The 28th Regime as an Engine for Scaling and Integration

Paving the Way for a Competitive Europe

Position of Deutsches Aktieninstitut on the EU Commission's initiative, 12 February 2026

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Introduction

In light of geopolitical and economic challenges, as well as intense global competition, Europe faces the task of promoting innovation and growth more effectively.

The United States is far ahead of the EU, as it offers start-ups and growth companies financing opportunities through deep, liquid capital markets and a unified regulatory framework. As a result, the US continues to expand its leadership in innovation. In contrast, there is insufficient financing available in the EU to turn good ideas into market-ready products and to support the digital and green transformation whose costs are estimated to range between 700 and 800 billion euros annually over the next ten years. Therefore, we need efficient capital markets in the EU to mobilise these amounts.[1]

Initiatives such as the Savings and Investments Union aim to facilitate the flow of capital across borders and generally strengthen corporate financing. This will also create prosperity for European citizens, enabling them to share in the economic progress via the capital market. However, as long as legal frameworks remain fragmented, such projects cannot unfold their full potential.

This includes national particularities and diverging regulations in areas such as company law, insolvency law, and taxation. While the fundamental freedoms of the single market embody a strong European idea, practical implementation frequently falls short of expectations. The main negative impact is on companies and investors, who must grapple with 27 different legal systems.

The lack of an attractive EU legal form leads directly to more European founders starting their businesses in the USA, resulting in a drain of talent and ambition from Europe and severely undermining Europe's capacity to develop its own technology and start-up ecosystem. As a result, so-called flywheel effects, which are crucial for the development of a start-up ecosystem, are prevented: founders and employees who have already been successful become active again — as angel investors, serial entrepreneurs, or experienced executives.

A uniform European legal framework in company law and selected related areas of law has great potential to strengthen Europe's position in international competition.

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[1] Draghi-Report, The future of European competitiveness Part A | A competitiveness strategy for Europe, September 2024, 97e481fd-2dc3-412d-be4c-f152a8232961_en.

According to Deutsches Aktieninstitut the following prerequisites are essential:

- A 28th regime must be "competitive": flexible in basic structures and corporate governance, and designed to be "financing-friendly," otherwise companies simply will not opt for the new legal form.
- A 28th regime must offer a solution for fast-growing companies, enabling them to move from formation to IPO without the need to change their legal form.
- A 28th regime must be applicable within corporate groups, since global champions are typically organised as groups of companies – and a single, uniform legal form would significantly streamline governance and administration across such groups.
- A 28th regime cannot be confined to company law alone, it must equally extend to adjacent fields, notably insolvency, tax and labour law, to achieve meaningful harmonisation.
- As EU-wide differences in securities law, which governs the issuance and custody of securities, stands in the way of market-driven consolidation of trading and settlement infrastructures, we also suggest a 28th regime for that area, alternatively a harmonisation.

The Franco-German initiative "Financing Innovative Ventures in Europe – FIVE"[2] likewise emphasises that Europe must create an environment where innovative companies can grow into global market leaders. It concludes that a 28th regime must be ambitious and provide businesses with access to the capital they need throughout their entire life cycle by creating a seamless framework. We fully endorse this view.

[2] Kukies/Noyer, Financing Innovative Ventures in Europe: Recommendations to close the scaleup financing gap, deepen the Savings and Investments Union and strengthen Europe's competitiveness, January 2026, p. 87. https://www.bundesfinanzministerium.de/Content/DE/Downloads/Europa/abschlussbericht-five-taskforce.html.

1 Key Points of a 28th Regime

The key points of our position on a 28th regime are as follows:

- **Contributing to the Single Market**: A 28th regime can be introduced as an opt-in system for companies alongside national legal frameworks, ideally covering a wide range of legal areas.

- **Optional Availability and Legal Certainty**: Every company should have the right to choose the EU-wide regime, with Member States obliged to guarantee access. Upon opting in, a company becomes exclusively governed by harmonised EU rules in the relevant legal area, thereby displacing any corresponding national obligations. This avoids parallel legal risks, double audits, and inefficient multiple registrations.

- **Mutual Recognition & One-Stop Shop**: Companies under the 28th regime must be recognised across the EU and be able to operate in all Member States with a single registration ("register once"). This significantly lowers the barriers to internationalisation, especially for SMEs.

