

An EU Corporate Legal Framework by the European Commission

Response of the European Law Institute





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Feedback of the European Law Institute on the
Public Consultation on the 28th Regime

An EU Corporate Legal Framework by the European Commission

The European Law Institute

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I. Introduction

This Response rests on a draft Response to the Open Public Consultation on the 28th regime, which was prepared for the European Law Institute (ELI) by Prof Dr Aldo Laudonio (Università 'Magna Graecia' di Catanzaro, Italy), Prof Dr Florian Möslin (Philipps-Universität Marburg, Germany), Prof Dr Anne Sanders (Universität Bielefeld, Germany) and Prof Dr Steen Thomsen (CBS, Denmark). ELI has formed its opinion based on this Response, but has also taken into consideration other inputs, with the result that the present Response differs in some respects from the original draft.

The Draghi and Letta reports address the challenges facing European innovative companies as regards scaling up after having attracted initial funding. In order to identify the most significant barriers, the experiences of entrepreneurs and investors are crucial. This Response considers legal fragmentation, cumbersome registration processes and lack of finance as great challenges to European competitiveness. Therefore, this Response focuses on a discussion of possible tools for **improving registration with digital tools (III)**, **access for SMEs to finance (IV)**, and on **opportunities of alternative ownership forms (V.1.)**, such as purpose-oriented enterprises, employee ownership enterprise foundations and steward ownership to enhance European growth and innovation. It also refers to the possibility of making efficient specialised, **English-speaking courts** responsible for the application of cases concerning the 28th regime **(V.2.)** and **insolvency law (V.3.)**. Tax law and employment law will not be addressed in this Response, which will also not undertake a detailed examination of the harmonisation of commercial law. In this respect, the valuable work of the Association Henri Capitant should be taken into consideration.¹ Many of the suggestions made here have also been advanced by the JURI draft report of the European parliament.²

The 28th regime initiative is intended to simplify business regulation, stimulate entrepreneurship and improve competitiveness for European businesses. However, it could entail both opportunities and risks. An additional legal regime may add additional complexity to the European business environment. The deregulation and liberalisation the initiative aims to achieve is likely to be met by demands for additional safeguards and complicated exceptions (especially in the form of gold-plating) that – while made with the best intentions – may lead to more bureaucracy rather than simplification. This may not only make the 28th regime unattractive but could even unintentionally spill over to national business law through the logic of a level playing field, which would, of course, defeat its whole purpose.

¹ <<https://www.henricapitant.org/actions/draft-european-business-code/>>.

² Available at <https://www.europarl.europa.eu/doceo/document/JURI-PR-773199_EN.html>.

II. Structure and Core Elements

1. A Supranational Limited Liability Company (LLC)

If politically feasible, the 28th regime company could be designed as a supranational corporate form, a LLC without, or a very low minimum, capital requirement to reduce burdens for setting up such businesses; this feature would easily fit within the consolidated legal framework already in place in many countries, where the minimum capital requirement for the national LLC – or a ‘lighter’ variation of it – is, essentially, symbolic (Austria, Belgium, France, Germany, Italy, Netherlands, Portugal, Spain).

If such a path is taken, it may be advantageous for entrepreneurs to be able to set up a new entity from scratch or transform an existing entity into a 28th regime LLC. This could be done either by a natural person or by a legal person that wishes to set up a separate entity as its subsidiary under this new legal form. For scaleups, operating in groups across Europe is important. Therefore, the argument can be made that the 28th regime LLC can also be useful as part of a corporate group structure.³ The broader the access to the 28th regime company is, the more likely it is that it will be adopted in practice and thus considered successful.⁴ Moreover, the Response proposes that the legal framework should be flexible enough to adjust to individual needs. Finally, it is suggested that the EU develops and offers fair, standardised articles of association and shareholders’ agreements – developed by experts from venture capital (VC) funds, notaries’ organisations, specialised law firms and entrepreneurs – that would function effectively in all member states and which everybody can use.⁵

Such fair and easy-to-use documents, as they are used in the US⁶ and Germany,⁷ may help investors and founders reduce costs. At the same time, such tools should never limit the freedom of entrepreneurs and shareholders to draw up such documents freely according to their specific needs with competent legal advice. Parties should be adequately informed about the risks involved in using standard templates, and they should still be encouraged to consult seek competent legal advice and create bespoke documents in light of the complexities involved.

A 28th regime company, conceived as an LLC, could draw on the success of this type of company across Europe and would not be intended to replace national regulations, but rather to serve as an optional, EU-level corporate vehicle designed to tackle the issue of legal fragmentation. Proposals for a supranational LLC are already included in the Draft European Business Code, as the Letta Report has rightly pointed out. However, because the focus there was not on promoting innovation, further elements have to be taken into consideration. This approach could make the 28th regime a ‘one-stop shop’, a unified framework that simplifies cross-border commercial activities by coexisting with national systems. The 28th regime could provide scaleups with a single legal identity, making it easier to operate and attract investment throughout the Single Market. To avoid the serious practical difficulties and inconsistencies that arise from a multi-level regulatory framework, where European law must be supplemented and complemented at national level (as is the case with the *Societas Europaea* and *Societas Cooperativa Europaea*, and also with the failed attempt to establish the *Societas Unius Personae*), an approach

³ See for this position, Hommelhoff/Stern/Goll, *Europa zum international attraktiven Wirtschaftsstandort ausbauen!* Neue Zeitschrift für Gesellschaftsrecht 2025, 915, 918–919.

⁴ See the in-depth analysis on the scope of the 28th regime prepared on request of the JURI Committee by Anne Sanders (available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA\(2025\)776311_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA(2025)776311_EN.pdf)>).

⁵ In this respect, the EU can learn from the example of Y Combinator (<<https://www.ycombinator.com/documents#about>>) and the GESSI documents in Germany (<<https://www.business-angels.de/standardvertragswerke/gessi/>>).

⁶ Y Combinator, Safe Financing documents <<https://www.ycombinator.com/documents#about>>.

⁷ BAND, Startup Verband Deutschland, Standardverträge (GESSI) <<https://www.business-angels.de/standardvertragswerke/gessi/>>.

where the rules of the 28th regime are set exclusively at the European level may be preferable.⁸ In this Response, the term ‘28th regime LLC’ refers to such a supranational corporate form at EU level, designed to complement national legal frameworks.

A possible significant innovation of the 28th regime LLC could be a governance model designed to evolve automatically based on a company’s size and growth stage. This structure would prevent a rigid legal framework from becoming an obstacle to growth – a common problem when regulations fail to keep pace with a scaleup’s rapid development. For instance, in Italy or Austria, local legislators have strongly enhanced access to multiple financing channels for some special sub-types of national LLCs, but did not fully adjust for the anticipated growth of these entities’ corporate governance structures, which were originally conceived for small, closely held companies.

Rather than requiring costly and complex statutory changes or conversions, the governance could adapt through a tiered system based on objective metrics (reference could be made to a combination of the thresholds established in Delegated Directive (EU) 2023/2775 on the adjustments of the size criteria for micro-, small-, medium-sized and large undertakings or groups, or in Directive 2013/34/UE on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings). Several EU member states have already implemented some forms of governance adaptations based on objective quantitative parameters in areas such as the mandatory appointment of supervisory bodies or external audits (Belgium, France, Italy, Spain) or workers’ participation in governance (Austria, France, Germany among others). The 28th regime LLC can be conceived as a way of consolidating and standardising these practices to ensure that corporate governance progressively strengthens a company’s early growth, by requiring, for example, that a single director can be appointed only up to a certain stage and then a board of directors becomes

mandatory, or turning individual information rights or individual derivative actions into minority information rights or shareholders’ derivative actions as the company grows. This would also significantly reduce transactional and legal costs, a benefit further enhanced by the provision of optional model statutes and shareholders’ agreements, in line with the regime’s overall objectives to ease company formation. Once a company reaches a more substantial size, it could more easily access appropriate legal advice within a legal framework that allows for broad access to external financing. On the other hand, if the company were to decrease in size, the rules designed for the previous stage(s) would once again apply after a transitional period or a ‘grace period’ to prevent temporary fluctuations above or below the thresholds from causing continuous changes in governance.

