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Answer given by Mr McGrath
on behalf of the European Commission
(28.10.2026)

The Commission agrees that the legal basis of a proposal must be determined by its overall aim and content. This was the case for the 'EU Inc.' proposal[1].

The impact assessment report[2] preceded the preparation of the legislative proposal and thus did not determine its legal basis. The report outlined considerations on the possible use of either Article 50 or Article 114 of the Treaty on the Functioning of the European Union (TFEU). It pointed to Article 114 of the TFEU as the appropriate legal basis for a multi-pronged initiative consisting of a single act aiming at the approximation of laws with, inter alia, fast, digital and cost-effective procedures, as well as providing investors with exit options through a share transfer or the listing of the companies to public markets.

The chosen legal basis reflects the aim and content of the proposal, as explained in the Explanatory memorandum[3]. The aims of the proposal go beyond attaining the freedom of establishment as regards a particular activity. Indeed, the proposal aims at improving the functioning of the internal market and reducing fragmentation by creating an efficient and digital corporate legal framework which enables businesses to attract investment and grow, by enhancing and facilitating the free movement of capital by providing digital and harmonised rules and procedures that enable both EU and third country investors to invest in EU Inc. companies, and by prohibiting the imposition of certain discriminatory or disproportionate requirements.

In view of the above, the Commission considers that Article 114 of the TFEU constitutes the appropriate legal basis.

[1] Proposal for a Regulation of the European Parliament and of the Council on the 28th regime corporate legal framework – 'EU Inc.', COM(2026) 321 final.
[2] SWD(2023) 178 final, page 22.
[3] COM(2026) 321 final, page 6.