares are disposed of
- Member States must ensure EU-ESO treatment is not less favourable than existing national employee stock option regimes

Related party transactions — commercial purpose sufficient

Transactions with related parties: either at arm's length consideration or for genuine commercial purpose.

- Where neither is present: the transfer classifies as a distribution — triggering the balance sheet and solvency tests and director liability
- "Genuine commercial purpose" may echo the Austrian concept of *betriebliche Rechtfertigung* — operational justification recognised under case law for certain related party transactions

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Access to public markets guaranteed for MTF only.

- MTF access: Member States shall not block admission
- Regulated market: Member States may enable access in national legislation
- “Handbrake” built in – a political concession to Member States unwilling to grant automatic parity to EU Inc. without assessing compatibility with existing investor protection frameworks

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Room for improvement for EU Inc.

EU should be bold.

- Remove all provisions that hinder going public, e.g. withdrawal rights for minorities, with liability for remaining shareholders

- Grant EU Inc. access to regulated markets without allowing Member States to act as gatekeepers

- \- No fallback to national laws for corporate matters not governed by the Regulation – put a unified legal form in place www.bpv-huegel.com