



Non-paper: How can a 28th regime company status help young and innovative companies to scale in Europe?

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The European Union has one of the largest markets in the world with 450 million inhabitants. However, it is still ineffective in growing European tech champions, while American and Chinese players are filling in this gap, storming into the Single Market in a strong position due to their massive local market in which to grow. The reasons for this lack of European hyperscalers are varied, but one prevails: **Europe is still made of 27 fragmented markets, each with its own legislation.**

We must allow European tech champions to become global leaders and offer the world a European vision for innovation. Young and innovative companies may not yet be profitable, since most of their early funding goes into research, innovation, initial sales, and finding product-market fit. Spending time, workforce, and money to navigate 27 legislations is not a priority, and after scaling in their home country, innovators prefer to continue their development in larger markets outside of the EU. It can take between 3 months and 3 years to open another European market, depending on the field of activity. Multiply it by 27, and it becomes clear that it could take decades for a European startup to operate in all Member States.

Moving forward, startups should be European from day one, both in terms of legal and administrative status, so as to be able to operate in the Single Market as their domestic market. This will enable them to scale faster and at lower cost, which in turn will make more resources available to recruit talents, finance R&D and increase their global competitiveness.

After France Digitale's Manifesto for the European elections¹ and discussions with the European Commission, the idea of a harmonised framework for startups is growing in Brussels. Enrico Letta, whom we met while preparing his report, paved the way for a "**28th regime to operate within the Single Market**", to "**directly address the current patchwork of national regulations**". Newly elected President of the European Commission, Ursula von der Leyen, has adopted the idea, mentioning a "**new EU-wide legal status to help innovative companies grow**" in her political priorities for the 2024-2029 mandate.

"Launching a company in the US is a 100m race, launching in Europe is a 110 metres hurdles where the rules change at each hurdle". Frédéric Mazzella, President & Founder of Blablacar

¹ [France Digitale, Manifesto for the European elections \(2024\)](#)

Our understanding of a 28th regime is based on:

- I. **A new uniform and EU-wide legal status** (the 28th regime company status) adapted to young and innovative companies, that is easily accessible, allows for further scalability and increases attractiveness for investors;
- II. **Supporting measures through further harmonisation in EU legislations** that will complement and boost the adoption of the 28th regime company status. This should include, but not be limited, to topics such as public and private procurement, labour laws, contract laws, uniformisation of standards, investments, and taxation.

Wasn't there already a Societas Europaea (SE)?

There is an existing status of company at the European levels: the ***Societas Europaea*** (“SE”), a legal form that was designed to facilitate cross-border business operations within the EU by allowing companies to operate under a single set of rules across multiple member states. However, **its structure has proven to be virtually unworkable for startups**, SMEs, and high-growth companies. A SE cannot be created from scratch (“**ex nihilo**”) and can only be formed through a merger, establishment of a holding company, formation of a subsidiary, or conversion into an SE. As such, only legal entities can create a SE, which typically prevents founders from adopting a European mindset at the beginning of the entrepreneurial journey. The SE regime also requires the company to have a presence in at least two member states, making it impossible for young companies operating in only one country to set up as such, despite their willingness to expand. The minimum subscribed capital of €120,000 is also prohibitive for startups, and the SE's requirement that the registered and head offices must be in the same country limits flexibility for young companies with limited manpower in their early stage. Lastly, the SE Status suffers from a lack of full harmonisation across the EU and remains subject to a patchwork of national laws, resulting in inconsistencies and additional complexity. Due to these challenges, the SE form has been adopted by only a small number of companies in Europe, and only companies of significant size².

In response to the shortcomings of the SE, the Commission launched several initiatives to establish a new legal form better suited to the needs of SMEs, startups, and scale-ups: the European Private Company (EPC) in 2010 and the European Single-Member Company (SUP) in 2014³. However, both proposals were ultimately withdrawn, leaving a gap in the EU regulatory framework.

²[The European Work Council Database, SE Company](#)

³[European Parliament. Fact sheets on the European Union - Company law \(2024\)](#)

I - Setting up a new uniform and EU-wide legal status adapted to young and innovative companies

A must-have to scale efficiently in Europe

Driven by a vibrant research & development ecosystem, **European tech companies have blossomed in the last decade, as highlighted in France Digitale’s Leading European Tech Scale-ups (LETS) initiative⁴**. Yet these startups and scale-ups, in need of rapid growth to stay competitive against US and Asian hyperscalers, are still faced with 27 different legislations when it comes to their “home market”, creating barriers to their expansion and hindering the creation of European champions.

