



# TOGETHER FOR A FAIR DEAL FOR WORKERS

EL/LR/gv

Brussels, 17 March 2026

To Commissioner Michael McGrath

European Commission

[Letter sent by e-mail]

## ETUC urgent letter on the 28th regime / EU Inc. proposal

Dear Commissioner McGrath,

I am writing to urge the Commission to substantially revise the proposed 28th Company Regime / EU Inc. The leaked draft currently circulating raises serious concerns about its compatibility with fundamental principles of European labour law and risks creating legal uncertainty regarding the protection of workers' rights across the Union.

At its core, the proposal risks turning one of the fundamental freedoms of the Single Market into something it was never intended to be. Freedom of establishment cannot be transformed into a right “not to establish”, nor should the European Union return, even indirectly, to a country-of-origin principle for labour standards, an approach that was decisively rejected during the debate on the Bolkestein Services Directive.

No European company regime can allow firms to operate across the Union while avoiding responsibilities in the Member States where their workers are employed.

The objective behind a 28th regime is understandable. Creating a European company form that allows firms to operate more easily across borders could support innovation, investment and the growth of start-ups across the Single Market. Simplifying corporate structures at EU level can be a legitimate policy goal.

However, if such a proposal is to succeed politically and legally, it must fully respect the foundations of the European social model.

As Delors stated in 1988 already: “Measures adopted to complete the large [single] market should not diminish the level of social protection already achieved in the member States”.

In particular, the proposal must safeguard a fundamental principle of European labour law: workers' rights follow the place where the work is performed, not the nationality of the seat of the company employing them. Unfortunately, this principle does not appear to be clearly guaranteed in the leaked draft.

Any regulation creating a new EU company form must make explicit that corporate law harmonisation does not override national labour law. Workers must remain covered by the labour protections, collective agreements and social security systems of the country where they actually work, and employers must remain subject to the same legal framework and obligations.

The choice of a Regulation makes this safeguard even more important. Unlike a Directive, a Regulation applies directly and leaves Member States little or no room to adapt its provisions to their national labour law systems. Any ambiguity in the EU text could therefore unintentionally override well-established national protections or create conflicts between corporate law and labour law across the Union. Precisely because Member States cannot correct or adjust such rules



through national legislation, the Regulation itself must clearly safeguard the principle that employment rights follow the place where the work is performed.

In practice, this requires several basic safeguards to be clearly set out in the Regulation:

First, there should be a clear “applicable labour law” clause establishing that employment rights follow the worker’s place of work. For workers to benefit fully from the protections of national labour law, a 28th Company must also be required to live up to all obligations of an employer under the labour, employment and social protection legislation of the Member State in which it is established.

Second, companies operating under the regime should be required to establish and register as employers, including for social security purposes, in each Member State where they employ workers, and to provide the necessary information and cooperate with local labour inspectorates so that compliance with labour law and social security obligations can be effectively monitored.

Third, as a specific anti-avoidance safeguard, companies employing workers in a Member State should be required to maintain a local legal representative or establishment, helping prevent the creation of shell or letterbox companies designed to evade accountability.

Fourth, the Regulation should include a non-circumvention provision making clear that company statutes or contractual arrangements cannot derogate from national labour law.

Fifth, the Regulation must safeguard worker participation rights at board level. In many Member States, workers have legally established rights to representation on company boards through workers’ board-level representation systems. The creation, registration or conversion into a 28th Company must not reduce or eliminate these rights. The Regulation should therefore ensure that the establishment or use of a 28th Company cannot be used to bypass board-level worker representation rights, including through restructuring or workforce arrangements designed to reduce the number of workers below the thresholds that trigger such rights.

Sixth, the text must explicitly state that the creation of a European company structure does not affect national labour law, collective agreements or social security rules. Without such language, courts may be left to interpret the interaction between EU corporate law and national labour law – an invitation for legal disputes and unintended consequences similar to those seen following the Laval ruling. While EU private international law instruments such as the Rome I Regulation and the Brussels I Regulation lay down rules on applicable law and jurisdiction, they are not intended to address the structural implications of a new EU corporate form operating across multiple Member States. The Regulation establishing the 28th company must therefore clearly safeguard the principle that workers’ rights and employers’ obligations remain governed by the collective agreements, labour law and the courts of the Member State in which the work is performed, and that such rights and obligations cannot be circumvented or contracted out through corporate structure, contractual arrangements, or choice-of-law clauses.

Seventh, the Regulation must safeguard collective bargaining and trade union rights. Workers employed by companies operating under this regime should retain all rights arising from national legislation and collective agreements in the country



where the work is performed. Sectoral agreements, trade union rights and social dialogue cannot be optional elements of a Single Market initiative. The 28th company cannot be used to avoid collective bargaining rights.

Eighth, the Regulation must ensure effective judicial protection. Workers must be able to bring claims before the competent labour courts or tribunals of the Member State where the work is carried out, ensuring that rights are enforceable in practice and that both workers and employers remain fully subject to the jurisdiction of national labour courts.

Ninth, cross-border work also requires careful treatment. Where workers are temporarily posted to another Member State, the Regulation should explicitly confirm that the Posting of Workers Directive applies, ensuring respect for local wage floors and working conditions. Without this safeguard, the new company form could risk being used to bypass equal pay principles.

Tenth, the potential misuse of share-option schemes must also be addressed. Equity participation can be a useful way to reward workers in innovative companies, but it must not become a loophole to avoid labour law. The Regulation should therefore contain a clear provision stating that share options cannot replace remuneration or employment contracts, and that granting equity does not alter the legal status of a worker or remove the employer's obligations under labour and social security legislation. The link made in the current proposal between remuneration and shares is not acceptable.

Eleventh, the Regulation must safeguard workers' rights in insolvency, restructuring and closure situations. In particular, workers' claims for remuneration should be treated as priority claims in insolvency proceedings, ranking ahead of other creditors. Any provisions intended to accelerate restructuring or closure procedures must not reduce or circumvent workers' rights to information and consultation, nor the protections established in law or collective agreements governing restructuring and redundancy situations.

Twelfth, the Regulation must include a non-regression clause, guaranteeing that the creation of a European company form cannot be used to lower the level of protection provided by national law or collective agreements.

Without such safeguards, the Regulation risks opening the door to legal uncertainty, regulatory arbitrage and lengthy litigation about which country's labour law applies.

There is also a broader question regarding the legal basis of the proposal. Article 114 TFEU provides for the approximation of national laws in order to improve the functioning of the internal market. It does not provide a mandate to replace existing national legal frameworks with a parallel regime that allows companies to operate outside the systems of national labour law and industrial relations. Measures adopted under Article 114 must facilitate harmonisation while respecting the integrity of Member States' legal systems.

None of these safeguards are radical. They represent the basic legal architecture one would expect in any serious attempt to establish a new European company structure.

The key principle is simple: corporate nationality must never determine the employment rights of workers or provide a mechanism for employers to avoid their obligations. Rights and obligations must always follow the place where the worker carries out the work.



Given the significant implications of this proposal for workers' rights across the Union, the Commission should ensure that trade unions are consulted in accordance with the Treaty provisions on social dialogue, which require the Commission to consult social partners where legislative initiatives may affect employment and labour conditions. We have previously raised the importance of such consultation and would welcome the opportunity to engage constructively with the Commission as this initiative is developed.

If the European Union wishes to create a 28th Company Regime that genuinely supports innovation while respecting the European social model, the proposal must be substantially revised to clearly safeguard national labour law, collective bargaining systems and worker participation rights across the Union.

Yours sincerely,

Esther Lynch

General Secretary of the European Trade Union Confederation