The 28th Regime - EC Consultation
ecoDa's position paper

30 September 2025

CONTEXT :

In January 2025, the European Commission introduced the Competitiveness Compass to boost growth and innovation. Ursula von der Leyen announced a "28th legal regime" offering startups and scaleups a single EU-wide framework covering corporate, insolvency, labor, and tax rulesan optional alternative to national laws. The goal is to simplify business, cut red tape, retain talent, and support scaling across Europe. As part of this, the Commission's Start-Up and Scale-Up strategy (May 2025) highlights the 28th regime as a key tool to reduce regulatory burdens and replace fragmented national systems with one consistent framework. The European Commission launched a public consultation on the 28th regime from July to 30 September 2025.

The European Confederation of Directors' Associations (ecoDa) submitted comments to this consultation. Overall, ecoDa is supportive of the initiative but expressed doubts that the 28th regime alone will be sufficient to enhance innovation in Europe.

ecoDa's opinion is addressed below, following the structure of the EC consultation.

I. Barriers related to corporate law issues :

ecoDa welcomes the European Commission's ambition to strengthen Europe's innovation landscape and recognizes the value of exploring new tools such as the proposed "28th regime."
However, ecoDa remains sceptical that such a regime alone can effectively foster innovation in Europe.

The question of innovation in Europe is pressing, and it is worth recalling that the *Societas Europaea* (SE) statute itself took almost 40 years of negotiation (discussions began in 1964 and concluded in 2001 with the adoption of the related regulation). Even today, the SE continues to rely on national laws for many key aspects. The results have been mixed: only a limited number of companies (3,276) have been created under this form, and cross-border seat transfers have remained relatively modest. Other attempts at harmonisation have largely failed.

EU-level of decision-making takes time for good reasons. However at the startup scene time plays a crucial role. We suggest the EU to experiment with a format of this initiative to act as rapidly as possible. For example, by inviting Member States to support the initiative at their level first, making proactive steps towards EU-wide support framework as soon as possible.

The attractiveness of an EU-level corporate form depends critically on its practical advantages over existing national regimes. If the 28th regime does not offer a genuinely smoother and more flexible framework than national company laws, companies are unlikely to adopt it. Legal harmonisation alone, without tangible operational or fiscal benefits, may therefore fall short of encouraging innovation.

Moreover, the legal harmonisation of company forms is only one element and, on its own, is not the most powerful tool to stimulate innovation. For example, while regulatory frameworks such as the AIFMD have enhanced investor protection and transparency, they have also introduced challenges—particularly for smaller and non-EU private equity funds. These regulatory burdens may contribute to increased market concentration and potentially limit the diversity of investment sources in the European private equity sector.

Taxation is another critical dimension affecting innovation. Divergent corporate tax regimes, inconsistent treatment of intellectual property, and complex cross-border tax rules all influence where companies choose to locate and invest. High effective tax rates in certain jurisdictions may discourage the formation or scaling up of innovative ventures, whereas favourable tax incentives for R&D and investment play a crucial role in attracting capital and talent. Without a coherent and innovation-friendly tax framework at the EU level, legal harmonisation alone is unlikely to deliver the desired boost in European entrepreneurial activity. The work on a 28th regime therefore starts at the wrong end of the spectrum.

Another key factor is the role of banks and other financial intermediaries. Companies often face high administrative and compliance requirements from banks, which can slow access to credit or make financing more complex, adding yet another layer of difficulty for innovative businesses seeking growth capital.

Finally, ecoDa emphasizes the need to harmonize insolvency rules across Member States. Divergent national insolvency regimes create uncertainty for investors and founders alike, potentially deterring risk-taking and slowing the growth of innovative businesses. A coherent and predictable EU-wide framework for restructuring and insolvency would provide much-needed legal certainty, protect entrepreneurial initiative, and complement the goals of the 28th regime by supporting sustainable business development.

➢ Benefits of an EU brand for 28th Regime companies

An EU brand, such as the proposed “28th regime,” could help position a company as distinctly European, signaling a broader transnational identity to investors, partners, and clients. However, clients are ultimately driven by the quality and price of products or services, while investors focus on the wider economic ecosystem, including market opportunities, growth potential, and the overall business environment. An EU brand alone will not be decisive, but it can serve as a valuable signal if complemented by the substantive factors that build investor and client confidence. Trust in the new regime will take time to develop, growing gradually through experience and concrete examples.

II. Structure and the core elements of the 28th regime companies

➢ Scope and Targeted Company Types

Recent trends in Europe show that public limited liability companies (PLCs) are increasingly being delisted or taken private through buyouts, suggesting that the current regulatory and market environment may not be ideal for fostering innovation and flexibility. Against this backdrop, the 28th regime should primarily target private limited liability companies (Ltds), which are generally better suited to start-ups and innovative ventures.

However, it is challenging to predict at the outset which companies will prove truly innovative. Metrics such as the proportion of revenue invested in R&D or the creation of intellectual property can only be evaluated after a company has been in operation for some time. By keeping the 28th regime open to all private limited liability companies, the framework remains inclusive and adaptable, enabling any company with growth and innovation potential to benefit, without being constrained by rigid or early-stage criteria.

➢ Capital requirements

For start-ups, flexibility in profit allocation is crucial, as they often need cash to finance R&D and support growth. Existing legal frameworks that mandate allocating a portion of profits to a legal reserve can constrain companies and limit their ability to reinvest immediately. The 28th regime should therefore offer greater freedom in how profits are allocated, enabling companies to channel earnings into innovation and the development of new activities. Careful attention will also be needed to account for differences in the fiscal treatment of legal reserves and related provisions across Member States.