This lingering gap explains why creating a new European-wide and uniform legal form for companies has become crucial to entrepreneurs and investors, to provide legal certainty and reduce legal fees when operating across Europe. A European legal entity (the “**28th Regime Company**”), more flexible and accessible to young and innovative companies would also offer visibility and trust among cross-border investors in Europe, thanks to a “European label” effect.

The proposed 28th Regime Company

In line with the Better Regulation guidelines⁵, the 28th Regime Company should be established through a **regulation rather than a directive**, specifically to avoid further fragmentation of the market due to differences in national transpositions. References to national discretions or options should be reduced to the bare minimum, to avoid *forum shopping* among Member states and to achieve a truly unified regime in Europe. Thus, **this 28th Regime Companies could become a European “brand” that innovative companies would use to enhance their reputation on the market**. They would more easily find clients, as their European status will signify trust and growth through transnational activities. The regime will also map the promising European actors and allow for more mergers and acquisitions to create **European Champions**, and thus more exits for founders.

To be truly effective, the proposed regulation should provide the 28th Regime Company with the following mandatory features:

- The **European dimension of the 28th Regime Company could be established in the statutes themselves**, with no requirement for presence in more than one member state. The simple objective of expanding across Europe would suffice to characterise the European nature of the 28th Regime Company.
- The 28th regime company should be **online first, mobile first, API first**. There must be an identification process (EIDAS or e-residency) paired with an online-based company house (or company registry) in order to sign contracts, sell and allocate shares, create board resolutions and general governance documentation, and be registered once, for all standard transactions. The registry should also have available standardised and freely accessible articles of incorporation. As part of the 28th regime, **companies should also be able to complete due diligence processes 100% online**, such as identifying signing parties and ultimate beneficial owners as part of investment agreements, share agreements, and governance.

⁴France Digitale, [LETS 2024, the mapping of 251 Leading European Tech Scale-ups](#)

⁵European Commission, [Better regulation: guidelines and toolbox \(2023\)](#)

- A 28th regime company should benefit from a **single-employee stock options regime** across the bloc. Specifically, the ESOP framework under the 28th regime should provide employees with non-voting no information right shares (once exercised) and the options should only be taxed at the point of sale. The size of the tax burden may differ from Member State to Member State (depending on whether it is considered capital gains or income, and their respective rates), yet certainty around the rights provided and the point of taxation will be key.
- A 28th Regime Company should be able to be **created *ab initio*** (from scratch) and not solely through transformation. It could be established by either **natural persons or legal entities** and be structured as either **unipersonal or multipersonal**.
- The **minimum share capital** should be very low, to facilitate market entry. For instance, a 1€ company would be both useful and marketable for the launch of the 28th regime. No public offering of shares would be allowed, but a dedicated status for public companies should be set up to facilitate their transition. **Cash contributions** would be permitted, with the option for **capital release** of 25% upon formation and the remaining amount over the next five years. In-kind contributions would also be allowed, while industrial contributions (such as labour, service skills, etc) would be forbidden.
- The 28th Regime Company should follow a fast and easy incorporation process, without additional notary and apostille costs, with English as the default language. To carry out the necessary steps of a 28th Company's Regime along its lifecycle, **digital processes** should be allowed and made available: one should be able to file for incorporation distantly, to vote distantly, to sign electronically, and, more generally, to use modern at distance business practices.
- The 28th regime should also provide a **safe harbour in relation to share valuations** (similar to the 409A approach in the US) and be accompanied by clear public guidance on how to set fair market values/strike prices.
- **Interoperability is key** to achieve the efficient implementation and adoption of this 28th regime. **The required steps** to go from the national regime to the 28th regime **should be simplified**. Such a transition requires changing the legal status of the company, to exchange with stakeholders, and the implications (what it means for stock options or any rights acquired) are high. This transition should therefore be as streamlined as possible.
- The 28th Regime Company **should not be exclusively for SMEs**. Companies that have an objective to scale in Europe often are innovative and high-growth companies, that are outgrowing the SME status.
- Each 28th Regime Company should be **governed by the law of the member state where it is incorporated**, either when the proposed regulation and the statutes are silent, or in areas where member states remain competent such as labour law, workers' co-determination rights, and tax law. For greater legal certainty, the 28th Regime Company should be neutral as to whether the head office is dissociated from the country of incorporation or not, to keep the current state a play that exists in Europe on that topic.
- **Great contractual freedom** should be given to entrepreneurs, to have the flexibility of adapting the statutes to their business needs. They must have the freedom to decide on organisational matters such as majority and quorum requirements, shareholders' decisions, and the structure of

