

Position Paper of the German Startup Association

**On the European Commission's Proposal for an EU
Inc.**

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German Startup Association, 14 April 2026

I. Executive Summary

The German Startup Association welcomes the regulatory proposal for an EU Inc. presented by the European Commission on 18 March 2026 as a significant first step towards a competitive European corporate framework. As a directly applicable regulation enabling company formation within 48 hours for a maximum of €100 with no minimum capital, introducing flexible share classes and a harmonised employee participation scheme, and consistently relying on digital processes, the proposal represents a substantial improvement over the status quo for the vast majority of European founders and investors.

At the same time, the Commission's proposal falls short of the original vision of the EU Inc. initiative. It does not create a genuine 28th regime in the supranational sense: national law remains subsidiarily applicable, a central EU register exists only as a development promise, and specialised dispute resolution mechanisms are entirely absent. The EU Inc. is therefore a "Minimum Viable Product": functional, capable of further development, but not yet a true equivalent to the Delaware Inc.

The German Startup Association explicitly supports the proposal and will actively accompany the further legislative process. The level of ambition of the draft must be defended in the trilogue. Further dilutions would create an instrument that fails in practice and does not give Europe the necessary impetus in the global competition for business location.

We expect the Federal Government to act as a shaping force in the trilogue, to counter any dilutions, and to create the national conditions necessary to ensure that the digital promises of the draft are actually delivered in Germany.

II. Background and Objectives

Europe needs a competitive response to global competition for business location. For many years, high-growth European companies have been turning to US corporate law under the "Delaware Inc." because it offers what the European legal framework cannot yet provide: uniformity, simplicity, predictability, and speed in company formation and cross-border expansion.

The success of the US Delaware General Corporation Law is no coincidence. It offers a structured, flexible governance framework for growth-oriented companies, different share classes, liquidation preferences, anti-dilution mechanisms, a specialised court for dispute resolution, and a fully digitised incorporation process.

Incorporating in Delaware may not be the sole reason founders leave Europe. But it can be a strong reason to permanently relocate headquarters to the US, once legally anchored there. Those who found and scale in Europe navigate through 27 legal systems, notarial requirements, and registration bureaucracies. This contributes to founders and investors increasingly avoiding Europe as a location, with the consequence that value creation, capital and talent flow away.

The EU Inc. initiative from the European startup ecosystem aims to be the answer to these challenges. The idea: to create an originally European corporate form that requires no recourse to national legal systems – a 28th regime, detached from the 27 legal regimes of the Member States. This ambition is and remains the right one. The Draghi Report of 2024 also made clear that the fragmentation of the European single market is one of the biggest brakes on growth and competitiveness on our continent.

The regulatory proposal for an EU Inc. presented by the European Commission on 18 March 2026 takes up this idea but falls short in decisive respects. The Commission's EU Inc. does not correspond to a "genuine" 28th regime in the sense of the original proposal: national corporate, labour and

tax law of the Member States remains subsidiarily applicable (Art. 4(2), Art. 12 of the draft). This means no uniform European framework is created and the patchwork remains in essential areas of law.

At the same time, it must be acknowledged: the proposal presented by the EU Commission represents a significant step forward compared to the fragmented European single market for the vast majority of European founders and investors.

It is designed as a directly applicable regulation, consistently relies on digital processes and the "Once Only" principle, dispenses with minimum capital and enables company formation within 48 hours for a maximum of €100, EU-wide flexible share classes without notarial requirements, and opens up new possibilities for employee participation and capital market access. For European founders, growth companies and their investors, it thus creates significant simplifications in founding and scaling within the European Union.

The German Startup Association therefore supports the European Commission's proposal as a necessary first building block towards a globally competitive and fully integrated European single market – and as a proposal for a European corporate form that can meet the minimum requirements for a possible alternative to existing scaling models, provided it is implemented ambitiously and developed further.

