EuropaBio's startups and SME feedback on the EU Inc. proposal

The EU Inc. proposal delivers real improvements: digital formation, harmonised governance structures, and tax-deferred employee equity. Its operative provisions, calibrated for the median company, **do not,** however, **fully accommodate biotech and deeptech scaleups**, **academic spinouts**, and **founder-led growth firms.** Three targeted adjustments would correct this. None requires any change to the proposal's legal basis or its form as a directly applicable Regulation. None touches fiscal or labour competences, and all can be carried out in the ordinary legislative procedure.[1] A fourth provision, the non-discrimination guarantee in Article 103, is the provision the other three depend on: it determines whether the first three hold once a company operates across borders. It is welcomed.

Figure 1. The three operative fixes rest on the Article 103 non-discrimination guarantee.

1. Article 20: extend the once-only window to sectoral regulators

Article 20 establishes the once-only principle for the EU Inc. A company files its incorporation data once with the business register, which distributes it to the other authorities that need it, so the same information is never filed twice.

Article 20 covers business registers, tax authorities (TIN/VAT), social security, and beneficial ownership registers.[2] The European Medicines Agency (EMA), the European Food Safety Authority (EFSA), the European Chemicals Agency (ECHA), national medicines and biotech agencies, and innovation funding bodies as Bpifrance, KfW, Vinnova, and European Innovation Council (EIC) national contact points sit outside.

An EU Inc. active in critical technologies must still file separately with each of these authorities, using different identifiers and timelines. The one-stop shop does not apply to the stops that matter most for high-growth companies.

One umbrella change corrects this, in two parts. First, Article 20 can be extended, on a voluntary basis and without prejudice to sector-specific Union or national law, to include selected EU sectoral agencies, with the connected authorities and data categories specified by Commission implementing act. This way the list can grow without reopening the Regulation.

[1]COM(2026) 321 final, Explanatory Memorandum, section 2 (legal basis, Article 114 TFEU).
[2]COM(2026) 321 final, Article 20.

Second, national regulatory and innovation funding bodies should be required to accept the European Unique Identifier (EUID) as a primary identifier on the model of the Single Digital Gateway Regulation[3] and the European Business Wallet for authentication and document exchange. The proposal already provides this acceptance for the core authorities. This addition would improve the interoperability of administrative processes on the established once-only logic, without expanding company law into sectoral regulation and without requiring any authority to change its own substantive rules.

2. Article 65: protect early-stage IP from mandatory public disclosure

Article 65 governs contributions in kind, where a founder or investor pays for shares with an asset such as IP rather than cash, and requires an independent expert to value that asset before the shares are issued. Article 65 extends to all EU Inc. forms the independent expert valuation requirements for contributions in kind, as reflected in Article 49 of Directive (EU) 2017/1132,[4] and couples these safeguards with systematic public filing of valuation information.[5]

For biotech and deeptech companies, **early-stage IP valuation is commercially sensitive**. **Public exposure signals development stage to competitors and becomes a reference point in licensing, M&A, and partnering discussions**.

Recording that a contribution was made, and describing the asset, is already standard practice across registers. Regimes diverge, however, in the valuation disclosure.

Jurisdiction	Comparation of different regimes for the equivalent private form
France[6]	Independent valuer (commissaire aux apports) required above the 2019 PACTE waiver (each in-kind contribution of 30,000 euro or more, or total in-kind above half the share capital); report accessible through the Registre du Commerce et des Societes.
Switzerland[7]	Licensed-auditor confirmation required; the register records the contributed assets and their value, with the report filed in the incorporation documents.
Germany[8]	Sachgruendungsbericht filed with the registry court; the contribution value is stated in the publicly filed articles of association, and filed register documents are publicly inspectable under section 9 HGB.
Belgium (BV/SRL)[9]	Contributions in kind still require valuation by the company auditor (bedrijfsrevisor) and a special report under the 2019 Code.
Netherlands (BV)[10]	Auditor's statement for in-kind contributions abolished in 2012. No public valuation report.
Delaware[11]	Board determination conclusive absent fraud. No public expert valuation or per-asset disclosure.
USA (MBCA)[12]	Board determination of adequacy is conclusive. No public expert valuation required.

