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Policy Brief

Regime change instead of business as usual

A pan-European corporate law to unlock cross-border growth for EU companies

18 December 2025

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The proposed "28th Regime" would create a pan-European legal framework that companies can opt into, as an alternative to national frameworks. This would allow them to operate across the EU, while being bound by one single set of rules. It aims to reduce the substantial financial, legal, and bureaucratic hurdles that have been hampering innovative companies when scaling across the EU. However, crucial questions regarding the design and implementation of the 28th Regime remain unresolved. This Policy Brief discusses the main tradeoffs between design choices and identifies which features are crucial to support the establishment and scaling of innovative companies in the EU. These include that the framework should be open to all companies, focus on corporate law as the first step, be pragmatic regarding the legal instrument of the proposal, and incorporate new features, like a single online incorporation portal, that make it attractive for innovative companies.

1. What is the “28th Regime” and why do we need one?

The EU single market is a key driver of competitiveness, yet its potential remains underexploited due to persistent internal barriers. Fragmentation and divergent implementation in areas such as corporate, insolvency, and contract law impose significant costs on firms seeking to scale their operations across the EU. These challenges disproportionately affect small innovative firms that want to grow their business but lack the financial resources, legal expertise and administrative capacity to navigate differing national regimes.

Legal fragmentation is a major brake on small firms’ access to finance. Investors are forced to deal with 27 different national legal frameworks – covering everything from shareholder rights to insolvency – which deters cross-border investment and limits risk-taking. As a result, venture capital (VC) investment in EU firms remains six to eight times lower than in the US (EIB 2024). Although Europe produces more tech start-ups, it has around 80% fewer scale-ups and 85% fewer unicorns (firms valued at over $1 billion) than the US (European Commission 2025). More than a quarter of EU-founded unicorns ultimately relocate their headquarters outside the EU – most often to the United States – where a more unified legal environment facilitates scaling and access to investment (JRC 2022). As a result, the EU continues to miss out on significant economic value.

Reducing this fragmentation is politically fraught. Efforts to harmonise company, tax and insolvency law have stalled for years. In some areas – most notably labour law – member states have good reasons to protect national arrangements that are deeply embedded in their socio-economic models. In others, attempts at deeper integration have run up against resistance from national policymakers and regulators reluctant to cede competences. In practice, large-scale harmonisation remains at best a political aspiration.

A so-called 28th Regime is now being presented as a way out of this impasse. It would create an optional EU-level legal framework that would sit alongside national laws. At its heart, the idea is to create a new private limited-liability company form that firms could opt into instead of being governed by one of the existing national regimes. The aim is to reduce legal fragmentation, lower transaction costs, and make it easier for companies to operate and scale across borders within the single market – without reopening the intractable question of full legal harmonisation.

While the 28th Regime has become a key element in the EU’s competitiveness agenda, many issues are still unresolved. It has been endorsed in the reports by Enrico Letta and Mario Draghi and features strongly in Ursula von der Leyen’s political guidelines for the 2024–2029 Commission. The European Commission is expected to present a proposal in spring 2026, yet key questions regarding the regime’s design and implementation remain open. Building political consensus is likely to be challenging, particularly on sensitive issues such as employee co-determination.

This Policy Brief examines how a 28th Regime should be designed to meet its objectives and outlines the main trade-offs involved. Across four recommendations, it argues that the framework should be open to all companies, focus on corporate law as the first step, be pragmatic regarding the legal basis and instrument of the proposal, and incorporate new features that would make it attractive for innovative firms.

2. Where does legal fragmentation hold back innovative EU companies?

To foster a growth- and investment-friendly regulatory environment, the EU faces two related challenges: the suitability of national rules and, separately, fragmentation of rules across member states.

Company surveys across the single market point to diverging legal and contractual practices, combined with a lack of clear information on procedures for operating in other member states, as one of the steepest obstacles holding firms back (see for example Eurochambres 2024). Companies therefore struggle to navigate differing obligations, licensing requirements and compliance standards (see also IMF 2025). These difficulties do not stem from overly strict regulation, but from having to comply with multiple national rulebooks with diverging requirements. The problem is particularly acute for innovative firms, such as those developing cutting-edge technologies for industry decarbonisation that require building physical infrastructure, which rely on cross-border value chains and internationally mobile expertise.