2. The Scope of the 28th Regime

Another question is: which types of businesses should be able to adopt the 28th Regime? Limiting access to “innovative businesses” would require the development of appropriate definitions for such businesses, as well as the establishment of administrative institutions to check compliance with these requirements. It could be argued that, for the 28th regime to be successful, it should be as easy to adopt and use as possible, so that it creates new standards and fosters trust among entrepreneurs and investors. Bureaucracy was identified by both the Draghi and Letta reports as a serious problem, particularly for SMEs. If the 28th regime were to require an assessment of whether or not a business was innovative, it could be perceived as creating even more red tape rather than helping innovative companies. This does not preclude special legislation to protect certain vulnerable groups, eg employees. Overall, a modular approach that combines widely accessible, general tools

⁸ Valuable food for thought has been developed by the Association Henri Capitant: <https://www.henricapitant.org/wp-content/uploads/2024/11/Book-IV_Company-Law.pdf>, and the report of the Haut Comité Juridique de la Place Financière de Paris <https://www.banque-france.fr/system/files/2023-10/rapport_40_f.pdf>.

with specific rules applicable to specific cases and for the protection of vulnerable groups could be advantageous. However, if such an approach were taken, avoiding fragmentation and reducing complications would be an issue.⁹

Even if the 28th Regime itself were to remain broadly accessible, the need to define ‘innovative companies’ might still arise in certain contexts, for example, if specific innovative companies, shall have access to public funding or other tangible advantages. Moreover, other requirements could be required to establish a competence basis for European legislation. However, this is not the focus of this Response, which aims at discussing tools that could be useful to help innovative businesses fulfil their needs rather than at defining them.

3. Targeted Harmonisation

Given the history of European supranational entities, a supranational form on its own may not be politically feasible. In this case, a targeted harmonisation of the member states’ corporate law through a quite detailed – if not a self-executing – directive (legally based on Articles 50 and 114 Treaty on the Functioning of the European Union (TFEU)) could still bring advantages if combined with standardised articles of association and shareholders’ agreements that reduce costs for both investors and founders. If harmonisation could achieve a sufficient legal basis, the same standardised documents could be available for setting up companies across Europe. If such a level of harmonisation is not created, the gathering of existing and support for the development of new standardised documents at the national level could be discussed. If such an approach is taken, the suggestions developed in this Response could still provide valuable food for thought. It could well be argued that the success of a 28th regime LLC would depend on whether it can bring down operating costs and make life easier for innovative businesses.

4. Recommendations

1. If politically feasible, the 28th regime could be set up as a **distinct supranational LLC** that could be established by natural persons (at least one) and by corporate founders to be used as a subsidiary within a group.
2. It could be **flexible** enough to be designed according to the needs of investors and founders.
3. The EU could offer **fair, standardised articles of association and shareholders’ agreements** developed by experts to reduce transaction costs without replacing the important role played by legal professionals.
4. **Dynamic governance** could allow for a legal framework that grows with the needs of a company.
5. For the 28th regime LLC to be successful, broad access and the avoidance of bureaucratic hurdles would be important.
6. If a supranational form is not politically feasible, **targeted harmonisation** could still be useful, provided that ameliorating the conditions for businesses remains the goal.

If the project of the 28th regime LLC is based on the conclusions of the Draghi and Letta reports, a strong argument can be made that it must be practical and offer true benefits for entrepreneurs by solving problems and by easing the setting up and running of companies. An LLC with a flexible, dynamic governance could be introduced as a supranational form. If not politically feasible, targeted harmonisation could still bring benefits if carefully designed to make life easier for businesses. Access to this legal form should be broad to avoid bureaucracy. Tools to reduce costs could include standardised articles of association and shareholders’ agreements, while fully acknowledging the limits of such standardised solutions and highlighting the key role of ex-ante legal advice and the important functions of specialised legal professionals.

⁹ See the in-depth analysis on the scope of the 28th regime prepared on request of the JURI Committee by Anne Sanders (available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA\(2025\)776311_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA(2025)776311_EN.pdf)>) p 10–22.

III. Simple, Flexible and Fast Procedures and Rules: Digitalisation and Registration

1. Introduction

The simplification of company registration promises to become one of the most important advantages of the proposed 28th regime LLC for innovative companies. At present, incorporation procedures across the EU remain fragmented, slow, and often costly.

In this respect, the use of digital tools is not a marginal technical issue but a structural condition for the success of the 28th regime LLC. The Commission's public consultation expressly invites feedback on how to harness digitalisation to reduce administrative burdens.¹⁰ The **Draft JURI Committee report¹¹** confirms this direction, calling for a Union-level register and for incorporation to be possible within 48 hours. This chapter contributes to the consultation by examining the potential of digital tools to simplify company registration, highlighting the legal and technical preconditions for their effective deployment.

2. Fragmentation of Current Registration Systems

The starting point is the persistence of fragmentation. Each Member State continues to maintain its own company register, governed by domestic company law, with significant variations in formality, content, and language. In some jurisdictions, incorporation requires notarial certification and the submission of physical documents; in others, the process is already fully digital. Although such formalities may appear

wholly sensible from the perspective of Member State legislators, their heterogeneity represents a significant obstacle from a European perspective. Also, timelines for registration can vary from a few hours to several weeks.

Existing EU instruments – notably the **2019 Digitalisation Directive** and the **2025 Digitalisation Directive 2.0** – have improved the situation by mandating the online incorporation of limited liability companies and introducing the once-only principle. However, these Directives operate on the basis of coordination, not unification. Companies seeking to operate in multiple Member States must still duplicate registration processes, undermining efficiency and legal certainty.

This fragmented landscape imposes costs that fall disproportionately on small- and medium-sized enterprises (SMEs) and start-ups. It also undermines the Union's broader innovation strategy, as identified in the Draghi and Letta reports, which call for rapid and seamless cross-border company formation.

3. The Case for a Single Digital Register

The establishment of a **single EU-level company register** is the necessary next step. Such a register would not merely interconnect national systems, as the Business Registers Interconnection System (BRIS) does, but would function as a **direct entry point** for incorporation under the 28th regime. A single European company register could take inspiration from the European Union Intellectual Property

¹⁰ Our input partly builds on the in-depth analysis on the simplification of registration of companies that has been prepared on request of the JURI Committee by Florian Möslein (available at <[https://www.europarl.europa.eu/thinktank/de/document/IUST_IDA\(2025\)776000](https://www.europarl.europa.eu/thinktank/de/document/IUST_IDA(2025)776000)>). It develops a comprehensive vision of a single, EU-level digital register.

¹¹ Available at <https://www.europarl.europa.eu/doceo/document/JURI-PR-773199_EN.html>.

Office (EUIPO), which administers Union-level intellectual property rights, namely trademarks and designs, through a centralised, digitalised register. While raising many institutional questions, ranging from administrability to issues of appeal, authority structure, and legal effects, a uniform EU company register could build on this experience to address the issues start-ups and other companies face in light of the EU's current approach to linking national registers.