[3]Regulation (EU) 2018/1724 establishing a single digital gateway, Article 14.
[4]Directive (EU) 2017/1132, Article 49; scope set by Article 44 read with Annex I.
[5]COM(2026) 321 final, Articles 25(1)(e) and 65(2) to (6).
[6] France: commissaire aux apports report, required above the 2019 loi PACTE, accessible through the Registre du Commerce et des Societes. Code de commerce, arts. L. 225-8 and L. 227-1; loi n° 2019-744 du 19 juillet 2019.
[7]Switzerland: Swiss Code of Obligations (SR 220), Art. 635 and 635a (founders' report and licensed-auditor confirmation for contributions in kind); for the private form (Sàrl/GmbH), Art. 777c applies the same confirmation.
[8] Germany: Sachgruendungsbericht under section 5(4) GmbHG, filed with the registry court. The contribution value is stated in the art. of association under section 5(4), which the Handelsregister publishes.
[9] Belgium: Code of Companies and Associations (2019).
[10]Netherlands: Wet vereenvoudiging en flexibilisering bv-recht (Flex-BV), in force 1 October 2012. See Hogan Lovells
[11]Delaware: 8 Del. C. section 152(d).
[12]United States: Model Business Corporation Act (2016), section 6.21.

Creditor protection is already addressed. Article 65(6) imposes shareholder liability for significant overvaluation, and the independent expert report required under Article 65(3) and (4) confirms the value before the shares are issued.[13] Confidential filing leaves anti-money-laundering and supervisory oversight intact. The report stays fully available to competent authorities and to parties with a legitimate interest, so only the public exposure of the figures changes.[14] Per-asset public disclosure goes beyond what creditor protection and that oversight require.

3. Article 78: recalibrate the EU Employee Stock Option Plan

Article 78 introduces a harmonised EU Employee Stock Option (EU-ESO) framework.[15] Its deferral of taxation until disposal of the shares is a genuine improvement, more favourable than the exercise-point taxation applied in Switzerland[16] and the deferral-with-trigger model in Germany.[17] This advantage may, however, be limited in practice by Member State implementation under Article 79(4).

Notwithstanding, **two design choices reduce its competitiveness: a mandatory exercise lock-up** under Article 78(3)(c), **which is too long**, **and a categorical ownership exclusion** with a look-back under Article 78(2), **which is too broad**.

The EU-ESO sets no harmonised vesting schedule. Article 78(3)(c) imposes a mandatory waiting period of at least 24 months from issuance before a warrant can be exercised. Vesting appears only in Article 79(2) as a tax-neutral event and is left to the company's general meeting resolution. The binding constraint becomes the exercise lock-up.

Among comparator regimes, Ireland's KEEP scheme also bars early exercise, for 12 months, half the EU-ESO period.[18] The United States,[19] the United Kingdom[20] and Estonia[21] use holding periods only as tax conditions and allow exercise at any time. Standard venture practice vests options over 4 years with a

[13] COM (2026) 321 final, Article 65(5): the expert report may be waived only for in-kind considerations, or parts thereof, that are not to be contributed to capital. The waiver therefore does not assist founders contributing IP for shares, and the waiver decision is itself filed and made publicly available under Articles 65(5) and 25(1)(g).

[14] Judgment of 22 November 2022 (Grand Chamber), Joined Cases C-37/20 and C-601/20, Luxembourg Business Registers and Sovim: public access to beneficial ownership information invalidated as disproportionate, against the former regime of access for any person or organisation able to demonstrate a legitimate interest. Cited by analogy on the standard of access to register filings.

[15] COM(2026) 321 final, Articles 78 and 79.

[16] Switzerland: employee stock options are generally taxed at exercise, on the difference between fair market value and the strike price. Walder Wyss, Country Q&A, Employee share plans in Switzerland.

[17] Germany: section 19a EStG, as amended by the Zukunftsfinanzierungsgesetz (Future Financing Act, 2024), defers taxation of qualifying employee equity to sale or departure; eligibility is company-based. No individual ownership cap on beneficiaries. KPMG

[18] Ireland: Key Employee Engagement Programme (KEEP), Revenue. A qualifying individual must not hold a material interest above 15 per cent; an option may not be exercised in the first 12 months after grant.

[19] 26 U.S.C. section 422(a)(1): ISO capital-gains treatment requires no disposition of the shares within 2 years from grant nor within 1 year after exercise. Law, Cornell

[20] United Kingdom: Enterprise Management Incentives (EMI). Employees with a material interest above 30 per cent at grant are excluded; Business Asset Disposal Relief requires disposal at least two years after grant.

