

iLINC Policy Briefs

# Adapting The Corporate Climate For Start-Ups



**iLINC**  
ICT Law Incubators  
Network

**Digital start-ups aim towards rapid deployment, growth and scalability in an ever-changing technological environment. In order to be truly efficient, corporate law should take into account this need for flexibility. The rigidity of the current legal framework is apparent on two levels: the incorporation of the start-up and the start-up's ability to hire and fire personnel. On both levels, legal flexibility may be necessary to ensure that start-ups reach their full potential.**

### **Corporate Concerns**

Making the shift from the 'garage to global' mentality to the corporate mind-set isn't easy for digital start-ups. Yet, even at an early stage, start-ups are confronted with corporate legislation. According to our iLINC survey, **50 percent of digital start-ups require legal assistance in the fields of corporate and corporate transactions law.** However, as start-ups often cannot afford professional legal advice, crucial legal questions concerning their corporate structure remain unanswered. **Raising awareness and simplifying the legal framework** would allow start-ups to develop a better understanding of corporate requirements.

However, in order to boost the digital market, policy makers must also take into account the particularities of the start-up scene. **Digital start-ups often aim towards rapid deployment, growth and scalability.** Additionally, the pace at which technological advancements are made, requires start-ups to be able to quickly adjust their business operations: the ability to **experiment is key.** This need to scale and experiment differentiates digital start-ups from small businesses who usually tend to have a fixed path. However, the corporate structures available to start-ups do not always allow for this flexibility. Thus, in a digital environment characterised by change, legal requirements based upon traditional business notions may fast become an unwelcome hindrance to creativity.

**Recommendation 1: Corporate policies should focus towards facilitating the key elements to start-up success: rapid deployment, growth, scalability and experimentation.**

This policy brief focuses on two aspects of the corporate environment: the incorporation and the ability to hire and fire personnel.

### **The Initial Start-up Phase**

Digital start-ups claim that the process of incorporating a business is still too time-consuming. Start-ups have therefore called upon policymakers

to facilitate the creation and maintenance of digital ventures in the EU.

Every Member State has their own set of corporate legal entities that can be chosen for incorporation. For start-ups there may be similar go-to options (e.g. limited liability), but every structure should at least be considered, e.g. from a tax perspective. The current confusion - due to the abundance of choice - should be mitigated. One of the suggestions made by start-ups to resolve this key issue is the introduction of a new legal entity catered specifically to digital entrepreneurship at its early stages: **an e-corporation.**

Investors have promoted the idea of a unified 'corporation' status as well as it would not only simplify the start-up process, but due to the standardisation of processes, **cross-border investments would be made much easier**<sup>1</sup>.

To truly foster the entrepreneurial spirit, policy makers should also consider the following aspects that impact a start-ups success.

- **CAPITAL:** Most legal entities require a minimal amount of capital. Considering the limited budget of digital starters, the introduction of a start-up oriented e-corporation would preferably require **a low minimum capital threshold:** most start-ups either have no funds or a revenue stream below €50k. Moreover, as a business can now be run from a single computer, some start-ups argue whether there is still need for capital requirements at all.
- **FAILURE:** One key aspect to keep in mind is that a start-up's road to success is paved with failure. 'Learn to fail' is an often heard start-up motto. Thus, businesses should not be only easy to create, but should also be **easy to shut down.** This would keep entrepreneurs motivated when facing failure: failure should be considered part of the learning process and should encourage start-ups to adapt, rather than quit.

**Recommendation 2: Consider a simplified pan-European e-corporation status for start-ups, enabling quick incorporation.**

**Recommendation 3: The minimum capital requirements for incorporation could be lowered.**

**Recommendation 4: Failure is an integral part of a start-up's road to success. Start-ups may benefit from the ability to quickly shut down their businesses.**

## Share Best Practices

In recent years, several Member States have, through the introduction of new legislation, facilitated the start-up process. Member States could share their best practices in order to achieve a higher level of entrepreneurship. Moreover, the EU encourages its member countries to meet certain targets in order to ensure quick start-up possibilities. Two EU member states could serve as an example: Portugal and Latvia.

### The 'On the Spot Firm' – Portugal

According to the World Bank Group "Doing Business Rankings<sup>2</sup>", Portugal ranks among the top 10 countries to start-up a business in the world, even topping the charts in Europe. Entrepreneurship is heavily promoted in Portugal. The ranking system is an important indicator for entrepreneurs of how start-up friendly a regulatory environment may be as it aims to show how easy or difficult it is for a local entrepreneur to open and run a small to medium-size business when complying with relevant regulations.

In recent years, Portugal has made it easier to set up a business by allowing company founders to choose the amount of minimum capital. Paid-in capital contributions can also be made one year after a company's creation. The requirement to report the setting up of a business to the Ministry of Labour has also been eliminated.

However, starting up a business is primarily facilitated through the one-stop-shop 'Empresa na Hora'. This 'On the Spot Firm' initiative was introduced in Portugal to kick-start fast-track entrepreneurialism. Through this program, setting up an undertaking in Portugal is made quite easy. The procedure takes on average 37 minutes, requiring the completion of a single form and costing about 360 euros. The service can also be accessed online (Empresa Online).<sup>3</sup> This enables entrepreneurs to set-up a company through the Internet in 1 to 2 days. Although not pan-European, the Portuguese 'Empresa na Hora' system showcases how a simplified start-up process could be implemented.