- **Listing** as a component of the 28th Regime: Going public (an IPO) is the premier route to raising equity capital and a crucial source for financing European champions. It enables early investors and founders to exit and finance new ventures elsewhere. The capital market option also helps build a broader and more specialised investor base: the "flywheel effects" described above, where specialist capital, e.g. in biotech, is repeatedly released and reinvested, will, over time, ensure deeper capital markets.

- **Digital Solutions**: The establishment, registration, administration, and even contract formation should, wherever possible, be digital. A central European company register can help facilitate this objective. Integrating digital interfaces (e.g., Business Single-Entry Point) and automatic translations reduces administrative burden and makes regulatory monitoring easier. Digital shares and bonds should be possible.

- **Acceleration**: Fast company formation must be enabled. To this end, state preliminary checks should be replaced by other creditor protection mechanisms, such as restrictions on distributions.

- **Company law as the natural starting point for a 28th Regime**: A 28th regime in company law is a natural candidate for creating supranational structures, as companies need to adopt a legal form to participate in economic life. At the same time, the legal position of creditors or equity providers and the specific rules for raising capital depend on company law.

Company law thus has a direct impact on whether and how flexibly companies can raise funds. It also defines internal decision-making processes in corporate governance and thus directly influences how business decisions can be taken. A 28th regime in company law therefore directly addresses the two fundamental problems of the EU mentioned above: a) the fragmentation of the legal landscape and b) the need for financing-friendly conditions for improved innovation funding.

→ *Listing on a stock exchange is the premier way of raising capital and an important source for financing European champions. This must also be possible with the new European legal form.*

2 Key Features of the Proposed Company Form

A 28th regime under company law competes directly with the existing national company laws of Member States. Its success will depend on whether it is more growth-friendly, simpler, more digital, and more flexible than the current alternatives — so that companies actually choose to adopt it. Specifically, it is a legal form that

- involves low incorporation costs,
- grants extensive freedom for the drafting of the articles of association,
- enables streamlined administration of the company from the outset,
- can keep pace, as the company grows and the number of shareholders increases, with investors' expectations of sound corporate governance, and
- is suitable for both startups and larger companies, including as subsidiaries.

The 28th regime should therefore combine the advantages of a non-capital-market-oriented legal form (such as a limited or GmbH) with those of a capital-market-oriented legal form (such as an Inc. or AG).

To provide orientation, the legislator could develop sample articles of association which companies can adapt according to their individual needs. Moreover, companies will always need to negotiate individual contracts when raising additional capital, particularly from venture capital or private equity investors. Model contracts could boost efficiency by providing commonly used, balanced, and fair standard provisions for both sides.

The fact that these requirements are not "squaring the circle" is demonstrated by the Belgian company forms BV and NV since 2019. The specific design of the company form is largely left to the owners within the framework of freedom of contract. For example, whether company shares are publicly traded or not is no longer a distinguishing feature between the Belgian BV and NV, as this can now be stipulated in the articles of association for either legal form. Model provisions are available that closely resemble the classic features of a private limited company or stock corporation (like German GmbH or AG).

> The modular company form we seek is not an impossible undertaking, as the Belgian company law reform of 2019 clearly illustrates.

2.1 Design of a Legal Form under the 28th Regime

2.1.1 Incorporation

- No notarization requirement upon formation.
- The legal form has no statutory minimum capital. Today, minimum capital is no longer considered significant for creditor protection. Instead, creditor protection is ensured by accounting standards, disclosure requirements, and restrictions on distributions to ensure solvency and liability. Additionally, a financial planning obligation can safeguard adequate capitalisation.
- Legal entities can also be founders. European corporate groups should be able to establish subsidiaries simply and securely across Europe. This facilitates mergers, strategic alliances, and operational expansion across borders. The use of a unified company form reduces transaction costs and simplifies group-wide management structures.

2.1.2 Corporate Governance

- The management structure can take the form of a dependent or independent management, consisting of one or more persons, a single-tier board (one-tier system), or a management board and supervisory board (two-tier system). The latter allows for the application/continuation of co-determination systems, if these are anchored in the supervisory board under Member State law. The articles can determine the language to be used within the structure.
- High flexibility regarding voting rights (including multiple voting shares), the transfer of shares, and shareholder agreements.