[21] Estonia: Estonian Tax and Customs Board. A share option is tax-exempt at exercise where at least three years separate grant and exercise; exercise is not otherwise barred.

1-year cliff;[22] the 24-month lock-up is twice that cliff, applies on top of whatever vesting schedule the company sets, and bars exercise longer than comparator regimes.

Warrants are also non-transferable under Article 78(4). An employee who leaves before 24 months will typically be unable to exercise. Under market and comparator practice, a leaver exercises whatever has vested.[23] Even KEEP lets a leaver exercise within 90 days of departure.[24] The EU-ESO has no such carve-out. The lock-up falls hardest on early leavers and mobile specialists, common in deeptech scaleups.

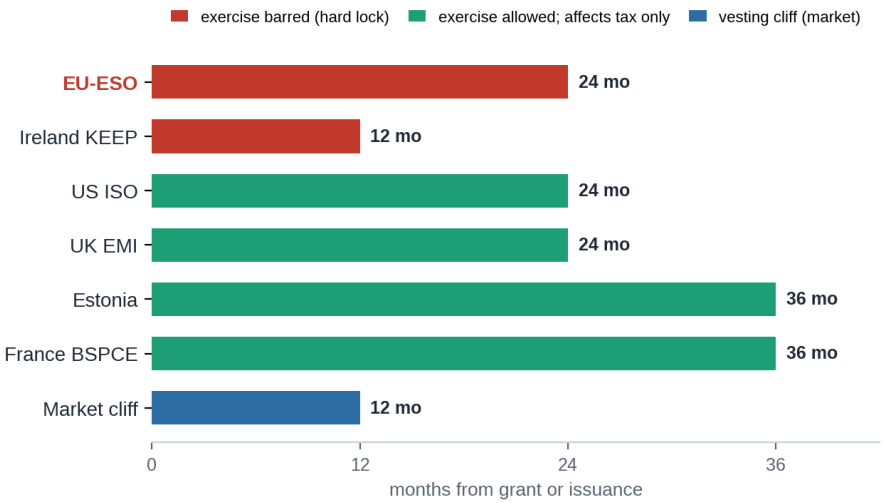

Figure 2. Minimum period before exercise or before favourable tax treatment. Red marks a hard exercise lock-up; teal marks a tax condition that still allows exercise. Germany and Switzerland set no minimum period.

The 25% exclusion sits mid-range, but is paired with a unique look-back and the longest lock-up

Article 78(2) categorically excludes individuals who hold, directly or indirectly, more than 25 per cent of voting rights or proceeds, and those who held that level in the 24 months before issuance.

Comparators treat large holders differently, as the table below shows. France[25] and Germany set no individual cap; the United States instead adjusts the terms;[26] Ireland and the United Kingdom exclude at 15 and 30 per cent. The EU-ESO threshold of 25 per cent sits mid-range. What distinguishes it is the

[22] Index Ventures, Rewarding Talent: venture-backed equity typically vests over four years with a 12-month cliff.
[23] See footnote 22.
[24] Ireland: Revenue, Tax and Duty Manual, Share Schemes Manual, Chapter 9 (KEEP), paragraph 9.5.1; section 128F TCA 1997. Where the company share scheme rules allow exercise after cessation, a leaver "will continue to be considered a 'qualifying individual' for the purposes of KEEP relief, provided that such options are exercised within 90 days of the termination of the office or employment."
[25] France: bons de souscription de parts de createur d'entreprise (BSPCE). No individual ownership cap on beneficiaries; the favourable rate requires three years of service. Code general des impots, art. 163 bis G; BOFiP BOI-RSA-ES-20-40.
[26] 26 U.S.C. section 422(c)(5): for holders above 10 per cent, the option price must be at least 110 per cent of fair market value and the term must not exceed five years. Law Cornell

pairing of that exclusion with a retrospective 24-month look-back on prior holdings, which no comparator applies, and with the longest exercise lock-up among peers.

Regime	Threshold	Effect above threshold
France BSPCE	No individual cap (company-based eligibility)	Permitted
Germany 19a	No individual cap	Permitted
US ISO	10%	Permitted, adjusted terms: strike at least 110% of FMV, term up to 5 years
Ireland KEEP	15% material interest	Excluded
EU-ESO	25% (including the prior 24 months)	Excluded
UK EMI	30% material interest (tested at grant)	Excluded

Why the threshold binds biotech spinouts

University equity stakes sit mostly below the line. United States universities typically take around 5 per cent;[27] the European average is likely 7.3 per cent.[28] Across 809 UK spin-outs the mean stake is 22.8 per cent (median 20.2 per cent), with the life-science median at 21.2 per cent.[29] The global Spinout.fyi dataset shows a 12.8 per cent mean across a 0 to 70 per cent range,[30] with pre-reform UK stakes and high-stake European institutions reaching 40 to 50 per cent.[31] The threshold is crossed by the high-stake tail and, more reliably, by founders.

