European Commission's Call for evidence on the 28th regime – a single harmonized set of rules for innovative companies throughout the EU

Detailed comments to the questionnaire

30 September 2025

Introduction

Deutsches Aktieninstitut very much welcomes the initiatives regarding the 28th regime. A 28th regime describes a set of rules that co-exists, within the territory of a Member State, next to the national domestic legal order.

In an era marked by increasing geopolitical fragmentation and growing divergences across international markets, Europe stands at a critical crossroads. As global economic powerhouses like the United States and China continue to consolidate their dominance through large, integrated enterprises, Europe risks falling behind unless it sets favorable conditions for the formation of "European champions"—large, competitive European companies that can hold their own on the world stage. European champions provide economic autonomy, reducing dependence on global players whose priorities may conflict with Europe's values and interests.

It is time for European policymakers to recognize the urgency of empowering homegrown large companies—while also fostering the conditions for today's start-ups and scale-ups to become tomorrow's market leaders. By creating a legal, regulatory, and economic environment that nurtures both established enterprises and emerging innovators, Europe can secure its prosperity, sovereignty, and long-term leadership in the global economy. So, all companies irrespective of their size are allowed to opt for the 28th regime in order to grow and expand. This would also correspond to the overarching objective of the Savings and Investments Union.

In order to not only provide very much appreciated simplification but also contribute to growth the EU would need to enact an entirely new and comprehensive body of company law that covers all aspects of corporate life and has direct effect in all Member States. This would represent a significant step toward further European integration and would clearly strengthen the single market. Therefore, the contemplations about the 28th regime should be ambitious, even though in the past no real European legal form could be agreed upon.

In contrast, the draft report of the European Parliament with recommendations to the Commission on the 28th Regime focusses only on start-ups and scale-ups and suggests regulatory obstacles that prevent influence or the acquisition of innovative companies ("killer acquisitions"). It must be stated clearly that obstacles for larger firms to acquire "garage companies" force these start-ups to face all the challenges of growth alone—often without the needed capital, infrastructure, or expertise. This not only limits the growth and success of individual start-ups, but can weaken Europe's overall innovation ecosystem, making it less competitive globally. To foster both innovation and the emergence of strong European players, it is crucial to ensure that acquisition remains a viable, well-regulated path for start-ups' growth and maturity.

1. Details to Q1,2 and 38

The USA is far ahead of the EU because it offers start-ups and growth companies funding opportunities through deep, liquid capital markets and a unified regulatory framework. In the EU, however, there is a lack of sufficient financing to turn good ideas into market-ready products and to support the digital and green transformation, whose costs are estimated at €700 to €800 billion per year over the next ten years. That is why we need efficient capital markets in the EU to mobilize these amounts.

Moreover, the EU is characterized by significant legal and administrative fragmentation, despite having a single internal market. This includes national specificities and diverging regulations in areas such as company law, taxation, and labour law. While the fundamental freedoms of the internal market embody a powerful European idea, practical implementation often falls short of expectations. This adversely affects companies and investors, as they must navigate 27 different legal systems.

The 28th regime can help ensure that new businesses are founded and grow in Europe. Start-up ecosystems thrive over the long term when so-called flywheel effects take hold. This means that if founders are successful in Europe they might engage further in the industry as serial founders, investors and experienced consultants or executives – a whole ecosystem develops. An attractive EU legal form could be the beginning of such development as it might prevent that the business is started directly abroad in the first place.
Studies show that entrepreneurial ideas exist, but a deep and broad capital market to finance these ideas is lacking. In particular, there is a financing gap for scale-ups—that is, for the scaling of business models that have moved beyond the start-up phase. The measures of the Savings and Investments Union are intended to help address this issue. A 28th regime could be one supporting element, here if the following applies:

A 28th regime must be "competitive": flexible in fundamental structures and corporate governance and also designed to be "financing-friendly." Otherwise, legal forms such as the Naamloze Vennootschap (N.V.) will continue to be chosen.

A 28th regime must provide a solution for fast-growing companies, allowing them to progress from creation to IPO without needing to change their legal form.

A 28th regime must be suitable for the use within corporate groups, since market leaders are typically organized in group structures and a uniform legal form can facilitate administration within these groups.