The register should be designed according to four core principles:

1. **Digital-by-default:** All procedures – from incorporation to subsequent filings – must be conducted electronically, without residual paper requirements.
2. **Once-only principle:** Information provided by the company must be reusable across the Union, avoiding duplication.
3. **Real-time processing:** Verification and registration must occur within 48 hours, as envisaged by the Commission's Startup and Scaleup Strategy.
4. **Mutual recognition:** Registration under the EU system must be automatically recognised by all national legal orders.

In the design of this register according to the principles above, special attention should be paid to the role played by legal professionals in the current national systems. Efforts should be made to integrate their beneficial functions in the new model to ensure that legal certainty and safeguards against risks such as fraud, money laundering, or abusive incorporations are not undermined.

This vision is echoed in the JURI draft report, which explicitly calls for a uniform Union-level digital company register, integrated with BRIS but going substantially further in its centralising function by serving as a direct access point for the formation of companies under the 28th regime.

4. Digital Tools as Enablers of Simplification

A successful EU register should integrate cutting-edge digital tools that go beyond existing initiatives. These instruments could make registry entries faster and more efficient, while at the same time preventing abuse and fraud. Several technologies stand out:

a) Electronic Identification and eIDAS

Uniform and secure identification of founders is essential. The eIDAS Regulation already provides a framework for cross-border recognition of electronic identities and trust services. Its forthcoming extension through the **European Digital Identity Wallet** will allow entrepreneurs to authenticate themselves and sign incorporation documents remotely. Embedding eIDAS into the registration process could ensure trustworthiness while eliminating the need for physical presence or notarisation.

b) Distributed Ledger Technology (DLT)

Blockchain-based systems have the potential to record incorporations and subsequent corporate events (such as share transfers) with immutable timestamps. A permissioned DLT, accessible to competent authorities across the Union, could enhance transparency, reduce fraud, and provide a tamper-proof audit trail.

c) Artificial Intelligence (AI) and Automation

AI tools could automate compliance checks, such as verifying the uniqueness of company names, cross-referencing beneficial ownership databases, or screening against anti-money laundering (AML) lists. Such automation would accelerate the process, making the 48-hour incorporation goal achievable. At the same time, AI tools could reduce risks of fraud and abuse.

d) Multilingual Interfaces and Standardised Templates

To ensure accessibility, the register should operate through a multilingual digital portal, providing standardised templates for articles of association and other core documents. This would reduce translation burdens and ensure uniformity across Member States.

e) Application Programming Interfaces (APIs) and Interoperability

The register should be designed as an open, API-based infrastructure, allowing seamless interconnection with tax authorities, social security institutions, and other relevant bodies. This would ensure that registration automatically triggers all necessary ancillary steps, further reducing administrative burdens.

5. Lessons from Best Practices

Several Member States already provide valuable examples. Estonia's e-Business Register demonstrates what is achievable within the EU, enabling incorporation within hours, using national eID and backed by blockchain-based integrity systems. Malta has also rebuilt its Business Registry on a blockchain-backed platform with inter-agency data sharing, offering a one-stop incorporation process. Beyond Europe, British Columbia's OneStop registry in Canada and Delaware's fast-track digital incorporation services in the United States show how streamlined online processes can foster entrepreneurship even in multi-jurisdictional legal systems.

These best practices demonstrate both the feasibility and the added value of fully digital registers. However, they also highlight the limits of purely national solutions. Only a supranational register can ensure full cross-border operability and equal access for all EU entrepreneurs.

6. Addressing Risks and Safeguards

The integration of advanced digital tools also raises legal and technical risks. Cybersecurity, data protection, and reliability of automated processes must be guaranteed. The register must comply with the **General Data Protection Regulation** and be resilient against cyberattacks. Transparency in algorithmic decision-making (eg AI-assisted checks) is essential to maintain trust. The register could integrate with existing AML and Know Your Customer (KYC) databases, where such databases exist, to ensure that rapid incorporation does not occur at the expense of due diligence.

Furthermore, simplification must not compromise safeguards against fraud, money laundering, or abusive incorporations. In the majority of Member States, a broad range of such safeguards are currently in place, including ex-ante scrutiny by specialised legal professionals, or authorities. Lifting these safeguards for the sake of simplification without replacing them with new safeguards that are at least as effective as the existing ones would be inconsistent with AML rules and regulations and could prove to be more expensive for Member States' economies and come at a societal cost that cannot be accepted.

7. Recommendations

In light of the foregoing, the following recommendations are advanced:

1. **Establish a Union-level digital company register** as the central feature of the 28th regime, enabling incorporation within 48 hours.
2. **Embed eIDAS-based identification and trust services** to ensure secure, cross-border recognition of filings.
3. **Leverage blockchain and AI technologies** to automate compliance checks, prevent fraud, and ensure immutability of records.

4. **Provide standardised multilingual templates and user-friendly portals** to reduce translation costs and enhance accessibility.
5. **Design the register with API-based interoperability**, ensuring automatic linkage with tax, social security, and other administrative systems.
6. **Ensure strong safeguards** against fraud, money laundering, tax fraud or other misuse of the structure for non-legitimate purposes as well as for cybersecurity, data protection, and AML/KYC compliance.

Simplifying company registration is not an ancillary issue but the foundation upon which the success of the 28th regime LLC depends. Digital tools make possible what was previously unthinkable: a uniform, real-time, and user-friendly EU-level incorporation process.

By embracing a single digital register, the Union could eliminate fragmentation, reduce administrative burdens, and create an innovation-friendly legal environment. The result would be a regulatory framework aligned with the needs of Europe's entrepreneurs, fully integrated with the Digital Decade agenda, and capable of supporting the EU's strategic objectives in the global economy.

IV. Attracting Finance

1. The Persistent Gap in Access to Finance: A Systemic Disadvantage

Despite representing 99% of all businesses in the EU and playing a crucial role in the economy, small- and medium-sized enterprises (SMEs) face significant and disproportionate obstacles that limit their growth and capacity for innovation. Access to finance remains one of the most pervasive and structural barriers, a problem that manifests as a two-tiered loan market where conditions for large enterprises are markedly more favourable than for SMEs. An analysis by the European Central Bank (ECB) highlighted how large firms reported an easing of financing conditions and a decrease in interest rates, while SMEs continued to experience a tightening, with a very limited number reporting a decrease in rates.¹² This divergence reflects a deep information asymmetry: SMEs are intrinsically ‘informationally opaque’, and lenders perceive a higher risk and react with higher interest rates and more stringent collateral requirements, perpetuating the gap.

Besides the contingent effects of trade tensions with the US, this issue is further complicated by a prevalent reliance on traditional lending metrics and a preference for businesses with tangible assets or easy-to-understand business models, which can leave those with risky projects, intangible products, or a strong focus on innovation at a disadvantage. Even when financing is approved, SMEs face high costs in the form of (increasing) interest rates and substantial arrangement fees¹³ and long timeframes for fund

disbursement. The procedural friction and high costs often lead to ‘discouragement’¹⁴. This phenomenon occurs when businesses do not apply for credit for fear of being rejected, leading to an underutilisation of available capital and a further weakening of their financial position.

2. The Double ‘Valley of Death’ Issue

The trajectory of a business, from its conception to its stabilisation, is marked by challenges that transcend the mere availability of capital. An analysis of the phenomenon known as the ‘valleys of death’, also mentioned in the EU Commission consultation paper, reveals an intrinsic complexity that requires a holistic political response on the financial point of view.

The double ‘valley of death’ concept extends the idea of the single ‘valley of death’, which describes the initial challenge of securing funding to transform a technology from a laboratory-proven concept into a viable prototype, while the second challenge lies in a subsequent gap between the successful prototype and full-scale commercialisation and growth of a company.