Legal fragmentation also deters cross-border investment. Differences in corporate and insolvency law raise information costs and uncertainty about shareholder rights and obligations, and outcomes in cases of business failure. Diverging national corporate laws further constrain cross-border investment by limiting the use of standardised, US-style VC contracts across different EU member states, increasing transaction costs and reducing capital availability (Enriques et al. 2025). While risks related to insolvency law could in principle be reduced through national reforms that make frameworks sufficiently creditor-friendly, this approach applies less well for corporate law, where fragmentation creates costs in itself. Before they put their hand in their pocket, investors first need to understand a company's legal form and governance structure, and these vary significantly across member states, making harmonisation crucial in this area.

The effects are particularly detrimental when it comes to the EU's highly concentrated VC sector. Start-ups and scale-ups rely heavily on VC, as banks are generally ill-equipped to finance high-risk, high-growth projects. Yet venture capital investment remains largely domestic: for around 66% of total investment, both investor and target firm are located in the same member state (JRC 2021). The consequences are most severe for early-stage investments, where specialised investors make many small but high-risk investments. Here, additional information costs can deter cross-border funding altogether, because the effort required to assess an unfamiliar legal environment is often disproportionate to the size of the investment.[1] This makes the availability of early-stage or seed capital in Europe unevenly distributed, leaving firms in many member states struggling to secure initial financing.

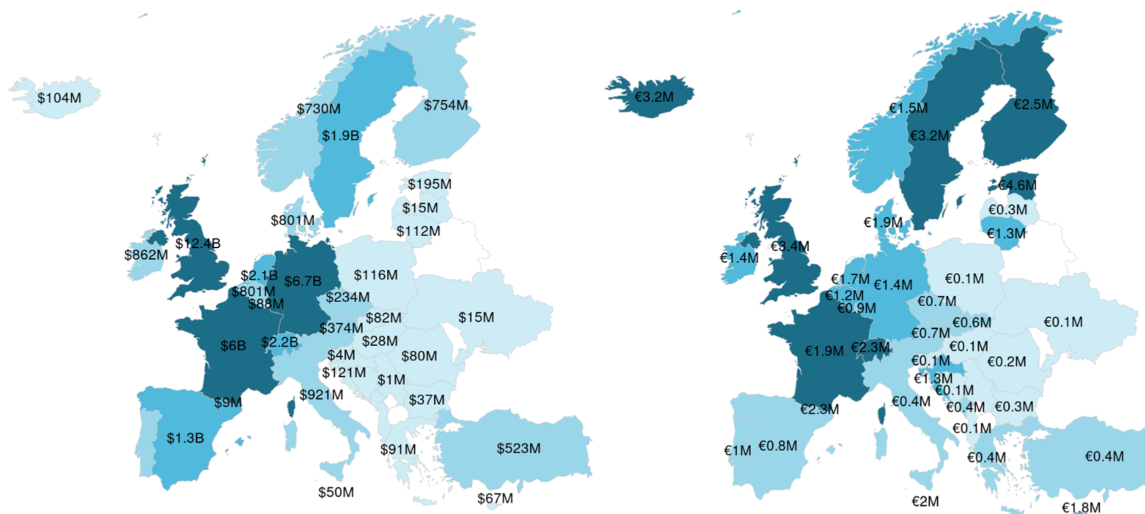

Figure 1 – VC invested in Europe Q3 2024 YTD; Figure 2 – VC funding in Europe Q3 2024 YTD per billion € of GDP 2024 (Source: data from Dealroom Europe Q3 2024 report, GDP Data from Eurostat and World Bank)

[1] For large investment rounds so vital for scale-ups, this specific problem is not as pressing because investors give out a smaller number of these tickets and can invest more time into screening a single investment opportunity. Nevertheless, in this segment, financing bottlenecks in Europe are especially pronounced due to the smaller size of EU-based VC funds.