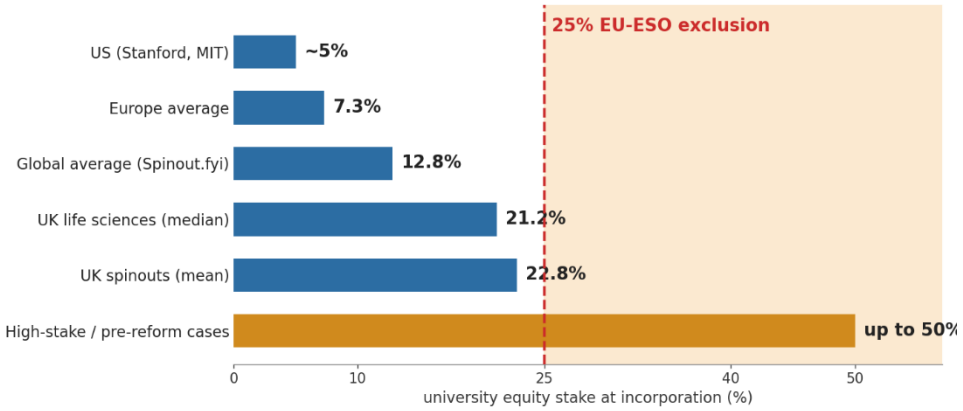

Figure 3. University equity stake at incorporation, by region and sector. Median and average stakes sit below the 25% EU-ESO line; the UK life-science median (21.2%) is not the highest sector. Only high-stake and pre-reform deals reach 50%. The threshold binds biotech mainly through founders (Figure 4).

[27] US universities typically take low single digits; MIT and Stanford around 5 per cent. Orrick, Legal Ninja Snapshot, Dec. 2024.
[28] Spinout.fyi V1 database analysis, June 2022 (community-sourced deal data): average European university stake of 7.3 per cent, against 19.8 per cent in the United Kingdom.
[29] United Kingdom: Beauhurst, Spotlight on Spinouts 2024. Mean university equity stake of 22.8 per cent (median 20.2 per cent) across 809 spinouts with known university shareholders, tracked since 1 January 2011 and incorporated since 1 January 2010; sector medians of 21.2 per cent for life sciences, 21.7 per cent for hardware, and 20.0 per cent for software. Life sciences is not the highest sector, and its median is below the 25 per cent line.
[30] Spinout.fyi V1 database analysis, June 2022 (community-sourced deal data: 143 entries from 71 universities): mean university stake of 12.8 per cent across a 0 to 70 per cent range.
[31] Independent Review of University Spin-out Companies (Tracey Review), November 2023: pre-reform stakes as high as 50 per cent; recommended working range of 10 to 25 per cent.

The threshold binds hardest through founders. Article 78(2) excludes anyone who held more than 25 per cent **in the 24 months before issuance**. At incorporation founders own the company outright.

The median founding team still holds about 56 per cent after a seed round and 36 per cent after Series A, falling below 25 per cent only at Series B[32]. A solo or lead academic founder, the common structure in a biotech spin-out, holds well above 25 per cent through these rounds. The look-back therefore excludes founder-employees from the EU-ESO during the company's first years, the window when equity is the main way a cash-constrained scaleup can pay them.

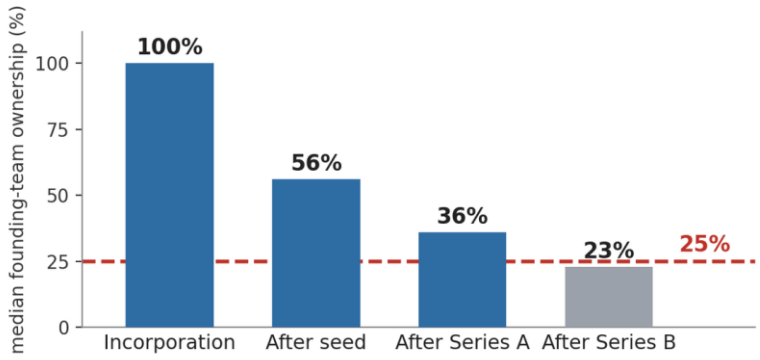

Figure 4. Median founding-team ownership by round (Carta). Founders hold above 25% through Series A; the 24-month look-back in Article 78(2) reaches anyone at that level in the prior two years.