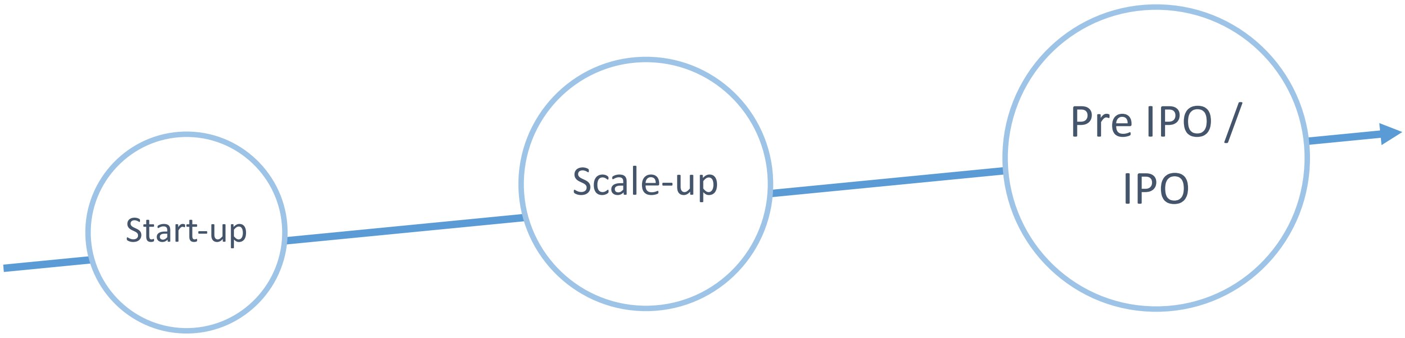
2.1.3 Financing

- Flexibility in raising capital, for example, with the amount of authorised capital and the possibility of exclusion of subscription rights.
- Possibility to issue various types of securities (shares, convertible bonds, certificates), including in digital form, irrespective of whether they are listed on a stock exchange or not.
- Going public is possible without a change of legal form. The rules applicable to public offerings — such as requirements regarding the size/composition of governing bodies (independence, qualifications,

minority protection), disclosure, and transparency obligations — apply in this case.

2.2 Example of the Life Cycle of an Innovative Company

The following selected articles of association provisions illustrate the idea that the statutes determine the legal framework for a company within the flexible system of the 28th regime. The statutes can be tailored to the company's stage of development; here are typical models for each phase — starting with strong founder and private investor influence, becoming more formalised, and eventually transitioning to fully transparent and standardised governance for the public capital market:



Start-up	**Scale-up**	**Pre IPO/IPO**
Characteristics:	**Characteristics**:	**Characteristics**:
One or a few founders	Entry of institutional investors (VC, PE)	(Preparation for) numerous shareholders
High flexibility, strong personal ties among members	More capital, often multi-level share structures	Full adaptation to capital market requirements, standardization
Fully individualized control mechanisms	Professionalization of structures, initial alignment with listed company standards	Owners and management usually no longer identical, potential conflicts of interest addressed by articles and law
		Strict corporate governance and disclosure requirements

Articles of Association	Articles of Association	Articles of Association
Company name, registered office, corporate purpose	**Same**	**Same**, adaptation of the articles to listing requirements
Management bodies: Managing director(s); no supervisory board	**Management bodies**: In addition, introduction of an optional board (advisory board/supervisory board)	**Management bodies**: one-tier board or two-tier structure with management and supervisory board
Shareholders' meeting: Extensive instruction rights over management	**Shareholders' meeting**: No more instruction rights, but safeguard mechanisms such as blocking minorities	**General meeting**: Use of digital systems for invitations, resolutions and voting
Capital: No minimum capital; at foundation, company must have sufficient liquid funds to conduct its activities (financial plan)	**Capital**: No minimum capital. Option for common and preferred shares, flexibility for capital increases	**Capital**: Efficient capital increases. Minimum nominal value not higher than one cent required.
Transferability of shares: Only registered shares, transfer only with consent of shareholders, possibly notarial form	**Transferability of shares**: Free transferability	**Transferability of shares**: Full fungibility via stock exchange trading
Profit distributions: By shareholder resolution; no statutory reserve; liquidity test; net assets must not become negative or fall below an amount set out in the articles	**Profit distributions**: e.g. preferential distributions to new investors	**Profit distributions**: As resolved by the general meeting
No specific protection for founders	**Rights of investors**: Inclusion of typical VC clauses such as pre-emption rights, anti-dilution clauses	**Investor protection and disclosure**: Extended minority protection, statutory publication requirements
Employee share ownership programs: None	**Employee share ownership programs**: Empowerment of management to create and issue new shares specifically for employees, etc.	**Same**
(…)	**(…)**	**(…)**