Even in member states with more developed VC markets, improved access to cross-border finance would be beneficial. Greater cross-border investment would intensify competition among funds, improving financing terms. It would also allow firms to select investors from a broader pool, choosing those with the most relevant sectoral expertise and financing models.

Against this background, the 28th Regime directly addresses the barriers created by legal fragmentation and today's resulting concentration of VC markets. By offering an optional EU-wide legal framework, it would streamline cross-border scaling through a single registration process and a uniform set of rules, reducing the bureaucratic and legal complexity firms face when operating across member states. For investors, a standardised EU-wide company form would lower information and legal screening costs, thereby reducing risks and facilitating flows of venture capital across borders. The 28th Regime combines targeted harmonisation in a policy area where problems are often exacerbated by national idiosyncrasies (hence requiring harmonisation) with an 'opt-in' design that allows national corporate laws to coexist. This would offer a politically feasible way to enhance market integration.

Box 1: Other pan-European company forms

The notion of a pan-European company is nothing new. The European Company (Societas Europea, or SE), introduced in a 2001 regulation and an accompanying directive on employee involvement, was the first major initiative in EU company law. It established a pan-European public limited liability company form. Originally proposed in 1970, it aimed to create a genuinely European corporate form but became the subject of decades-long disagreement among member states, particularly over governance structures and employee termination.

The eventual compromise allows firms to choose between two governance models and replaces substantive co-determination rules with a negotiation procedure (Max-EuP 2012). However, its extensive references to national law have led to fragmented implementation. As a result, there now exists a different SE variant for each member state (European Commission 2010). In practice, these national variants limit its use mainly to large firms that can draw upon sufficient legal resources. Additionally, the SE offers companies the means to circumvent national co-determination rules through so-called "shelf SEs" (ETUI 2025).

Subsequent attempts to introduce a European Private Company (*Societas Privata Europaea*, SPE) and a Single-Member Private Limited Liability Company (*Societas Unius Personae*, SUP) were ultimately shelved because of disagreements about worker protections and a perceived lack of safeguards for stakeholders (ETUI 2025; European Parliament 2025). These experiences underline the political sensitivity of pan-European company law and highlight employee co-determination as a central challenge for the 28th Regime. They also demonstrate that even regulation-based company forms can result in fragmented implementation.

3. What could (and should) a 28th Regime look like?

EU policymakers are pinning high hopes on the 28th Regime. It is being widely presented as a flagship tool for boosting competitiveness and deepening the single market, and it has become one of the most visible pillars of Ursula von der Leyen's pledge to deliver a step change in market integration by 2028.

Turning this ambition into reality, however, will require the Commission to navigate difficult political trade-offs. A proposal that is too narrow in scope may be politically safe but commercially irrelevant. Without meaningful uptake, the 28th Regime would risk joining the long list of single-market initiatives that looked promising on paper but failed in practice. A more ambitious design, by contrast, could provoke enough resistance from member states to stall the initiative before it even came into force.

To strike the right balance between ambition and feasibility, the 28th Regime ought to follow four principles. It should

- be open to all companies, regardless of size, age, or other company characteristics.
- concentrate on harmonising those areas of business law that matter most for cross-border scaling and investment, while excluding politically sensitive areas of tax, insolvency and labour law.
- take the form of a directive to sidestep the need for unanimity but still rely on maximum harmonisation to limit the risk of fragmented national implementation.
- include genuinely innovative features – such as an online incorporation portal or harmonised rules for employee stock-ownership plans – to make it attractive for innovative and fast-growing firms.

a) The 28th Regime should be open to all companies

The first question negotiators will have to address is who precisely the 28th Regime should be open to. Two approaches are possible: a limited opt-in for specific types of companies – such as innovative firms, small businesses, or newly founded companies – or a more welcoming approach that would allow any enterprise to participate.

Given that the 28th Regime is mainly being discussed as a tool to improve conditions for scale-ups in the single market, it may seem intuitive to limit it to the firms that need it most. Doing so could also reduce the risk that large, established companies – already well equipped to navigate multiple legal landscapes – use the new framework to sidestep national standards, for example on employee co-determination. This concern has led the German Trade Union Federation to call for a 500-employee cap for applicants.