governance. The proposed regulation would only set mandatory provisions that must be in the statutes, such as the designation of a legal representative, or a unanimity requirement for shareholders' decisions on certain critical matters (e.g.: share transfer restrictions).

- A **model for statutes** could also be provided by the regulation to make the 28th Regime Company easily accessible and reduce the legal costs for entrepreneurs. Although the law of the member state of incorporation would apply when it comes to incorporation formalities, a derogation could be set when using this model for statutes to bypass the potential need for a notary.
- The 28th Regime Company could significantly increase cross-border capital flow and early-stage private investments by **standardising investment procedures and introducing lightweight and standard investment contracts**, such as an EU SAFE - inspired by the Simple Agreement for Future Equity (SAFE) available in the US - which will allow investors to easily invest in startups against a promise of future equity.

Implications for investments

This new regime would also **allow a “Europeanisation” of current investments in young and innovative companies**. Today, the main investors in startups - venture capital funds (VC funds), and business angels (BA) - invest primarily in the country where they operate, as they have a better knowledge of the ecosystem but also of the company laws that apply⁶. Logically, they have more clarity on the status, share capital, cash contributions, and the decision powers inside the company as they are used to investing in these types of companies. Cross-national investments are therefore not predominant for VC and BA funds due to the complexity of national systems and the additional judicial costs. For instance, VC partners that are seated as board members in companies are not always fully aware of the rights they hold as such, depending on the country they are in. Taking a stake into a 28th regime company must therefore be simplified, to attract VCs and BAs investments.

A **“28th regime” company status would therefore allow VC funds, European but also international ones, to invest in startups across Europe**, with a knowledge of the company’s inner workings, as they will be similar on the continent, thus fostering a fair competition.

II - Supporting measures through further harmonisation in EU legislation to boost the 28th regime company status

1. Tax law

Europe should promote measures for further tax integration. We welcome proposed initiatives that will be assessed by the European Parliament, such as the Framework for Income Taxation (BEFIT)⁷, which proposes a new legislative framework for corporate taxation in the EU, and the Head Office Tax System for SMEs (HOT)⁸, which allows SMEs operating cross-border by way of permanent establishments the option to interact with only one tax administration. These two proposals are going in the right direction, and we call for a rapid and efficient application across the continent, as well as future efforts in the field.

⁶ In France, a relatively thriving VC ecosystem, investments in French firms accounting for 65% of total investments ([Baromètre 2024 of France Digitale](#)).

⁷[European Commission. Business in Europe: Framework for Income Taxation \(BEFIT\) \(2024\)](#)

⁸[European Commission. Head Office Tax System for SMEs \(HOT\) \(2024\)](#)

2. Labour law

Although employment policies are mainly enacted by member states, Europe should advance regulation in this area by establishing minimum standards across the EU through directives, as outlined in the European Pillar of Social Rights action plan. Such action would contribute to a comprehensive social public order across Europe. Additionally, the EU should promote the use of soft law tools and encourage cooperation and dialogue between member states to achieve common employment policies. To avoid forum shopping, the harmonisation should not result in worse working conditions for Europeans, and the transformation from a national company to a “28th regime” should not be done to the detriment of the employees.

While retaining talent is important, attracting it is also instrumental to Europe’s competitiveness. In that regard, we believe that in the same model as the *French Tech visa*, which provided young innovative companies with a fast-track visa procedure for foreign talents, a European directive could harmonise the timeframes and the procedures to recruit in Member States, when a company has the 28th regime status. This would bring further clarity to entrepreneurs who could plan recruitment without being surprised by the long timeframes for visa delivery.