In the following, this issue will be addressed from a company law perspective, aiming to enhance access to finance to overcome existing obstacles and inconsistencies among member States.

While overcoming the double valley of death obviously requires a combination of many factors, such as targeted government support, strategic public-private partnerships, and specialised financial backing from the banking sector, these issues fall outside the scope of this Response,¹⁵ which is

¹² European Central Bank – Eurosystem, *Survey on the Access to Finance of Enterprises in the euro area, 2025*, p 7 ff (<<https://www.ecb.europa.eu/stats/accesstofinancesofenterprises/pdf/ecb.safe202504~3839a2deca.en.pdf>>).

¹³ OECD, *Financing SMEs and Entrepreneurs Scoreboard – Highlights, 2025*, p 13 (<https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/04/oecd-financing-smes-and-entrepreneurs-scoreboard-2025-highlights_e7caeca1/64c9063c-en.pdf>).

¹⁴ European Central Bank – Eurosystem, *Survey on the Access to Finance of Enterprises in the euro area, 2025*, p 13 f

¹⁵ Another relevant issue that is not directly addressed by the Consultation can be identified in the opportunity of creating a more level playing field in some areas of private law by adopting a series of model rules elaborated by the Association ‘Henri Capitant’ in its ongoing project aimed at drafting a European Business Code. Examples include Euro-guarantee, Autonomous Euro-guarantee, and Euro-pledge (see the Draft book on the Law of Securities: <<https://www.henricapitant.org/wp-content/uploads/2023/10/Livre-5-Droit-des-suretes.pdf>>). All these uniform instruments could contribute to a smoother access to finance for the 28th regime company.

focused on the desirable business and company law interventions needed to establish the 28th regime.

A pan-European corporate legal framework, designed for startups and scaleups, would not replace national laws, but would operate in parallel, simplifying procedures and reducing legal and bureaucratic costs for cross-border expansion: introducing a modular set of modifications to existing national limited liability companies would facilitate building on an existing and widespread organisational tool, taking advantage of positive national experiences to empower an optional 28th regime in such a way as to promote innovation and, thus, competitiveness.

a) Startups and the First 'Valley of Death'

The first 'valley of death' manifests as a 'funding gap' between initial research and development (R&D) and the transformation of a new product or service into a sustainable business. While validating their business concept and defining their potential audience, startups often rely on self-funding ('bootstrapping') and on the support of families and friends, experiencing extreme difficulties in accessing external finance, both because of their intrinsic opacity and their high riskiness.

The first way to address this difficulty is to **strengthen alternative finance channels and enhance the ability of an optional 28th regime LLCs to tap into them**, especially those that ease access to credit (be it securitised/tokenised or not), since it does not dilute equity or require any burdensome change in corporate governance. From a company law point of view, therefore, the legal framework must be flexible, offering a range of financing options that adapt to the company's changing needs, providing liquidity without compromising governance at this stage of its development.

b) The Case for Lending-Based Crowdfunding

In this sense, it is important to emphasise the success of **lending-based crowdfunding** across the EU,

especially after its uniform regulation (Reg (EU) 2020/1503): in fact, it is already the most important form of participative finance in Europe.¹⁶

Crowdfunding offers a faster path to finance and more flexible loan requirements compared to other traditional debt sources, which often involve stricter criteria and a longer application process. Crowdfunding is particularly suitable for businesses with credit scores that do not match banking standards or those that need capital within a short period of time. On the other hand, the distribution of the risk among a plurality of investors reduces the loss for each individual lender.

The following table summarises key data from the European crowdfunding market for 2023, based on a sample analysed by ESMA.

Crowdfunding Metrics (2023)	Value
<i>Total funding raised</i>	<i>Over € 1 billion</i>
<i>Share of loan-based funding</i>	<i>65%</i>
<i>Share of debt-based funding</i>	<i>17%</i>
<i>Share of equity-based funding</i>	<i>6%</i>
<i>Average amount per project (loan)</i>	<i>Approximately € 15,000</i>
<i>Share of retail investors</i>	<i>87%</i>

Source: ESMA Market Report on EU Crowdfunding (2024)

These findings suggest that companies under a potential 28th regime should be empowered to choose freely between crowdfunded loans and the issuance of **debt-based financial instruments** resembling bonds via crowdfunding platforms, an option not always available under current national regulations.

The latter would represent a significant enhancement to the crowdfunding framework, benefitting both

¹⁶ ESMA, *Market Report on Crowdfunding in the EU 2024 – European Union, 2024*, (<https://www.esma.europa.eu/sites/default/files/2025-01/ESMA50-2085271018-4039_ESMA_Market_Report_-_Crowdfunding_in_the_EU_2024.pdf>). This report indicates that in 2023, out of a total of over € 1 billion raised through crowdfunding, loans accounted for 65% of the funding, confirming it as the 'most common funding model'.

issuing companies and investors alike. While the legal nature of the investment would remain unchanged, the securitisation (or ‘tokenisation’) of these loans would enable investors to transfer their ‘bonds’ or ‘tokens’ if they choose to.

The transfer of these instruments could easily be facilitated through the adoption of **Distributed Ledger Technology (DLT)**. This solution could be smoothly implemented within the existing framework of the **DLT Pilot Regime Regulation** (Reg (EU) 2022/858), broadening its scope and contributing to a revitalisation of the struggling regulatory sandboxes¹⁷ that have been introduced so far. The DLT Pilot Regime is a perfect regulatory environment for this kind of innovation, as it is specifically designed to test the issuance, trading, and settlement of tokenised financial instruments. Using DLT would streamline transactions and reduce costs, potentially creating a new market for these assets.

c) Adding Securitised/Tokenised Profit-Participating Loans to the Mix

Building on the first proposal, a second suggestion can be formulated along the same lines of increasing access to debt without interfering with corporate governance structures and equity allocation. Companies operating under an optional 28th regime should be allowed to **raise profit-participating loans (PPLs) through crowdfunding platforms** and to securitise or tokenise them, as already explained for ordinary crowdfunded loans.

PPLs are a form of ‘quasi-equity’ that blends characteristics of both debt and equity, with the investor’s return based partially on the business’s profits or losses. This model is capable of aligning the interests of the investor with the company’s performance: the investor usually receives a fixed rate interest plus an indexed share of the company’s profits, allowing the company to meet its financial needs without being burdened by high returns to

investors (in periods of lower profitability, repayment becomes less burdensome, reducing pressure on the company’s liquidity and the risk of insolvency). PPLs also provide a non-dilutive financing alternative, enabling founders to maintain full corporate control without altering the governance structure.

The introduction of a uniform legal framework at EU level that enables 28th regime LLCs to collect PPLs through crowdfunding is not a theoretical idea; it already has practical precedents, such as the Portuguese law on crowdfunding (decreto-lei n 11/2022). This type of loan is already recognised and regulated in other European countries (such as Germany, France and Italy) too, but it is not uniformly integrated in their company legislation, with the result that different company structures can take advantage of this alternative financing method at different conditions. **If the European Crowdfunding Service Providers Regulation (ECSPR) harmonised the ‘channel’ (the platform), the 28th regime would offer a standardised ‘product’** (the company and its financial instruments), eliminating the ‘different conditions’ that currently exist among countries.

28th regime LLCs would greatly benefit from this increased choice of financial instruments that can be issued through crowdfunding platforms. This possibility would offer retail investors the opportunity to participate in a flexible model tied to business performance. It would also give SMEs a vital source of liquidity, mitigating the governance complexities and negotiation costs typical of traditional equity financing. Additionally, PPLs could also offer the advantage of introducing a variable factor into workforce remuneration, serving simultaneously as an inducement for workers to achieve management-set goals and a means of aligning their interests with those of the company to ensure more growth.