However, limiting the regime to specific types of companies has its drawbacks. It would introduce new layers of red tape, as eligibility would require bureaucratic confirmation – undermining a key tenet of the 28th Regime, which is to be flexible, speedy and simple. Criteria such as minimum R&D spending could tempt some firms to game the system, ticking the compliance boxes to meet 'targets' artificially, while constraints on an applicant company's size may discourage growth. Restricting the regime to newly founded companies would also be problematic. Many firms only consider cross-border expansion once their business model has been tested and growth is underway – precisely the point where divergent national rules and due diligence requirements begin to bite. Excluding these companies could significantly limit the regime's real-world relevance.

Arbitrary cutoffs, such as maximum employee thresholds, create risks for companies and investors. If the corporate framework comes with a cutoff, beyond which a company must be converted into a different kind of corporation, the necessary restructuring could be complex and costly. Since corporate law defines the rights and responsibilities of shareholders, such a switch would also create risks for investors.

Overall, if the purpose of the 28th Regime is to facilitate smooth cross-border business operations and investments, the advantages of keeping it open to all companies outweigh the drawbacks. Of course, the risk of abuse is serious and needs to be addressed. However, this should be provided for directly in the legislation and not through restrictive eligibility criteria that undermine the regime's purpose.

b) The 28th Regime should focus on corporate law but remain open to future additions

The choice of legal areas covered in the 28th Regime is critical. It must ensure harmonisation in the legal areas where it is most needed without overcomplicating the negotiations and sparking opposition from member states.

First, the Commission's proposal should give tax, labour, and insolvency law a wide berth. Diverging national regimes in these areas are admittedly burdensome for cross-border companies. Tax issues, especially regarding withholding taxes, are complex; hiring of remote workers is hindered by uncoordinated social security systems (IMF 2025; European Commission 2025), and fragmented insolvency rules increase information costs for investors. Hence, it might seem natural to include these issues in the 28th Regime.

However, all these legal areas are politically highly sensitive. They touch on core elements of member states' socio-economic models – such as creditor hierarchies, state revenue, and the balance of power between employers and employees. This makes member states reluctant to cede control, often for legitimate reasons. While including these areas in the 28th Regime would enhance harmonisation, it would also significantly complicate negotiations and reduce the chances of agreement.

Against this backdrop, the 28th Regime should focus on harmonising areas that offer the best economic bang for their political buck. Corporate law is a natural starting point because it affects firms at the very beginning of their growth trajectory. Simpler rules governing incorporation can lower entry barriers and enable the creation of companies that might otherwise never be set up due to the administrative complexity of doing so (Scott Morton and Veugelers 2025). Incorporation is also less politically sensitive than an area like taxation, where even a limited harmonising of procedures – such as on the treatment of withholding taxes – faces fierce resistance due to conflicting member state interests, for example depending on whether a country is a net importer or exporter of capital. By contrast, targeted harmonisation of corporate law through a shared framework aligns with common objectives: all member states benefit from fostering innovative firms, and companies seeking to scale across the EU have a similar legal wish-list.

Hence, at its heart, the 28th Regime should provide a simple and flexible framework for corporate law, either through a new pan-European private company form or by harmonising national private company forms. It should set out common rules on company formation and governance, such as capital requirements, company structure, and the roles of management and shareholders. These rules should be basic and easy to understand, reducing complexity for firms and investors. Flexibility is equally important: the regime should avoid rigid, mandatory provisions found in some national laws and instead give venture capital funds a free hand in designing investment arrangements, including US-style VC contracts (Enriques et al. 2025). To minimise fragmentation within the regime, references to national law should be avoided as much as possible.