The Strategic Technologies for Europe Platform (STEP) Regulation identifies biotech and deeptech as priority sectors for European competitiveness.[33] An EU-ESO that excludes the founders and high-IP institutions typical of biotech spinouts undermines that priority from the instrument designed to support it. France (BSPCE) and Germany (section 19a) have moved to lower barriers for founder-led and spin-out equity. Sectoral differentiation is already Union practice. Recital 5 of the STEP Regulation records that the platform "responds in particular to the needs of startup and scaleup companies".[34] A shorter waiting period for STEP-sector companies applies the same logic within the EU-ESO.

4. Article 103: the safeguard to keep

Articles 20, 65, and 78 correct specific operative provisions. Article 103 determines whether those corrections hold once an EU Inc. company operates across borders. It requires Member States to treat EU Inc. companies no less favourably than national limited liability forms. It prohibits denying public support based on headquarters location and requiring a local representative, or refusing a payment account held in another Member State.[35] For biotech and deeptech, where national and Union

[32] Carta, Founder Ownership Report 2025 (United States data): median founding-team ownership.
[33] Regulation (EU) 2024/795 establishing the Strategic Technologies for Europe Platform (STEP).
[34] Regulation (EU) 2024/795, recital 5: the platform "responds in particular to the needs of startup and scaleup companies".
[35] COM(2026) 321 final, Article 103.

innovation funding is a primary source of capital, this guarantee decides whether an EU Inc. company can compete for the same grants as a domestic form.

Article 103 is the provision the other three depend on. The equal-treatment duty in Article 103(1) is the standard internal-market test the Court applies to all establishment restrictions. The specific prohibitions in Article 103(2), on headquarters location, registered office, local representative, and a payment account held in another Member State, carry no proportionality qualifier and bite on the most damaging forms of location-based discrimination. The State aid carve-out in Article 103(2)(a) is unavoidable in secondary legislation, which cannot override the State aid framework. The provision is welcomed. One residual point merits clarification: a Member State could set facially neutral criteria, for example a requirement to hold a specific national legal form, that exclude EU Inc. companies in effect and defend them under the Article 103(1) proportionality qualifier. A recital confirming that the equal-treatment duty reaches facially neutral criteria with discriminatory effect would close that gap.

Three asks, one welcome

Article 20: One change in two parts: extend the once-only principle, on a voluntary basis and without prejudice to sector-specific law, to EU sectoral agencies (EMA, EFSA, ECHA), with the connected authorities and data categories specified by implementing act. Require national regulatory and innovation funding bodies to accept the EUID as a primary identifier.

Article 65: File the expert report with the business register instead of publishing it with public disclosure limited to asset descriptions, valuation methods, and the experts' confirmation, with the values determined accessible to competent authorities and to any person demonstrating a legitimate interest. Move the value required by Article 65(2) and Article 25(1)(e) from the publicly filed articles of association to an accompanying declaration under the same access regime.

Article 78: Reduce the minimum waiting period in Article 78(3)(c) to 12 months for companies active in the critical technology sectors listed in Article 2(1), point (a), of the STEP Regulation (EU) 2024/795, self-declared at warrant issuance, subject to ex post verification by competent authorities. Allow exercise of vested warrants notwithstanding the waiting period where employment ends (within 90 days of departure), the company is acquired, or the holder dies, restoring the design of the industry blueprint,[36] Replace the categorical 25 per cent exclusion in Article 78(2) and its 24-month look-back with adjusted terms for holders above the threshold, on the model of 26 U.S.C. section 422(c)(5): an exercise price of at least 110 per cent of fair market value and a maximum 5-year term.[37] If co-legislators do not retain adjusted terms, the fallback is to test the threshold at issuance only and delete the look-back. (These changes concern the company-law design of the warrant and stay within the Article 114 TFEU legal basis of the proposal. The tax treatment in Article 79 is untouched.)

Article 103 (welcomed): Keep the non-discrimination guarantee as drafted. The single ask is a recital confirming that the equal-treatment duty in Article 103(1) reaches facially neutral criteria that exclude EU Inc. companies in effect.