¹⁷ See ESMA, ESMA Report on the Functioning and Review of the DLT Pilot Regime – Pursuant to Article 14 of Regulation (EU) 2022/858, 2025, p 7 ff (<https://www.esma.europa.eu/sites/default/files/2025-06/ESMA75-117376770-460_Report_on_the_functioning_and_review_of_the_DLTR_-_Art.14.pdf>), which signals: ‘While only three entities have received full authorisation to date several others are actively progressing through national assessment procedures’.

d) Other Potential Changes to Improve Access to Early-Stage Financing: Microfinance, Incubators and Accelerators and their Synergies

In order to ensure effective and lasting support for SMEs, financing should be interwoven with a broader support infrastructure that fosters growth and resilience.

At EU level, despite being mentioned several times in various pieces of legislation and used in funds and programmes, **microcredit** (now more frequently referred to as ‘microfinance’) **lacks legal harmonisation**,¹⁸ resulting in a mixture of divergent regulatory frameworks.¹⁹ This fragmentation has led some countries to maintain a banking monopoly or to limit this form of finance to only a select group of potential borrowers.

To support entrepreneurial creation and growth across EU member states, a **regulatory framework that formally recognises non-bank microfinance institutions (MFIs)** as legitimate providers is needed. This could be achieved by allowing lending by non-bank entities after establishing a set of uniform legal requirements²⁰ and possibly also integrating them in the crowdfunding framework. The use of AI tools to evaluate the credit score of potential borrowers may also help to overcome informational asymmetries and to reduce the costs of typically large portfolios of micro-lending operations managed by each MFI.

There is also another advantage: MFIs may be subsidised – as is already the case at national and EU level – or otherwise stimulated to tackle certain specific goals by means of impact investing. For example, they could fund the research and development of new financial products in fields

such as sustainable agriculture or renewable energy. MFIs could also support unemployed individuals in starting entrepreneurial ventures in depressed regions or economically relevant sectors, or help disadvantaged groups (eg women, young people, migrants, senior citizens, people with disabilities) become self-employed.

e) A Harmonised Legal Framework for Incubators and Accelerators

The absence of a uniform legal framework at EU level for incubators and accelerators represents a barrier to cross-border collaboration and the development of a cohesive ecosystem. To help overcome the first ‘valley of death’, as previously discussed, the 28th regime legal framework could be combined with a proposal to **level the playing field for incubators and accelerators across EU member States**, establishing a common array of services they may provide (space provision, training, mentoring, among others) and eventually differentiating them based on their activity (as accelerators usually take an ownership stake in the enterprises they host, in contrast to incubators, which typically only collect rent for the space provided). This differentiation would require a tailored set of requirements that would not be too difficult to establish, reflecting what happens in the market, and it would create a more consistent environment in the EU, making it easier for interested SMEs to recognise the kind of subject they are dealing with and identify the possible outcomes of their interaction. A harmonisation of regulation related to incubators and accelerators would also give potential hosts a higher degree of certainty about their level of professionalism and it could incentivise the creation of transnational networks. These networks, some of which are already in place on a voluntary basis, can facilitate ‘knowledge exchange’ and create a ‘peer-to-peer learning’ environment that provides crucial

¹⁸ There is only one piece of soft law, the European Code of Good Conduct for Microcredit Provision, which provides a detailed set of common standards for the operation of, and reporting by, microfinance providers: microfinance institutions must commit to comply with it to access EU funding.

¹⁹ European Microfinance Network, *Microcredit regulation in Europe: An overview*, 2024, p 3 ff (<https://www.european-microfinance.org/wp-content/uploads/2025/04/mainReport_NEW_2024_FINAL-1.pdf>).

²⁰ See: European Commission - Expert Group Report, *The Regulation of Microcredit in Europe*, 2007, p 28 f (<<https://ec.europa.eu/docsroom/documents/3669/attachments/1/translations/en/renditions/pdf>>); European Commission, *Microfinance in the European Union: Market analysis and recommendations for delivery options in 2021-2027*, 2020, p 70 ff (<<https://ec.europa.eu/social/BlobServlet?docId=23029&langId=en>>).

support for SMEs facing growth challenges.

It could be very useful to **combine the forces of microfinance with incubators and accelerators, allowing them to act as microcredit intermediaries or partners.**

This model also has another advantage, since it is not entirely new: European programmes like the ‘Social Inclusive Finance Technical Assistance (SIFTA)’ already support ‘business incubators or business accelerators interested in expanding services to financial support’. The mandate of the European Investment Fund (EIF) also includes the financing of ‘micro-credit providers’ and investment in ‘business incubators’. This integration ensures that financial support is paired with intangible resources usually made available by incubators and accelerators, maximising the potential for business success, especially for innovative companies.

3. Scaleups and the Second ‘Valley of Death’

A company’s transition from the startup to the scaleup phase – a process requiring significant expansion of the business, team, and customer base – is one of the most difficult challenges in the corporate life cycle. In this context, Europe faces a persistent growth ‘gap,’ often described as the **scaleup ‘death valley’**. This deficit is clearly shown by the data: between 2008 and 2021, almost 30% of European ‘unicorns’ (privately held companies valued at over € 1 billion) relocated outside the EU, and only 8% of global scaleups are based in Europe. The European Investment Bank (EIB) highlights that EU scaleups raise, on average, half the capital of their Silicon Valley counterparts, a figure that reveals an insufficient supply of late-stage growth funding.²¹ This information is complemented

by a survey by the EIF which reports that 66% of the venture capital fund managers interviewed said there were insufficient financing opportunities for companies to scale up in Europe.²²

Differences in company laws, securities regulations, and tax provisions, unwarranted gold plating and supervisory inconsistencies across various Member States create a significant obstacle for the flow of capital across national borders. This fragmented landscape acts as a multiplier of risk and transactional costs for investors. Despite a marked and prolonged decline that calls the reliability of this funding channel into question, especially in Europe, for a venture capital fund that intends to finance a pan-European scaleup, the need to navigate a mosaic of legal and compliance obligations for each market represents an immense operational burden. Consequently, it is simpler and more economical for these investors to concentrate their capital in a unified and more predictable market such as that of the United States. This legal uncertainty and the resulting scarcity of capital in the growth phase are among the main reasons that push European companies to seek financing abroad.

a) Designing an Agile and Flexible Capital Structure

A flexible capital structure is indispensable for balancing the often-conflicting interests of founding shareholders, who wish to maintain control and who have a long-term vision, and investors, who aim for high returns and liquidity. The 28th regime should, therefore, integrate and harmonise the most effective innovations already present in the European legal landscape for **issuing diversified share classes** in Europe.

A first fundamental component would be **maximum**

²¹ European Investment Bank, *The scale-up gap. Financial market constraints holding back innovative firms in the European Union*, 2024, p 4 (<https://www.eib.org/attachments/lucalli/20240130_the_scale_up_gap_en.pdf>).

²² Kraemer-Eis, Croce, *EIF VC Survey 2023: Market sentiment, scale-up financing and human capital*, *EIF Working Paper Series n 2023/93*, 2023, p 41 (<https://www.eif.org/news_centre/publications/eif_working_paper_2023_93.pdf>).

openness to multiple-vote shares (MVs).²³ The new EU Directive 2024/2810, which guarantees the recognition of such structures for companies that intend to list on Multilateral Trading Facilities (MTFs), establishes a favourable legal precedent. The proposed regime would extend this principle to unlisted scaleups, allowing founders to attract capital without ceding decision-making control.

