



ETF Position on the proposed EU Inc. / 28th regime

The European Transport Workers' Federation (ETF) is not opposed to innovation and simplifying cross-border business. Transport and logistics are inherently European and already operates across borders every day. However, **simplification of company law must not come at the expense of legal accountability, labour standards or effective enforcement.**

ETF's concern is that the European Commission's current proposal on EU Inc. has been rushed, in particular **without any proper social partners' consultation.** It does not take into account lessons learned from the past (for example on European Private Company, single-member private company, European Company (Societas Europaea, SE), Insolvency III Directive) and it has not been sufficiently tested against sectors such as transport.

The proposal has been originally developed with start-ups and scale ups companies in mind. However, the transport and logistics sectors are characterised by large multinational companies. It is also a highly regulated sector where corporate establishment is not merely a company law concept. On the contrary, it is decisive as it determines operating licences, market access, safety oversight, labour law enforcement and, ultimately, accountability.

These sectoral implications require much greater consideration. **Without targeted safeguards, the proposal risks creating consequences that would undermine EU transport legislation and exacerbate existing challenges.**

Existing challenges in the transport sector

In transport, **responsibility is already fragmented across multiple jurisdictions and subcontracting chains.** For example, a transport company may have:

- ▶ a registered office in one Member State;
- ▶ operational management in another;
- ▶ drivers based in a third;
- ▶ subcontractors elsewhere;
- ▶ workers posted across several countries.

We are already facing many challenges linked to accountability of companies, enforcement of workers' rights. The EU Inc. proposal, with an additional 28th regime, would create a new legal vehicle that could make it easier to separate the legal identity of the company from the jurisdiction where work is actually performed, creating more legal uncertainty and **additional risks**, in particular:

- ▶ **Increased difficulties to identify the responsible undertaking, reduced transparency over ownership and control, making labour enforcement more difficult.**
The current proposal contains significant gaps regarding corporate transparency. There is



for example no obligation to disclose data such as the number of employees. Yet, authorities need to know who owns the undertaking, where workers are employed, how many employees are affected and who exercises effective control.

- ▶ **Increased risk of social dumping** with companies choosing the most favourable corporate law or most “convenient” employment law while operating elsewhere;
- ▶ **Undermined collective bargaining and workers’ representation:** in the current proposal there is a reference to Rome I which does not cover collective rights. These could be easily evaded, as we have already seen with SE companies.

For ETF, the central question is not whether a company is called an EU Inc. The central question is whether workers, labour inspectorates and licensing authorities can still identify who is legally responsible, where that responsibility is exercised, and how rights can effectively be enforced.

Further considerations from the different sectors:

1. Road

In the road sector the interaction with the EU Inc. raises great concerns. For example, Regulation 1071/2009 for road transport is built around the concept of a **genuine operator** with:

- ▶ stable establishment;
- ▶ financial standing;
- ▶ professional competence

National authorities currently supervise transport managers, financial standing and professional competence. The Mobility Package deliberately strengthened the requirement for genuine establishment precisely to combat **letterbox companies and unfair competition**. The interaction between these reforms and the proposed EU Inc. remains entirely unclear. For instance:

- ▶ How will genuine establishment be verified?
- ▶ Which Member State would be responsible for supervision?
- ▶ Which authority may withdraw licences?

2. Maritime

Every ship must be registered under the flag of a single state which is responsible for enforcing international rules (on safety, labour standards under conventions). Under the traditional model, there is generally a genuine link between:

- ▶ the shipowner,
- ▶ the flag state,
- ▶ the company's place of establishment.

Today, many countries operate **Flags of Convenience (FOC)**, allowing foreign-owned ships to register there **with little or no economic connection to the country**, including EU-based FOCs.



From a trade union's perspective, FOC have historically facilitated:

- ▶ **Social dumping**, by enabling shipowners to recruit crews under lower labour standards or from jurisdictions with weaker wage protection.
- ▶ **Reduced collective bargaining coverage**, as ships can operate outside traditional national industrial relations systems.
- ▶ **More complex corporate structures**, making it difficult to identify the real employer.
- ▶ **Enforcement challenges**, because responsibility is spread across different jurisdictions (flag state, owner, manager, crewing agency and port state).