3 Additional Areas of Law

Instead of aiming for full alignment of all relevant legal areas, the 28th regime offers a modular, scalable EU legal framework, starting with company law, and later extendable to tax, insolvency, labour law, etc.

- In the area of **insolvency law**, national rules remain among the least harmonised. Significant differences exist regarding creditor hierarchy, restructuring procedures and periods of debt discharge. This complicates both cross-border continuation of businesses and the development of secondary markets for non-performing loans. Differences between Member States in insolvency law encourage forum-shopping and undermine legal certainty and investment. It is therefore essential to ensure that grounds for insolvency filings are unified with a focus on growth. In particular for start-ups, overly strict insolvency grounds such as "over-indebtedness" should be avoided, since these companies are structurally affected by uncertainty regarding the going-concern prognosis. Otherwise, a company in a Member State such as Germany would have to file for insolvency earlier than in another country.

- In **tax law**, substantial differences and divergent interpretations persist regarding VAT, the definition of permanent establishments, cross-border loss offsetting, varying deadlines/documentation requirements, divergent anti-abuse rules, different rules for employee share ownership, the treatment of cross-border investments and retirement provision products. Different compliance and reporting obligations also present challenges for businesses. While reaching agreement on these matters will be difficult, it is essential to create legal certainty in tax law, even if this requires (if necessary) clear national rules. Examples include risks of gift tax in the case of equity participation and the question of timing and type of taxation for employee participation (as salary or as a capital gain?).

- **Labour law** and regulations on employee participation differ greatly in terms of co-determination, protection against dismissal, and employee representation rights. This often hinders the cross-border use of European legal forms such as the Societas Europaea (SE). In our view, the 28th regime should not contain its own detailed labour law provisions because their political dimension would delay the process.

The catalogue of related legal fields could be expanded, particularly with regard to the use of the 28th regime for capital market financing. Significant differences exist not only in insolvency and tax law, but also in **securities law**, which governs the issuance and custody of shares, bonds, and other capital market instruments. Together with the differences in insolvency and tax law, these discrepancies make cross-border trading and settlement of shares and other securities complex and therefore costly. This also inhibits the potential of a pan-European legal form designed as a 28th regime. Moreover, these differences stand in the way of market-driven consolidation of trading and settlement infrastructures, thereby hindering a more efficient pooling of European capital resources.

It should be noted that the legal grounds for filing for insolvency (overly strict or not) can determine the survival or failure of a company especially for start-ups in the early stages with an uncertain going-concern prognosis.

4 Conclusion

A modular 28th regime as an optional, harmonised EU legal framework, initially in company law but expandable to other areas, offers a genuine chance to strengthen Europe's competitiveness and innovation capacity. It addresses key obstacles currently faced by businesses and investors: complex fragmentation of legal systems, high transaction costs, legal uncertainty, and barriers to cross-border growth. A company form that allows seamless scaling from start-up to IPO, integrates digital solutions from the outset, and is attractive both for founders and (institutional) investors would significantly enhance the appeal of the European market, mobilise more capital, and retain innovative businesses in Europe.

However, in order to realise the full potential, accompanying reforms are needed, especially in insolvency, tax and labour law. While deep harmonisation in all areas may not be achievable in the short term, clear, growth-oriented minimum standards and legal certainty are essential, particularly for the cross-border activities of innovative companies. The experiences of other member states, such as Belgium, demonstrate that flexible, modular, and growth-friendly company forms can work in practice.

Europe must dare to take these bold steps — only then can it develop the dynamic innovation ecosystems it needs, foster its own global champions, and ensure prosperity and opportunity for its citizens in the competition with other world regions.

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