[36] EU Inc. Policy Proposal: An industry blueprint for the upcoming 28th Regime, EU-ESOP design: minimum holding period of 1 to 3 years before beneficial exercise, with beneficial treatment preserved where the period is not met due to an acquisition, undue termination, or death.
[37] See footnote 26.

Annex: proposed amendments

Amendment 1: Article 78(3), point (c)

Text proposed by the Commission	Amendment
(c) a mandatory waiting period before which the warrants issued under the EU-ESO shall not be exercised, which shall be at least 24 months from the issuance of a warrant.	(c) a mandatory waiting period before which the warrants issued under the EU-ESO shall not be exercised, which shall be at least 24 months from the issuance of a warrant, ***or at least 12 months where the company declares at issuance that it is active in the critical technology sectors referred to in Article 2(1), point (a), of Regulation (EU) 2024/795. The waiting period shall not preclude the exercise of warrants where the holder's employment ends, in which case exercise shall occur within 90 days of departure, where the company is acquired, or where the holder dies***.

Justification: Aligns the waiting period with the 12-month benchmark of the Irish KEEP scheme for the sectors the STEP Regulation identifies as priorities, using STEP's existing definition and a self-declaration, so no new assessment procedure is created. The carve-outs restore the design of the industry blueprint. The change concerns the company-law design of the warrant; the tax treatment in Article 79 is untouched.

Amendment 2: Article 78(2)

Text proposed by the Commission	Amendment
Eligibility for warrants issued under the EU-ESO shall be restricted to members of the board and employees of the company and its subsidiaries. Warrants under the EU-ESO shall not be issued to persons who, directly or indirectly, hold shares in the company corresponding to more than 25 per cent of the voting rights or rights in the proceeds of the company or have held such shares in the 24 months preceding the issuance.	Eligibility for warrants issued under the EU-ESO shall be restricted to members of the board and employees of the company and its subsidiaries. Warrants under the EU-ESO ~~shall not be~~ issued to persons who, directly or indirectly, hold shares in the company corresponding to more than 25 per cent of the voting rights or rights in the proceeds of the company ~~or have held such shares in the 24 months preceding the issuance~~ ***shall provide for an exercise price of at least 110 per cent of the fair market value of the underlying shares at issuance and shall lapse no later than 5 years from issuance***.

Justification: Replaces categorical exclusion with the calibrated-terms model of 26 U.S.C. section 422(c)(5): participation above the threshold on stricter terms. The 24-month look-back, which no comparator applies, is deleted as it has no function once participation is permitted. "Fair market value" follows Article 79(3). Suggestion: if calibrated terms are not retained, limit the exclusion to holdings at the time of issuance and delete the look-back.

Amendment 3: Article 65(4)

Text proposed by the Commission	Amendment
The experts' report referred to in paragraph 3 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values determined by the application of those methods correspond at least to the value specified in accordance with paragraph 2. The report shall be filed and made publicly available in the business register.	The experts' report referred to in paragraph 3 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values determined by the application of those methods correspond at least to the value specified in accordance with paragraph 2. The report shall be filed ~~and made publicly available~~ ***in*** the business register. ***The business register shall make publicly available the description of the assets comprising the consideration, the methods of valuation used and the experts' statement, but not the values determined. The full report shall be accessible to competent authorities and to any person able to demonstrate a legitimate interest.***

Justification: Keeps every safeguard, the expert valuation, the Article 65(6) liability rule, and full access for competent authorities, while ending public exposure of commercially sensitive early-stage IP valuations. The legitimate-interest access standard follows, by analogy, the approach of the Court of Justice to register access in Sovim (Joined Cases C-37/20 and C-601/20).

Amendment 4: Article 65(2)

Text proposed by the Commission	Amendment
All in-kind considerations for shares shall have a determinable value. The value of in-kind considerations for the first shares shall be specified in the articles of association. Where new shares are issued against a consideration in kind, the value of the consideration shall be specified in the decision on the issuance of the shares.	All in-kind considerations for shares shall have a determinable value. The value of in-kind considerations for the first shares shall be specified in ***a declaration accompanying*** the articles of association***, filed in the business register***. Where new shares are issued against a consideration in kind, the value of the consideration shall be specified in ***a declaration accompanying*** the decision on the issuance of the shares. ***The third and fourth sentences of paragraph 4 shall apply to the public availability of those declarations.***

Justification: Consequential on Amendment 3. Without it, the valuation figure re-enters the public record through the publicly filed articles of association.