The success of the EU Inc. will also have to be measured by whether it actually represents a viable and practical alternative for founders and investors compared to existing national and international corporate forms. If this fails, company formations will increasingly take place outside the EU in the future and capital will be invested in other regions of the world.

III. What the EU Proposal Gets Right

Regulation Rather than Directive

The European Commission's decision to design the EU Inc. as a directly applicable regulation is correct. Only a regulation can provide the immediacy, standardisation and legal clarity that founders and investors require. 27 national implementing acts would have undermined the goal of a uniform European corporate form.

Open to All – Not just Startups

The Commission draft does not restrict access to the EU Inc. to startups or early-stage companies. This is a wise decision. Had the draft tied this corporate form to rigid thresholds, it would have been practically unusable for fast-growing companies. That would be diametrically opposed to the purpose and objective of the EU Inc.: to incentivise scaling and dynamism.

Instead, it is now envisaged that the EU Inc. is open to all companies. Shareholders and investors can rely on the legal framework not changing with a financing round or the crossing of certain thresholds. This protects investment paths, facilitates follow-on financing and creates the predictability that scaleups need for their expansion.

Fast-Track Formation: 48 Hours, €100, No Minimum Capital

The EU Inc. can be formed via the EU Central Interface (based on the Business Registers Interconnection System – BRIS) within 48 hours and at a maximum cost of €100 – with purely digital procedures, without mandatory minimum capital and without compulsory notarial involvement, but under preventive control by an authority, court or notary (Art. 10, Art. 14, Art. 16(2)). Those who choose an individual constitution rather than the EU standard constitution receive a deadline of five working days for registration (Art.

17(2)). This too represents a substantial step forward compared to current practice in Germany and most Member States.

Digital Only and Once Only

We welcome the consistently digital orientation of the draft. Formation, share transfer, capital measures, shareholder meetings and liquidation are to be fully processable online – without physical presence and without compulsory notarial involvement (Art. 10). The Once Only principle (Art. 28) prohibits authorities from requesting information already stored in the register; company data is captured once and automatically forwarded to tax, social insurance and transparency authorities (Art. 20). For founders with cross-border business models, this eliminates the need to comply with burdensome information requirements again when expanding into further Member States. Both measures precisely address the existing pain points that startups and scaleups in Europe experience daily.

Flexible Share Classes and Modern Financing Instruments

The EU Inc. allows different share classes – such as Common and Preferred Shares, non-voting shares, differentiated liquidation preferences and multiple voting rights, enabling structures typical of venture capital financing (Art. 55, 57, 64 ff.). Share transfers take place without notarial involvement; registration in the digital share register has constitutive effect (Art. 59). Non-par-value shares facilitate down-rounds as well as SAFE and KISS instruments – financing rounds in more challenging phases become possible without complex capital structure adjustments. Convertible instruments and other early-stage financing instruments are also provided for (Art. 68). For investors, this uniform framework represents a concrete efficiency gain that facilitates and makes investments more attractive.

EU-ESO: Employee Participation with Deferral Effect

Art. 78 of the proposal creates with the EU-ESO a uniform employee participation programme through warrants issued free of charge and non-transferable. Crucially: taxation only occurs upon actual disposal of the shares (Art. 79(2)) – the dry income problem is thus structurally addressed, without taxable income arising at grant, vesting or exercise. This corresponds structurally to the German § 19a EStG – an instrument that has applied in Germany since 2021. Its Europeanisation is in Germany's interest, especially since the EU-ESO applies without the size restrictions of national law.

However, the EU-ESO falls short of the original EU Inc. proposal in two key respects:

- The qualification of income as capital gains is not harmonised EU-wide, but remains with national law – the same instrument is taxed differently depending on the country of residence of the employee.
- From a German perspective, the EU-ESO is unlikely to offer a clear advantage over § 19a EStG – the eligible group is more narrowly defined, the minimum waiting period of 24 months is rigid, and indirect holding via a holding structure does not appear possible. It therefore seems questionable whether a German-incorporated EU Inc. will actually use the EU-ESO as proposed. Corresponding improvements are therefore desirable.