Crucially, corporate law could touch on member states' rules on co-determination. In this area, national models and traditions vary widely, making it hard to reach a uniform EU-wide solution that would fit every national context. One option is to defer co-determination to the law of the member state where the company is headquartered, even though this introduces some fragmentation into the 28th Regime. Additionally, a technical solution to avoid forum shopping needs to be found. If the issue of employee co-determination is not taken seriously, the framework might fail: Other pan-European company forms had been proposed by the European Commission but were ultimately withdrawn due to persistent opposition motivated by concerns about insufficient worker protection (see Box 1).

A 28th Regime focusing on corporate law need not be the end of the road. Sanders (2025), for example, has proposed a modular approach whereby other elements could be added later. Hence, a successful corporate framework could breed demand and help build political pressure for further targeted measures in areas where these prove to be most needed.

c) The Commission should be pragmatic about the legal basis of the proposal

A key design question for the 28th Regime is whether it should take the form of a directive, requiring transposition into national law, or an EU regulation that applies directly in all member states. This choice hinges on the legal basis – that is, the original Treaty article the regime is built on – which also determines the voting procedure that would apply.

The main options under discussion are Articles 50, 114, and 352 of the TFEU. In the European Commission's work programme for 2026 and in the draft initiative report by the European Parliament's Committee on Legal Affairs, Articles 50 and 114 are suggested as a legal basis. Article 50 TFEU concerns the freedom of establishment for professional practices and service provision and can be used only as a basis for directives. Article 114 TFEU, aimed at single market harmonisation, allows both directives and regulations without requiring unanimity on either.

Article 352 TFEU – the flexibility clause – permits introducing regulations in cases where the relevant agreements do not provide explicit powers but requires a unanimous vote. This was also the basis for the regulation governing SEs. Article 114 TFEU could allow for a regulation without unanimity, but these exclude tax and labour law. Additionally, the Article is intended to provide a means for harmonisation. On these grounds, member states have objected to its use as a legal basis for a voluntary common European sales law, as this would not harmonise procedures but rather add an additional legal layer (Ziller 2025). Thus, if this Article does end up being used as a reference, efforts must be made to ensure that it really does offer a solid legal basis for all elements of the 28th Regime.[2]

Both a regulation and a directive have potential drawbacks that call for careful legal design. A directive needs to be transposed into national law in the member states. This risks fragmentation if member states modify the text during this process. Additionally, transposition would delay the roll-out of the 28th Regime and lead to a staggered and piecemeal implementation across the bloc, creating admin challenges for early adopters and a possible market edge for latecomers. A regulation requiring unanimity, on the other hand, is difficult to negotiate and may result in gaps to be filled by national law or the addition of clauses tailored to accommodate member states, further increasing complexity, as experience with the SE shows (see Box 1). On top of this, a regulation based on unanimity voting can usually be changed only by another unanimous vote, creating an obstacle for amendments later on.

One pragmatic way forward would be to introduce the 28th Regime as a directive with a 'maximum harmonisation' clause. Member states would still transpose the regime into national law, but they would be bound by clearly defined minimum and maximum standards. This would bar them from adding extra procedures or requirements, such as the mandatory involvement of a notary or more detailed governance rules. If the areas prone to harmful divergence are pinpointed as meticulously as possible, this approach could prevent fragmentation while preserving the measure's overall political feasibility.

d) The 28th Regime should be attractive for innovative firms and scale-ups

Finally, while the regime should not be restricted to specific types of companies, its success will largely depend on how much it improves conditions for small, innovative and embryonic firms. To make the 28th Regime especially attractive to these companies, it could introduce several new features of corporate law that would help simplify incorporation and improve access to financing. **First, a 28th Regime could simplify company incorporation and management through a single online portal.** The portal should be linked to national registries, allowing data to be entered just once. It could also provide blueprints for articles of association and shareholder agreements. These documents clarify the rights and responsibilities of shareholders and are hence important for investment decisions. Creating such blueprints as standardised documents to be used across the

[2] For a more detailed discussion of possible legal foundations, see the in-depth analysis by Jacques Ziller.