➢ Cross-border convergence

Ideally, the 28th regime would be especially relevant if it enables scale-up companies to operate across borders while shielding companies, their management, and boards from constantly navigating differing national employee participation requirements.

Hiring contractors across the EU can save time and costs compared with establishing a branch in another country. However, national labor and tax regulations often limit the use of this straightforward approach in the early growth stages.

III. Simple, flexible and fast procedures

➢ Digital Processes for Seamless Registration

While the emphasis on digital services is welcome and valuable, cross-border access can sometimes be hindered by the lack of widely accepted forms of e-ID. As these digital services are developed, it is crucial to ensure that individuals in different EU Member States can access them easily; otherwise, the services themselves will fail to remove barriers to online registration.

➢ Governance Structures that Support Scaling and Innovation

Governance plays a crucial role in enabling change and fostering innovation. Allowing founders the flexibility to customize a company's governance structure empowers them to design decision-making processes, shareholder rights, and management arrangements that best support growth, investment, and innovation. By clearly defining roles, responsibilities, and decision-making mechanisms, corporate governance helps prevent and manage conflicts among founders, shareholders, and independent board members. It provides structure to power dynamics and mitigates the risk of misalignment as the company scales.

➢ Flexible Participation and Voting Mechanisms

Shareholders and directors should have the flexibility to participate and vote both in person and remotely, enabling companies to adapt to varying circumstances. A hybrid model can be particularly valuable for companies with geographically dispersed shareholders or directors, as it promotes inclusivity and broad participation. However, while hybrid meetings offer convenience, they may not always support dynamic discussions and effective decision-making.

Granting companies autonomy ensures that governance remains flexible and well-suited to the dynamic nature of early-stage and innovative businesses. A phased approach can be particularly effective, allowing governance structures to evolve gradually so that they act as an enabler rather than a constraint.

IV. Attracting investment to 28th regime companies

➢ Flexible Share Structures and Classes

Deviations from the one-share-one-vote principle are not necessarily detrimental; they can encourage competitiveness, innovation, and address the diverse needs of companies and investors. Mechanisms such as loyalty shares and multiple voting rights may be justified to promote long-term shareholding, foster shareholder commitment, or allow founders to retain control. Multiple voting rights have long been applied in various Member States and have recently become popular among new founder groups, particularly in the tech sector, as a way to preserve control while still accessing capital from the global investor community. Approaches to loyalty shares and multiple voting rights structures differ across Member States: in many jurisdictions they are permitted under specific conditions, while in others they are either prohibited or not subject to particular requirements.

In general, companies should enjoy broad contractual freedom, particularly in areas such as capital raising, mergers and demergers, exit strategies including IPOs, and board liability. The framework should facilitate a wide range of corporate arrangements, including multiple share classes (such as non-voting preference shares), share conversion clauses, stock options (including employee options and their taxation), all types of convertibles (reverse, mandatory), share redemption mechanisms, share splits and reverse splits, tag-along and drag-along provisions, various forms of mergers including cross-border and triangular structures, liquidation preferences, flexible dividend mechanisms (in natura, scrip, or other forms), and the acquisition of own shares.

Multiple voting shares may offer particular advantages for companies under the 28th regime, while other share features, such as dividend preferences, redeemable shares, non-voting shares, or governance rights, should generally be left to the shareholders' discretion. Provided these features are transparent, investors can make informed decisions to opt in or out, ensuring both flexibility for the company and clarity for the investor.

➢ Facilitating Scale-Up and EU Market Access

Start-ups and innovative companies often aim to scale and access broader capital markets as they grow. Including provisions that facilitate a smooth transition to regulated markets ensures that the 28th regime does not become a barrier to growth and investment. Such provisions could include mechanisms for converting the company into a European public limited company (*Societas Europaea*, SE).

The Single Market is a key strength for Europe and offers several features that are particularly important for the growth of startups. Cross-border investment should be possible to facilitate access to capital, while finding the right investor is essential to move from an idea to a startup and from a startup to a scaleup. An up-to-date EU-wide directory with detailed information on investors can serve two main purposes: it can facilitate access to funding by providing insights on industry, profile, and risk appetite, and it can give founders information on investors' strategies and long-term commitment. In addition, harmonized market access standards would simplify and accelerate the initial testing phase for new products or services. A product that meets the requirements of one Member State should be allowed to enter other Member States' markets for a limited period, providing a broader initial customer base, generating valuable feedback on product features, and enabling rapid product improvement, ultimately enhancing competitiveness.

➢ Promoting Good Governance

Soft law can be a useful tool to promote good governance while allowing companies to diverge from non-binding recommendations. However, developing a European Business Code that truly adds value to business practices, without restricting governance approaches that have proven effective at the national level, remains a significant challenge.

Conclusion :

Europe can best support startups by acting quickly, providing simple, clear, and flexible rules that reduce administrative burdens, accept risk, and allow founders to focus on growing their business, ideally through one-stop support services. At the same time, a united Single Market is crucial, enabling cross-border investment, access to investors, easier hiring, broader use of stock options, and harmonized market access to accelerate product testing, growth, and competitiveness.

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About ecoDa: The European Confederation of Directors Associations (ecoDa) is an independent and unique umbrella organization representing the main national institutes of directors across Europe. Our member institutes collectively encompass around 50,000 individual directors from 24 countries, who serve on the boards of companies spanning various sizes and sectors. Our mission is to promote the highest standards of boardroom governance and to ensure that directors across Europe are well-equipped to meet the challenges and opportunities of their roles.

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