Access to Capital and Capital Markets

The EU Inc. can bring tangible improvements in access to private capital. For investors, a harmonised European corporate form with a recognition effect is expected to mean significantly lower search and advisory costs, which can lower the threshold for cross-border investments in unlisted companies. In addition, Article 60 of the proposal enables a listing of EU Inc. shares on the open market without prior change of legal form. This makes the

corporate form attractive for more advanced scaleups for whom the capital market route is relevant as an exit option.

Fast-Track-Liquidation

The draft provides for an independent, largely digital winding-up regime, including a fast-track liquidation procedure for solvent companies with a short deadline (standard winding-up within approximately three months according to the recitals) and fully online processable steps (in particular Art. 83 ff.). "Orderly failure" – a process unjustly stigmatised in Europe – thus becomes considerably less time-consuming and costly compared to the lengthy, paper-based and heavily court- or notary-centred procedures in many Member States today. This is not only relevant for founders, but also for investors' willingness to take risks, as the downside costs of a failure can be significantly reduced.

IV. Challenges and Structural Gaps

Subsidiary National Law Remains in Core Areas

The fundamental structural deficiency of the proposal is the subsidiary applicability of national law (Art. 4(2)): all questions not regulated by the regulation are filled with the respective national law of the state of registration. For an EU Inc. registered in Germany, German GmbH law applies supplementarily – for one registered in Estonia or Ireland, the law there applies. This corresponds to the design of the Societas Europaea (SE). Its limited practical relevance as a pan-European corporate form should serve as sufficient warning here.

In practice, this creates different conditions for the same corporate form in different Member States. The patchwork thus persists in decisive areas of single market harmonisation. This limits the attractiveness of the EU Inc. as a genuinely EU-wide standard, particularly for international investors who

depend on legal predictability and experience precisely this fragmentation as an investment barrier today.

No Dispute Resolution Mechanism

The draft does not provide for an independent, EU-wide specialised judicial body for EU Inc. disputes. Instead, it indicates that Member States should endeavour to establish appropriate dispute resolution structures. Without specialised jurisdiction – analogous to the Delaware Court of Chancery – a central element of attractiveness for investors is missing, who factor legal certainty and predictability of decisions in dispute resolution as decisive criteria in selecting suitable investments.

No Central EU Register

The original EU Inc. proposal envisaged an independent European commercial register as central infrastructure. The Commission proposal remains with registration in the national commercial registers of the Member States, connected via the existing BRIS. Art. 34 merely announces a possible further development towards a central digital register, but currently without concrete binding commitment or timetable. A central EU register would guarantee uniformity of registrations by excluding national divergences in registration practice. The current announcement of future further development should be converted into a binding provision in the further process.

No Streamlined Seat Transfer Regime

The EU Inc. must have its registered office and its central administration or principal place of business in the EU (Art. 9). A simplified procedure for transferring the registered office to another Member State without conversion, merger or division and without effective "re-incorporation" is not

provided for; cross-border seat changes proceed via the mechanisms of the Transformation Directive (Art. 21(1), recital 17). For growth companies that shift their operational focus in the course of their development, this can represent a real restriction. Those who maintain their registered office and actual management seat in different Member States must also reckon in practice with complex questions of tax residency and possible dual residency – a risk that can represent a practical exclusion criterion for fast-growing companies.

Digital Promises Require National Implementation

The "Digital Only" and "Once Only" principles are only as good as their national implementations. Company registration, preventive constitution control, assignment of tax number and VAT identification number, commercial and transparency registers, bank account opening: these are all downstream processes that mean real delays at the start of a company and which the regulation does not harmonise. In Germany, the assignment of a tax number often takes many months. An EU Inc. that is registered within 48 hours but cannot issue an invoice for weeks due to lack of a tax number does not fulfil the promise of the regulatory proposal.