EU would contribute to harmonisation and reduce costs and risks for companies and investors. It would also help decrease the adoption costs of a new regime that is unknown to companies and investors by limiting the need for specialised legal advice (Sanders 2025). Additionally, standardised articles of association and shareholder agreements could protect against judicial review because, at the moment, courts in the member states sometimes declare contractual provisions established in VC deals to be void due to diverging legal interpretations (Enriques et al. 2025). Model documents or templates as an optional basis for so-called 'mezzanine' financing instruments could also be provided through this online portal (see Box 2).

Box 2: The potential of standardised investment documents

The Simple Agreement for Future Equity (SAFE) illustrates the potential of standardised legal documents. Introduced by the US start-up accelerator Y Combinator in 2013, a SAFE is a contractual agreement that allows early-stage investors to commit capital in exchange for shares to be issued later, once predefined conditions have been met. The instrument is used by most companies that are supported by Y Combinator, but has also become popular with other companies. Y Combinator provides SAFEs as freely available model contracts, making them easy and inexpensive to use without extensive legal advice. Their widespread adoption shows how standardisation can lower transaction costs and accelerate early-stage financing. Developing a pan-European SAFE tailored to companies operating under the 28th Regime could therefore be a highly beneficial move.

Parallel to SAFE, standardised model documents for mezzanine financing instruments could be developed. These instruments allow fast-growing companies to collect funding without diluting control, while offering investors more attractive returns than traditional debt. Like SAFE, mezzanine financing instruments are based on contracts negotiated between company and investor. The landscape of mezzanine financing is highly fragmented in Europe. Creating harmonised and trusted frameworks usable across the entire EU reduces transaction costs and facilitates the investment process for both investors and companies. Instruments that are counted as equity on a start-up's balance sheet would be especially useful for companies, as this makes it easier to raise additional credit from banks. Ideally, the treatment of these financing instruments under tax and insolvency law would be harmonised; at a minimum, interactions with national tax systems should not undermine their attractiveness.

Second, specialised procedures for dispute resolution and bankruptcy could reduce risks for founders and investors while limiting fragmented implementation of the legal framework. Fast-tracked court procedures in specialised legal chambers, with English-language options and the availability of alternative methods of dispute resolution, would lower costs and uncertainty. Cooperation and exchange between these chambers across member states could further ensure consistent application of EU corporate law (Sanders 2025). The European Court of Justice should also ensure uniform interpretation in the member states and resolve potential conflicts that might arise when national rules are applied to companies incorporated under the 28th Regime's provisions. Finally, bankruptcy rules should avoid penalising founders, as the high cost of business failure in Europe currently discourages serial entrepreneurship (Scott Morton and Veugelers 2025).

Third, an EU framework for employee stock-ownership plans (ESOP) could be established as an element of the 28th Regime. These plans give employees the possibility to buy or receive company shares. Start-ups tend to be unable to offer sufficiently high salaries to the experts they need to hire, which is why ESOPs are crucial for attracting talent. However, in Europe, there is no harmonised framework – instead, companies need to adhere to diverging national rules. And so, if a company hires across borders, it needs to create different plans for different employees, which is administratively burdensome. Additionally, national rules and diverging tax treatment of ESOPs create obstacles for their applicability across borders, which creates problems for employees working in different EU countries. An EU-wide framework for ESOPs could help avoid this and create legal certainty for companies and employees across the bloc.

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4. Conclusion

Currently, the EU's competitiveness, strategic autonomy, and prosperity are at stake. These all depend on innovative companies that drive growth and are devising scalable technologies for the green and digital transitions. The 28th Regime provides an actionable way to remove persistent barriers to cross-border business growth and obstacles to investment for these companies by creating a simple, flexible and optional EU-wide corporate framework.

Careful attention to its interaction with national legal frameworks and institutions, particularly as the legislation is implemented by member state courts, and a fair taxation of employee stock-ownership plans, will be essential for the regime's efficacy in practice. Complementary measures for nurturing Europe's VC ecosystem, for example through national pension reforms, towards pre-funded systems invested on capital markets, as well as making it easier to raise capital across borders for VC funds, coupled with further administrative streamlining and legal harmonisation, including consumer protection rules, remain important. In this way, a 28th Regime could become a true cornerstone of a more integrated, innovative and effective single market for the EU and its citizens.

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