3. Improve access to public procurement

Representing 14% of the European Union’s GDP, public procurement is vital to young innovative companies. While a re-opening of the 2014 Directive on public procurement is currently under discussion, the European Commission should ensure that 28th regime companies are treated equally to national companies when it comes to public procurement, across the Single Market. A dedicated budget or preference for public procurement could even be established to incentivize entrepreneurs to create or transition into a 28th regime company.

4. Create a derogation for European companies in difficulty from state aid rules

Currently, European rules for subsidies are strict: a company cannot benefit from subsidies in Europe if it is considered an undertaking in difficulty, i.e. if its funds are below 50% of its equity capital⁹. Yet, and that is a common point for any innovative startup and scale-up, during the growth phase such companies fund research and development with their deficits, to later create revenues.

Therefore, the state aid regime in Europe is totally unbalanced with the current business model of innovative companies, and we believe 28th Regime Company should be allowed an exemption from these rules. This is especially crucial given the EU’s stated emphasis on deep tech and university spinouts, which often require 5-10 years to begin generating meaningful revenue. Biotech startups – which currently comprise nearly 50% of all EIC-funded projects – can take well over a decade to bring a product to market.

5. An optional contract law for 28th regime companies

The 28th Regime Company could be accompanied by a European contract law framework, introduced as an optional 28th regime. The parties could either choose to apply the laws of the member states or this European contract when dealing with each other. Such a contract would be valid across Europe without distinction (provided it is compliant with member states public policy laws). The key advantage of this regime is the reduction in legal costs associated with navigating different national laws, providing businesses with a consistent legal framework across the EU without requiring changes to existing national legislation. This flexibility would make it easier and more cost-effective for companies to operate and expand across the single market, fostering greater legal certainty and

⁹[European Commission. Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty](#)

efficiency in commercial transactions. Furthermore, the European contract law framework would benefit smaller actors, as they are often forced to agree to the larger companies' preferred legal framework or jurisdiction in case of disputes, often to their disadvantage.

6. Codification / uniformisation

Business law in Europe is currently characterised by complex and often fragmented legislation across various fields, including market law, company law, banking law, finance law, intellectual property law, employment law, and bankruptcy law. While there are some minimum common obligations in these various fields, there isn't a repository gathering all the sources of law from which they stem, making it difficult for entrepreneurs to navigate between European law and its various implementations in member states. A European Code of Business Law would provide more readability and foreseeability. To this aim, codifying business law would involve creating a comprehensive compilation that integrates existing EU legislation, the jurisprudence of the Court of Justice of the European Union, and the corresponding national implementations.

Moreover, while the EU is regulating to offer startups a harmonised market, these efforts are hampered by national legislators which might over-transpose regulations in their national frameworks. By adding obligations within national laws, it creates a single market with in fact 27 different legislations. For instance, complying with GDPR in Europe amounts to complying with 27 variations of it (and even more with intra-state regional differences, e.g. 16 of them in Germany), making it hard to have as many online services as targeted users. Codification would help better track whether member states have gone beyond their duties when transposing directives. A tool should be created by the Commission, for instance through an electronic portal, to allow companies scaling in Europe to report a lack of harmonisation due to the over-transposition of EU directives.

Lastly, for some companies operating in specific fields (for instance, a fire safety robot, a carpooling application, a health-tech startup...) sectoral legislation also varies widely between countries. Unless specified, these companies' approval in one member state should set a precedent to be deployed in the entirety of the European Union. This could lead to the emergence of real ecosystems in specific sectors; for instance, the European fintech scene is vibrant due to a European financial passport, which allowed fintechs to scale seamlessly on the continent, an example that could be replicated.

Co-signatories: Adigital, Allied for Startups, Austrian Startups, BESCO - The Bulgarian Entrepreneurial Association, Beta-i, Danish Entrepreneurs, Dutch Startup Association, Estech, EUInc, Euratechnologies, European Champions Alliance, European Startup Network, France Digitale, Iconomy, Innovate Europe Foundation, InnovUp, Italian Tech Alliance, Latitude59, Roma Startup, ROTSA - Romanian Tech Startups, Startup Greece, Startup Hungary, Startup Portugal, Startup Verband, Startup Reaktor, Techcelerator, Tech Lounge Association - Innovation Labs.

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