The EU Inc. would again introduce **another layer of legal fragmentation** which would exacerbate the situation with:

- ▶ Greater distance between the company and the workforce, making it harder to identify who is ultimately responsible for labour obligations.
- ▶ More opportunities for companies to optimise several different legal regimes simultaneously to minimise regulatory obligations while making accountability more diffuse.
- ▶ More difficult enforcement (which legal entity, which authority, which court's jurisdiction)
- ▶ Potential weakening of social dialogue

The maritime sector demonstrates that once legal and economic responsibility become detached, restoring accountability is extremely difficult. The EU should avoid reproducing similar dynamics in other transport sectors.

3. Aviation

The airline industry already makes extensive use of:

- ▶ Multiple Air Operator Certificate (AOCs),
- ▶ Complex cross-border group structures and subsidiaries,
- ▶ Wet leasing, including ACMI arrangements,
- ▶ Crew employment through separate companies.

The ECJ case law¹ involving airlines has demonstrated how complex it can be to determine the applicable labour law, the competent courts and the responsible employer where companies operate through multiple legal entities across Member States.

The European Commission is currently preparing the revision of Regulation (EC) No 1008/2008 on common rules for the operation of air services. One of the key objectives supported by the ETF is to strengthen legal certainty by clarifying the applicable labour law, competent jurisdiction and social security legislation for highly mobile aircrew, while preventing social dumping and regulatory arbitrage. Introducing the EU Inc. regime would add a further layer of legal fragmentation, making it even more difficult to identify the responsible employer and the competent authorities, thereby undermining the objectives of the ongoing revision of Regulation 1008/2008.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A62016CJ0168>



At a minimum, the aviation sector should therefore be excluded from the scope of the proposed EU Inc. regime. Any future consideration should only take place after the revision of Regulation 1008/2008 has entered into force and its interaction with company law, labour law, licensing and social security legislation has been properly assessed.

4. Rail & Logistics

Liberalisation has already produced increasingly complex corporate structures involving operators, infrastructure managers, subcontractors and temporary agency workers. Any further fragmentation of legal responsibility also risks weakening accountability throughout the supply chain.

Warehousing and parcel delivery increasingly rely on subcontracting and platform-based models. Effective enforcement already presents significant challenges and the EU Inc. may directly undermine the application of the Platform Work Directive in relation to identifying the real employer and tracing algorithmic control across borders.

Conclusions

The proposal risks creating precisely the type of legal fragmentation that the EU has spent the last decade trying to eliminate through the Mobility Package, the European Labour Authority and stronger action against letterbox companies.

Simplifying company law should never simplify the avoidance of social responsibility. If the objective of the 28th Regime is to facilitate cross-border business, it must also guarantee cross-border accountability. Otherwise, the proposal risks distorting competition by placing responsible operators who comply with labour and licensing obligations at a disadvantage compared with companies that organise themselves through more complex corporate structures. It will also be at the expense of transport workers.

ETF therefore advocates to withdraw the EU Inc. proposal or exclude the transport sector in its entirety. Should it go forward, it undeniably needs to include robust and binding safeguards against abuses, including:

- ▶ keeping the scope for start-ups and scale ups (original proposal of the Commission);
- ▶ preventing the possibility for multinational companies to convert into this new regime;
- ▶ preserving the requirement for a genuine and effective establishment linked to actual economic activity;
- ▶ ensuring that sector-specific licensing and labour obligations continue to apply regardless of the corporate form;
- ▶ preventing the use of EU Inc. structures to circumvent collective agreements or worker participation rights;
- ▶ maintaining clear legal responsibility for employers across subcontracting chains;
- ▶ strengthening cooperation between labour inspectorates, transport regulators, and licensing authorities;
- ▶ ensuring that public procurement and concession rules continue to permit strong social conditionality, including respect for collective agreements and employment protections.



Clarification questions for the next steps:

- ▶ Which authority is competent to inspect an EU Inc. operating in several Member States?
- ▶ Which authority can withdraw licences where sectoral legislation requires establishment?
- ▶ How will labour inspectorates identify the responsible employer?
- ▶ How will worker representatives exercise information and consultation rights?
- ▶ How will social partner rights be protected where the applicable corporate law differs from the place where workers are employed?

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