### Gradual Simplification – Lithuania<sup>2</sup>

Ranked the 11<sup>th</sup> country in the world out of 189 countries, Lithuania is, next to Portugal, the second-easiest country to start-up a business in the EU according to the World Bank's "Doing Business Rankings". In 2014, Lithuania was still ranked 19<sup>th</sup> in the world, indicating that new regulatory measures have facilitated the process of starting-up a business. In recent years, Lithuanian authorities have implemented the following measures to make the start-up process easier: introducing an online registration for limited liability companies, eliminating the notarization requirement for

incorporation documents, creating a new form of limited liability company with no minimum capital requirement and eliminating the need to have a company seal and speeding up VAT registration at the national State Tax Inspectorate.

## Hiring and Firing

Digital start-ups need to be able to swiftly adapt to the ever-changing technological landscape. **Start-ups deploy skills when and where they are needed.** If no longer crucial, employees merely slow-down the growth process. However, the necessity to quickly adjust to emerging technologies is reflected in a start-up's hiring practice. Hiring staff may be considered too risky as the financial consequences of a skill mismatch may prove to be detrimental. In order to foster a truly competitive environment, **one option could be to make it easier for start-ups to fire their employees.** Firing fast is often considered integral to the start-up lean ethos: any part of the enterprise that does not have an added value for the final product or customer should be eliminated. **However, the moral component should not be forgotten: policy makers should therefore promote start-up network frameworks that allow start-ups to find the right skills from the outset.** The Start-up Europe Manifesto has suggested some potential alternatives in this regard as well.<sup>4</sup> According to the manifesto, **universities could make their curriculum more 'digital' in order for graduates to acquire basic digital skills. Additionally, students could be given support in finding part-time work experience, summer jobs and internships.** Indeed, such mechanisms could reassure future employers. Moreover, these internships could be performed at start-ups and they could even become an integral part of the student curriculum.

*Recommendation 6: Policymakers could enable start-ups to faster hire and fire personnel, but should also help start-ups in finding the right talent from the outset, e.g. through establishing start-up networks.*

*Recommendation 7: Promote the introduction of 'digital' courses in universities and support students in finding 'digital' work experiences.*

## Cross-Border Hiring

The digital environment has changed the way a business is usually operated: **digital start-ups are no longer bound by the confines of a physical establishment.** Web conferencing tools, such as Skype and WebEx, facilitate cross-border collaboration.

Considering these developments, cross-border hiring must be facilitated, taking into account the technological nature of the start-up workspace. Although the EU labour market enables free movement of workers, hiring can still be complex. Start-ups would greatly benefit from a **simplified framework** enabling them to **hire outside their respective home countries, without being required to set-up a local subsidiary.**

*Recommendation 8: As the online environment facilitates cross-border co-operation, the practice of hiring cross-border talent should be facilitated as well.*

### A Pan-European Visa

Additional difficulties arise when start-ups try to hire people from non-EEA countries: visas must be acquired and minimum wages, potentially sector-specific, have to be ensured.

The manifesto for entrepreneurship and innovation to power growth in the EU suggests that one way to turn Europe in the easiest place for highly-skilled talent to start a company would be the introduction of **a pan-European visa**.<sup>4</sup> Such a visa would **make it easier for non-EU start-ups to start a business in Europe. Additionally, EU companies would have easier access to non-EU talent.**

*Recommendation 9: Hiring talent outside the EU could be made easier, for instance through the introduction of a pan-European Visa.*

### iLINC Recommends

- Corporate policies should focus towards facilitating the key elements to start-up success: rapid deployment, growth, scalability and experimentation.
- Consider a simplified pan-European e-incorporation status for start-ups, enabling quick incorporation.
- The minimum capital requirements for incorporation could be lowered.
- Failure is an integral part of a start-up's road to success. Start-ups may benefit from the ability to quickly shut down their businesses.
- When drafting employment policies, consider the start-up's hiring environment to be global.
- Policymakers could enable start-ups to faster hire and fire personnel, but they should also

help start-ups in finding the right talent from the outset, e.g. through establishing start-up networks.

- Promote the introduction of 'digital' courses in universities and support students in finding 'digital' work experiences.
- As the online environment facilitates cross-border co-operation, the practice of hiring cross-border talent should be facilitated as well.
- Hiring talent outside the EU could be made easier, for instance through the introduction of a pan-European Visa.

### References

1. Start-Manifesto's: Start-Up Investors Manifesto, Start-up Europe Manifesto, Belgium, Greece, Poland, UK Start-Up Manifesto's

2. World Bank. 2014. Doing Business 2015: Going Beyond Efficiency. Washington, DC: World Bank Group. DOI: 10.1596/978-1-4648-0351-2. License: Creative Commons Attribution CC BY 3.0 IGO

Report Portugal:

<http://www.doingbusiness.org/data/exploreeconomies/portugal/~media/giawb/doing%20business/documents/profiles/country/PRT.pdf?ver=2>

Report Estonia:

<http://www.doingbusiness.org/data/exploreeconomies/lithuania/~media/giawb/doing%20business/documents/profiles/country/LTU.pdf?ver=2>

3.

[http://www.empresanahora.pt/ENH/sections/PT\\_inicio](http://www.empresanahora.pt/ENH/sections/PT_inicio)

4. The Startup Europe Manifesto

<http://startupmanifesto.eu/files/manifesto.pdf>

ILINC is the European Network of Law Incubators. Its main objective is to facilitate the provision of free legal support to start-ups while, at the same time, offering postgraduate law students the opportunity to engage in professional practice in the fast-moving and highly exciting world of technology start-ups.

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