The fact that Art. 14 allows Member States to continue prescribing notarial controls exacerbates this risk at national level. If it is not possible to ensure that this control neither shifts the timeline nor generates additional costs, a structural competitive disadvantage arises here. Founders would specifically choose those Member States as the seat of their EU Inc. whose administrative practice actually delivers the digital promises of the regulatory proposal.

Missing Standard Document for Early-Stage Financing

The original EU Inc. proposal had envisaged with the EU-FAST instrument a standardised, open-source convertible document for seed investments. The

proposal does regulate convertible instruments (Art. 68), but does not provide for a uniform standard document. For early-stage financing, this continues to mean negotiation effort and advisory costs – a missed opportunity to reduce transaction costs at the European level.

V. What Matters Now

Do Not Dilute the Draft

The EU Inc. as proposed by the European Commission is already a compromise – a "Minimum Viable Product". Further restrictions, additional formal requirements or new conditionalities would make the construct unattractive for founders and investors alike.

This applies in particular to proposals to overload the EU Inc. with additional protective provisions beyond the level already provided for in the draft. The draft makes clear in recital 16 and Art. 12 that rules on employee participation – including co-determination – remain a matter for Member States and existing EU secondary law. An erosion of national protection levels is thus expressly prevented. This compromise is workable and politically viable and should not be weakened by new conditionalities in the further process.

Europe gains nothing if an agreement ultimately produces an instrument that is not used in practice. A complicated legal construct helps neither founders nor employees and cannot be Europe's answer to high-growth markets worldwide.

Member States Must Deliver: Germany in Particular

The EU Inc. is only as attractive as its weakest national implementation. Germany bears a particular responsibility here, but also a certain risk. If the national processes upon which the EU Inc. necessarily builds in Germany continue to be as slow as they are today, Germany will lose formations to

other Member States. Not because the EU Inc. would be a different corporate form there, but because the administrative reality there is more modern.

It would, however, be a fallacy to use this fact as an argument against the EU Inc.: those who reject the European corporate form out of fear of intra-European competitive disadvantage fail to recognise that the alternative is not to remain with German GmbH law. Because the alternative is that high-growth companies turn their backs on Europe.

The EU Inc. must therefore also be a catalyst for us: it gives Germany an incentive to finally decisively advance the digitalisation of its administration. The necessary steps, such as accelerated tax number procedures or purely digital authority communication, are long overdue and urgently needed regardless of the EU Inc. The resulting competitive pressure within Europe should therefore not be seen as a threat, but as an opportunity.

VI. Conclusion

Europe will only prevail in global competition if it enables companies to scale from the outset as if the entire EU single market were their home market. The European Commission's proposal is a first step in translating this acknowledged diagnosis into political effect.

The EU Inc. offers the opportunity to structurally overcome the corporate law fragmentation of our single market and thereby remove one of the most persistent growth barriers for European startups and scaleups.

For German founders, the EU Inc. is a structural step forward that addresses a concrete problem: the GmbH reaches its structural limits as a corporate form for internationally growing startups, with its notarial requirement for capital measures, lack of standardisation of financing instruments and months-long processes for cross-border transactions. The EU Inc. addresses precisely these weaknesses and creates for the first time a competitive, European-based alternative.

European scaleups that want to continue growing here also find added value in the EU Inc.: cross-border financing rounds become leaner, due diligence processes simplify, cap table management across multiple Member States becomes standardisable and follow-on financing can be handled with considerably less operational effort than before.

Not least, from the perspective of investors, the signal sent by successful implementation of an EU Inc. is at least as important as the concrete legal innovations themselves.

The EU Inc. in the current Commission proposal is a "Minimum Viable Product", a substantial improvement on the status quo in Europe. We as the German Startup Association therefore explicitly support the Commission's proposal and will also actively accompany the legislative process.

Our expectation of the Federal Government is clear: act as a shaping force in the trilogue, defend the level of ambition of the draft and counter any dilutions.

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