

AMF Italia’s response to EU Commission Consultation “A single harmonised set of rules for innovative companies throughout the EU – 28th regime”

AMF Italia considers the EU Inc proposal to be an important step towards strengthening European competitiveness and supporting the cross-border growth of innovative companies. In a context characterised by increasing competition among legal systems and persistent regulatory fragmentation, the creation of a genuinely European corporate form should be pursued with a pragmatic approach, also with a view to making the Single Market more attractive for entrepreneurs and investors. In an instrument largely based on private autonomy and contractual freedom, a certain degree of interpretative uncertainty is inevitable and can be addressed constructively without undermining the overall purpose of the initiative.

Against this background, the residual reference to national law under Article 4 should not be regarded as undermining the harmonising function of EU Inc. No credible corporate law framework can entirely eliminate recourse to national law. Moreover, the proposal provides for a significantly more detailed and comprehensive set of rules than previous models, thereby limiting the risk of fragmentation into twenty-seven different variants. From an interpretative perspective, the notion of matters “not governed” by the Regulation leaves room for solutions capable of limiting the scope of residual national law, particularly where the statutes have already addressed a given matter comprehensively. It would therefore be desirable to clarify expressly that the statutes may, within the limits imposed by mandatory provisions of Union and national law, regulate or exclude the application of residual national law. To that end, Article 4(2) could be amended to provide that matters not governed by this Regulation or by the statutes, unless otherwise provided therein within the limits permitted by this Regulation and by mandatory provisions of Union and national law, shall be governed by the national law applicable to the corresponding national corporate form in the Member State of the registered office.

Likewise, the possibility of divergent interpretations by national courts should not be seen as a reason to abandon further harmonisation efforts. Divergences in application exist in all complex legal systems and do not prevent the emergence of common principles. Rather, measures aimed at fostering interpretative convergence should be encouraged. Allowing disputes relating to EU Inc to be conducted before national courts in English and establishing a European database of judgments would contribute to the development of a common body of case law. Similarly, further modernisation of the preliminary ruling mechanism under Article 267 TFEU, through faster, digitalised and more specialised procedures, could better align judicial dialogue with the needs of modern markets. In addition, the Regulation could clarify the possibility for EU Inc to adopt institutional arbitration for disputes relating to the internal affairs of the company, thereby promoting the development of principles by highly specialised arbitrators and facilitating their dissemination, in anonymised form and in English.

With regard to access to capital markets, AMF Italia supports a flexible approach. Listed companies, as well as companies intending to seek admission to trading, may represent an important channel for the dissemination of harmonised corporate rules, while remaining subject to the safeguards required for the protection of investors and minority shareholders. Article 60 could therefore be amended to provide that Member States shall not prohibit an EU Inc from seeking admission of its shares to trading on a multilateral trading facility or a regulated market, provided that the applicable requirements under Union and national law are complied with, while preserving the possibility for Member States to regulate access to regulated markets in accordance with national frameworks and applicable Union law.