2. Details to Q5 to 7

Especially in disruptive times, we need to support large companies as much as smaller and medium sized companies. The 28th regime should contribute to that.

A legal form that can be used also for being listed is essential for this. This kind of flexibiliy enables start-ups and scale-ups to naturally grow into a “grown-up state” without facing a complicated transformation at a stage when financing may need to be shifted to another level.

Companies evolve and can quickly outgrow any thresholds or definitions and the need to change the legal form could entail administrative burden and costs - and additionally to that: the danger of a possible decision for a market outside Europe.

There should be utmost flexibility to meet different needs also when it comes to how many shareholders a 28th regime company should have. Companies of all sizes face complexity with different regulations, languages and authorities throughout Europe. It would also be beneficial to use as a group component available to large enterprises. If they could set up all EU group companies with largely uniform articles of association under the 28th regime, participation management could be handled centrally, rather than “at home” and—albeit to a lesser extent—in 26 other countries at the same time

The 28th regime company would be in direct competition to national legal forms. If entrepreneurs do not see an advantage in its use, they may not choose it and the whole project is void. It should therefore provide flexibility, suitable for start-ups and scale-ups and fit for being used in company groups.

3. Details to Q17ff.

A ‘digital first’ approach should be taken. Explore from the beginning the potential of digitalisation, in particular with respect to all aspects of incorporation in order to provide a future-proofed new statute. This includes the introduction of a uniform digital company register replacing the patchwork of commercial and company registers in the various EU jurisdictions, where issuers and their legal representatives can upload all documents to be filed and get a registration within a guaranteed timeframe. Proofing and checking of documents submitted can be easily performed by employing AI-tools. The European company would benefit e.g. from a quick registration of capital measures in the commercial register.

4. Details to Q21

As stated before, the regime should cover private limited liability company models and public limited liability company models alike. There should be flexibility.

Founders face a variety of strategic, operational, and financial challenges when setting up a company. The situation they are in will have a significant influence on which company's structure to choose. In order to simplify the choice optional model statutes for both private and public limited liability company models could be provided.

5. Remarks to Q29 and 30

Flexible provisions for raising capital should be enabled. It should be up to the shareholders to define the volume of authorised capital. This enables management to decide on capital measures needed to finance further growth steps in a flexible manner based on a limit approved by the shareholders.

6. Details to Q33 and 34

The regime for multi-voting share structures, so far only available for companies listed on an EU Growth Market, should be expanded to all (listed) companies. Experience shows that founders are more open to outside investors, if such structures exist. When a company adopts a multiple voting share structure, investors decide — through their willingness to provide capital — whether they accept the arrangement. Thus, multiple-voting structures should be available in the 28th regime, so that markets can decide whether and under which circumstances they accept them. This is also why we consider Q34 as not relevant. It is and should be up to the company and finally the market to decide.

7. Details to Q37 and 48

Any form of financing should be permitted; therefore, the 28th regime ought to remain open and flexible. Only in this way can it provide the necessary degree of adaptability for businesses. The last thing companies need is for certain financing options to be imposed or, even worse, prohibited by law.

One of the fundamental features of dynamic innovation ecosystems — particularly in sectors like technology, biotech, and clean energy — is the close interplay between young, innovative start-ups (often born in "garages") and established larger enterprises. As stated before in the introduction regulatory obstacles that prevent the acquisition of "garage companies" by larger firms force these start-ups to face all the challenges of growth alone—often without the needed capital, infrastructure, or expertise. This not only limits the growth and success of individual start-ups, but can weaken Europe's overall innovation ecosystem, making it less globally competitive. To foster both innovation and the emergence of strong European players, it is crucial to ensure that acquisition remains a viable, well-regulated path for start-up growth and maturity.

8. Details to Q47

Alongside the foundational principles of the new European company law framework, it is advisable to consider integrating mechanisms for an EU-wide Employee Share Ownership Plan (EU ESOP) as well as enhanced options for employee participation. Such initiatives would address the practical needs of founders and businesses seeking to provide their workforce with harmonized incentives throughout the Single Market. Consequently, the 28th Regime should serve as a means to facilitate the establishment of employee stock option schemes, thereby helping innovative firms attract skilled professionals and permitting employees to share in the company’s long-term success.

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