Additionally, the regulatory framework for 28th regime LLCs ought to provide for the establishment of **shares with limited or conditional voting rights** (already permitted in several EU member states), such as **veto power over certain resolutions**, including, but not limited to, alterations to the governance structure, changes to the corporate purpose or the very existence of the company, or the transfer of shares to non-European investors. This would complement the range of tools aimed at balancing the retention of corporate control with long-term strategic objectives, while also giving certain shareholders a voice in important decisions that could deeply impact the company.

To facilitate all forms of investment and to accommodate other interests related to equity participation, there should be **broad freedom to modulate the financial rights attached to company shares**. This would allow for the creation of share classes with **preferential rights to profits or subordinate rights in losses, tracking shares** (linked to the company's overall performance or specific sectors), or even **redeemable shares**.

The Austrian FlexCo regime, with its 'company value shares' (CVS (*Unternehmenswert-Anteil*)), non-voting shares designed to grant holders rights to profits and liquidation proceeds, is another confirmation of how modern corporate vehicles can effectively integrate hybrid instruments for financing and remuneration.

Finally, **there should not be a rigid correlation between the strengthening or weakening of administrative rights and financial rights**.

Furthermore, the regime should permit the issuance of **quasi-equity instruments**. In this area, the Italian legal system offers a useful example with its *strumenti finanziari partecipativi* ('participatory financial instruments', SFP). These instruments allow a subset of the national LLC company type (srl PMI and srl innovative start-ups) to raise funds by granting investors specific economic and administrative rights, but without surrendering equity stakes. SFPs represent an intermediate solution between risk capital and debt, offering a way to finance the company without immediately diluting the founders' ownership.

The proposed 28th regime should aim to **simplify the circulation of financial instruments to the maximum extent possible**, a key step in easing cross-border investments. This simplification would be achieved by leveraging new digital infrastructures, while still maintaining strict AML, KYC and counter-terrorism safeguards. Every unnecessary formality would be removed by integrating the capabilities of the European Digital Identity Wallet (EUDIW – provided by Reg (EU) 2024/1183) and DLT. The **EUDIW**, which all member states must provide by 2026, would allow for the secure, cross-border electronic signing and storage of important digital documents. Concurrently, the EU's **DLT Pilot Regime** provides a legal framework for the trading and settlement of 'tokenised' financial instruments. By combining the EUDIW's secure identity authentication and digital signature functions with the DLT framework for legally recognised digital securities, the regime would minimise administrative friction. While this will not automatically create a liquid secondary market for these securities, it would mark a crucial first step in making cross-border financial transactions more efficient and transparent for companies and investors.

The creation of a unified regime that synthesises these best legal practices, from Italy to Austria, would help to fill a gap in the European landscape. The current difficulty for institutional investors to

²³ Non-proportional voting rights or particular rights can be introduced also in the Societas Europaea Simplificata (SES), a model company proposed by the 'Henri Capitant' Association (Art 4.2.2.3.12 (2), <<https://www.henricapitant.org/wp-content/uploads/2023/10/Livre-4-Droit-des-societes.pdf>>)

channel capital between different countries, due to regulatory hurdles, would be significantly reduced. **The 28th regime does not need to be an entirely new type of company, but a strategic platform that draws on the best existing regulations**, creating a comprehensive and competitive corporate vehicle.

b) Attracting Talent: The ‘Work for Equity’ Model

Share-based remuneration plans, known as **‘work for equity’**, are a cornerstone for high-growth companies that often operate with limited cash reserves. Such mechanisms are strategic not only for retaining the best talent, but also for aligning employee incentives with the company’s long-term success, creating a sense of **shared ownership** and reinforcing the **purpose-orientation of the company**.

However, the implementation of these plans in the EU is made extremely complex by the lack of a unified legal and fiscal framework. Differences in national regulations lead to a confusing situation where the taxation system varies significantly from one Member State to another. A common problem is the taxation of so-called ‘dry income,’ where employees are taxed on unrealised gains at the time of the granting or exercise of stock options, before any actual liquidity.

To overcome these barriers, the 28th regime should propose a harmonised and fiscally efficient framework. A reference model could be the German *Fondsstandortgesetz* (‘Fund location law’), which allows for the deferral of taxation on share gains until a liquidity event, such as a sale or an IPO. Such an approach would solve the ‘dry income’ problem and provide a clear and predictable set of rules for ‘work for equity’ plans, share valuation, and transferability. The following comparative table highlights the great disparities between some of the current systems, demonstrating the potential advantages of a unified taxation for 28th regime companies.

Feature	Proposed 28th Regime	Italy	Germany	Austria
Tax Deferral	Yes, until liquidity event	<ul style="list-style-type: none"> • Possible under specific frameworks for innovative startups (decree-law 179/2012) • Tax exemption with a cap and, under certain conditions, for all companies (law 76/2025) 	Yes, up to ten years or liquidity event, for SMEs	Variable, depending on taxation (ordinary income vs special payments)
'Dry Income' Treatment	Automatic tax deferral	Partially resolved by tax benefits for innovative startups	Mitigated by tax deferral	Taxable upon exercise
Qualification Conditions	Harmonised framework for startups and scaleups	For 'innovative startups' and 'innovative SMEs' and, under certain conditions, for all companies	For SMEs with less than ten years of operation that meet size criteria	Variable; a plan extended to a broad range of employees who can enjoy benefits
Permitted Instruments	Shares, quasi-equity instruments	Shares, participatory financial instruments	Shares, options, under specific conditions	Share options and other instruments

c) Investor-Company Relations

The current macroeconomic context has impacted the venture capital market. A recent survey by the EIF revealed that 50% of VCs are concerned about exit strategies and the near-total absence of new IPOs.²⁴ The lack of liquidity events has prompted investors to demand more protective investment terms, with an increase in liquidation preferences at higher multiples (1.5x, 2x, or more) and the inclusion of redemption rights.

²⁴ See A Botsari, F Lang, *EIF VC Survey 2024: Market sentiment*, 2024, p 28 ff (<https://www.eif.org/news_centre/publications/eif-vc-survey-2024-market-sentiment.pdf>) for complete data and the following remarks: 'The exit environment is still perceived challenging by almost half of the surveyed VCs, and exit prices have decreased, on balance, for the third year in a row. This is echoed in the fact that over the past 12 months, insolvencies increased further and even reached a record-high value in the time-series of the survey results. By contrast, trade sales and IPOs have decreased significantly, with IPOs in particular falling to an all-time low in the survey record of these data'. See also at p 38 ff, for data about exit challenges.

The 28th regime must codify a balanced approach to these dynamics. While it is legitimate for investors to require liquidation preferences as protection against losses, it is essential to avoid terms that could compromise the company's future financial stability. The regime should **mitigate clauses such as 'full participating' preferences** (which allow investors to 'double-dip', ie, get their multiple and participate pro-rata in the remaining distribution), which can create significant misalignments with founders and other categories of shareholders, making subsequent funding rounds unfeasible. The legal framework should also **regulate redemption rights** to prevent a company from being forced to liquidate large sums of cash to repay investors, thus depleting its resources. The goal is to create a predictable environment that attracts capital by offering clear protections, without undermining the long-term growth of the financed company.

d) The Paradox of Growth: Capital Increases and Minority Rights

A further and specific legal difficulty that hinders the scaleup phase is the shareholders' right of withdrawal. In some jurisdictions, and especially in Italian company law (art 2481-*bis* cc), a resolution for a capital increase reserved for third parties (a common mechanism for acquiring financing from new investors) can constitute a cause for withdrawal for shareholders who did not consent to the decision, or it can be challenged in court if it amounts to an abuse of majority power (as may occur in Spain, France or Germany, for example²⁵). This may create a fundamental paradox: the very act of raising capital to finance growth can, in turn, trigger an onerous and potentially destabilising request for liquidation from existing shareholders.

The right of withdrawal, while an important protection for minorities, applied in this context can become a critical obstacle to growth. Its application reflects an obsolete corporate model that favours the static value of a share over the dynamic and long-term

interest of the company as a whole. The protection of the dissenting shareholder, who fears the dilution of their stake, clashes with the company's need to expand and compete in the global market.

To overcome this friction, the 28th regime should explicitly provide for statutory provisions that allow for **capital increases reserved for third parties without triggering the shareholders' right of withdrawal or preventing them from challenging the resolution in court.**

An effective approach would be to require a qualified majority for the approval of a capital increase resolution. For example, a qualified majority of two-thirds of the share capital would provide a robust legal basis to overcome the minority shareholders' objection. The main argument in favour of this approach is that **such a broad and qualified consensus demonstrates a clear will of the majority to pursue the long-term interests of the company**, subordinating the individual right of withdrawal to a primary corporate objective.

Another complementary option could be to activate the right of withdrawal only if the capital increase causes a **dilution that exceeds a certain predefined percentage threshold** for existing shareholders. This would protect the minority from excessive dilution while allowing the company to proceed with the investment rounds necessary for its growth.

Finally, the legal framework concerning the **valuation of a withdrawal share** in European states is highly fragmented. However, a common principle emerges from both legislative texts and case law: even where specific statutory provisions exist, the share due to the withdrawing partner generally cannot exceed the 'valore effettivo' (Italy), the 'wahrer Anteilswert' (Germany), the 'Angemessenheit' (Austria), the 'valor razonable' (Spain), and the 'valeur d'actif net' (Belgium). **This criterion** (or criteria) **should be explicit and uniform** to prevent forum shopping and abuses stemming from unclear regulations,

²⁵ A withdrawal right is present also in Art 4.2.2.3.15 (2) of the SES regulation, as proposed by the 'Henri Capitant' Association: 'Without prejudice to any other circumstances that may be provided for in the statutes, a shareholder may withdraw at their request in the following circumstances: [...] the majority shareholder(s) have adopted one or more decisions which have seriously harmed the interests of the withdrawing shareholder, for the sole purpose of favouring the majority shareholders to the other shareholders' detriment'.

while simultaneously safeguarding the company's stability and ensuring predictability for such exits.

4. Recommendations

In light of the foregoing, the following recommendations are advanced:

1. **Consider Strengthening Alternative Finance Channels:** Strengthen the use of alternative finance, especially lending-based crowdfunding, to help startups overcome the 'first valley of death'. This may provide a more accessible financing option than traditional bank loans.
2. **Consider Integrating Profit-Participating Loans (PPLs):** Enable companies under the new regime to raise PPLs through crowdfunding platforms and to securitise/tokenise them. This model can align investor interests with company performance without diluting founder equity.
3. **Consider Harmonising Microfinance and Incubators:** It is suggested to create a legal framework that formally recognises non-bank microfinance institutions (MFIs) and establishes uniform standards for incubators and accelerators. These two entities should be allowed to combine forces, ensuring financial support is paired with crucial intangible resources like mentoring and training.
4. **Consider Allowing Flexible Capital Structures:** The 28th regime should permit the use of MVSs and shares with limited or conditional voting rights to allow founders to attract capital while retaining control.
5. **Consider Harmonising 'Work for Equity' Rules:** Implement a unified, fiscally efficient framework for share-based remuneration plans. A key feature should be the deferral of taxation on share gains until a liquidity event occurs, solving the 'dry income' problem.
6. **Investor-Company Relations:** Codify a balanced approach to investor terms. The regime should mitigate clauses such as 'full participating' liquidation preferences and regulate redemption rights to

prevent financial instability for the company.

7. **Consider Protecting Against 'Paradox of Growth':** Explicitly provide for statutory provisions that allow for capital increases reserved for third parties without triggering a shareholder's right of withdrawal.
8. **Consider Utilising Digital Infrastructure:** Simplify cross-border transactions by removing unnecessary formalities through the integration of the European Digital Identity Wallet and the DLT Pilot Regime for secure, transparent financial transactions.

There are many other tools that can meet the financing needs of a growing company, but the interventions highlighted in this Response are likely some of those most urgently needed to harmonise company law. This would allow for the maximum possible access to external financing sources while at the same time preserving the complex balance between growth, founders' control, employee participation, and the preservation of the company's original purpose. There is no absolute order or sequence for using these financial tools. The one illustrated is a simplification aimed at better identifying which interventions could be used to make the 28th regime more robust and attractive. Combined with the use of model articles of association and model shareholders' agreements, these proposals can greatly help reduce the transactional costs associated with the start-up and scale-up of a company on a pan-European scale.

V. Other Issues

1. Alternative Ownership Forms

a) Introduction

Europe is characterised by a diversity of ownership forms deviating from conventional for-profit ownership. These include cooperatives, financial mutuals, enterprise foundations, cooperatives, steward ownership and employee-owned companies. This diversity could be seen as an asset in Europe's quest for innovation and competitiveness.²⁶

Because of large differences in national law and regulation, alternative ownership forms face very diverse conditions in different European countries, which prevents them from reaching their full potential at the European level and thus limit European competitiveness. The alternative ownership forms all engage in business activity and offer an alternative to conventional ownership structures such as investor ownership, family businesses or government ownership. Despite not having access to the financial resources and public attention of conventional business companies, they continue to be an important part of the European business landscape. They are tenacious entities with high survival power in part because they tap into the communities in which they exist and can draw on sources of motivation, including a degree of idealism, that are not accessible to conventional business. Many of them are purpose-driven rather than profit-driven despite being businesses that have to pay their bills. They are long-term because they do not exist merely to make money. They thus constitute an untapped source of sustainable

European competitiveness. These businesses and the people who run them care about their economic activity and their contribution to society. Opening opportunities for business succession of workers and social communities may also be an important tool in helping to unleash the innovative potential of SMEs in a socially inclusive economy.

Therefore, these alternative ownership structures, which enable founders to freely choose to keep their businesses independent and to take a purposeful long-term perspective, should be included in the discussion of a 28th regime.

b) Purpose

Over the last decade, there has been an important discussion on the role of corporate purpose.²⁷ Innovative legal forms, especially the French *société à mission*, have introduced tools that allow a company to commit to a common-good purpose in a meaningful way, backed up by governance tools that make the commitment reliable. In Italy, the *società benefit* has followed a similar path, also supporting purpose-oriented entrepreneurship. It has built on the example of the US-American benefit corporation²⁸ but has adopted a different approach with respect to governance.²⁹ In case of the *société à mission*, such tools include a board supervising how the company lives up to its commitments. It is not the place here to discuss this movement in greater detail. However, a legal form introduced or harmonised under the 28th regime may allow founders wishing to do so the flexibility to commit to such a purpose and introduce governance benefitting from the French and Italian experience.

²⁶ See the in-depth analysis on the scope of the 28th regime prepared on request of the JURI Committee by Anne Sanders (available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA\(2025\)776311_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA(2025)776311_EN.pdf)>).

²⁷ Colin Mayer, Firm Commitment, 2013; Colin Mayer, Prosperity – Better Business Makes the Greater Good, 2018; Klaus Hopt, Corporate Purpose and Shareholder Value, in: Jens-Hinrich Binder, Klaus J Hopt and Thilo Kuntz (eds) Corporate Purpose, CSR and ESG (2024) p 17.

²⁸ See Part II, in: Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds), The International Handbook of Social Enterprise Law – Benefit Corporations and Other Purpose-Driven Companies (2023).

²⁹ Livia Ventura, Social Enterprises and Benefit Corporations in Italy, in: Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) The International Handbook of Social Enterprise Law – Benefit Corporations and Other Purpose-Driven Companies (2023) p 651.

c) Employee Ownership

The company law of the 28th regime should be flexible enough to allow employees to participate in the value creation of the business. Granting co-ownership to employees is a common way to retain talent in cash-constrained high-tech startups. While addressing the challenge of business succession of SMEs in Europe is not the goal of the 28th regime, the ESOP model, the other financial instruments previously described and tools for workers' buyout will give workers a voice in the governance of the company and align their interests with its success (or recovery) combining in a single vehicle various solutions that already exist at national level.³⁰ When designing such options, it should be borne in mind that providing shares below value to workers may have undesirable effects in national tax law (in Germany so called 'dry income problem').

d) Enterprise Foundations

Enterprise foundations – defined here as foundations or similar non-profit entities that own controlling shares of business companies – provide a solid long-term ownership base for the creation of competitive, purposeful European companies.³¹ Examples include AP Moller – Maersk, Anheuser Busch Inbev, Bertelsmann Robert Bosch, CaixaBank, Carl Zeiss, Carlsberg, Inter IKEA, Investor AB, Kavli, Kuehne + Nagel, Lloyds Register, Norske Veritas (DNV GL), Novo Nordisk, Pierre Fabre, Rolex, Giorgio Armani and many others.

Academic research shows that these businesses are not only profitable and competitive, but sustainable in terms of both environmental and social responsibility.³² They are governed and managed for the long term³³ and their unique ownership structure

keeps these valuable businesses headquartered in Europe. For founders who wish to secure the purpose of a company and to protect its employees and other stakeholders, the foundation structure is a natural choice. The structure allows the foundation-owned companies to grow without fear of takeover as long as the business remains profitable.

While innovative companies may start as foundation-owned from the beginning, if founders wish to secure the purpose of the company, a more likely scenario is that they are used as a mode of ownership succession (for example in the founder's will). At this point, companies will usually be larger and more mature than startups, but they may still have substantial innovation potential. Transition to enterprise foundation ownership will allow such companies to stay on course and potentially grow into a large multinational without being acquired by international competitors when ownership is diluted by a full public listing or inheritance. Major Danish firms like AP Moller – Maersk, Carlsberg and Novo Nordisk show that this ownership form can provide an appropriate environment for scaleups. Foundation-owned companies can trade some of their shares to raise capital while control is retained by the foundation.

Nevertheless, national legal barriers artificially curtail the creation and growth of enterprise foundations in Europe.³⁴ In many jurisdictions including France, there is uncertainty about whether it is an acceptable purpose for a foundation to be a responsible long-term owner of a business company. Secondly, foundation law and foundation tax law often prevent foundations from acting as active owners for fear of engaging in business activities and being taxed as business entities. However, to exercise responsible long-term ownership, it is crucial that enterprise

³⁰ See the ESF+ Study on Workers' Buyout (2025) <<https://www.fi-compass.eu/esfplus/workers-buyout>>; the work of <<https://ied.si/en/>> and Part 3, in: Marija Bartl, Rutger Claassen, Nena van der Horst (eds) Whitepaper Sustainable by Design (2024); see for a US perspective: <<https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing>>.

³¹ Steen Thomsen and Nikolaos Kavadis, Enterprise Foundations. Law, Taxation, Governance, and Performance. *Annals of Corporate Governance* (2022) Vol 6, No 4, 227, 293–294.

³² David Schröder and Steen Thomsen, Foundation Ownership and Sustainability. *Journal of Corporate Finance*, 91, Article 102740. <<https://doi.org/10.1016/j.jcorpfin.2025.102740>> (2025).

³³ Steen Thomsen, C Børsting, T Poulsen, and J Kuhn, Industrial foundations as long-term owners. *Corporate Governance: An International Review*, 26(3) (2018), 180–195.

³⁴ Anne Sanders and Steen Thomsen (eds), *Enterprise Foundation Law in a Comparative Perspective*. Intersentia (2023).

foundations can ensure that their subsidiaries act accordingly, and this requires active ownership. They must also be able to react if subsidiaries are not managed efficiently. This is not only a question of the law of groups, which is regulated differently in different member states, but also of foundation law.

ELI's **Enterprise foundations in Europe** project,³⁵ the outcome of which is to be published in 2025 or early 2026, sets out an enterprise foundation model law. This model law could provide a legal framework for a 28th regime for enterprise foundation law in Europe. Given the diversity of national foundation laws, harmonisation on the European level appears difficult and, thus, a new approach may be called for. However, the proposal for a European Foundation³⁶ pursuing a public benefit purpose was not successful, despite there being agreement among Member States that foundations may pursue the public good. Foundations pursuing economic activities could be even more controversial. Therefore, the model law for Enterprise Foundations is designed not only with a view to potential European legislation but also to provide inspiration to Member States to reassess and possibly reform their own foundation law.

e) Steward Ownership

In steward ownership, a business is controlled by stewards acting in the interest of the business, while profits are seen as a means to an end that should mainly strengthen the business but may also support charitable causes. Stewards should stay closely connected to the business and not sell their position or pass it on through inheritance. Though stewards are paid for their work in the business, profits may not be distributed to them. This does not mean that investment in steward-owned businesses

is impossible – rather it means that investors do not receive control rights over the business. They can invest in shares without voting rights, use revenue-based finance and mezzanine capital.³⁷

This non-distribution constraint is often described as a complete capital or asset lock, a concept familiar from foundations, charitable entities and special legal forms for social enterprises.³⁸ Enterprise foundations are sometimes described as one form of steward ownership. Other legal structures used to implement the concepts include perpetual purpose trusts in the US³⁹ and veto-share models in Germany that prevent a change of articles of association blocking profit distribution.⁴⁰ All of the various forms aim at the long-term orientation that has proved so beneficial for enterprise foundations.

Highly innovative businesses such as Open AI,⁴¹ Patagonia and Ecosia, Europe's largest independent search engine,⁴² show that such structures can be attractive for entrepreneurs who want to communicate the importance of long-term orientation and values beyond profit maximisation. By irrevocably separating power in the business from profit orientation, founders can be sure that their successors will also not make business decisions because of personal profit interests but in the best interests of the business. Businesses using such structures range from media companies, that wish to maintain their independence, traditional family businesses, wishing to secure a long-term perspective, food retailers to cyber security companies. The structure could also be used for critical infrastructure projects.⁴³

On a continent undergoing demographic change, newly established European businesses need good arguments to persuade **young talent** to work for

³⁵ <<https://www.europeanlawinstitute.eu/projects-publications/current-projects/current-projects/eli-enterprise-foundations-in-europe/>>.

³⁶ Proposal for a Council Regulation on the Statute for a European Foundation COM(2012)35.

³⁷ See for the concept: *Purpose Foundation, Steward Ownership* (2021) pp 9–16; *Anne Sanders and Noah Neitzel, Steward Ownership – Concept, Potential and Implementation in Germany and the Netherlands* available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5178366>.

³⁸ *Antonio Fici, A statute for European cross-border associations and non-profit-organizations* (2021) p 65; see also the chapters in Dana Brakman Raiser, Steven A Dean and Giedre Lideikyte Huber, *Social Enterprise Law* (2023).

³⁹ *Susan N Gary, The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 *University of Cincinnati Law Review* 707, 725–729 (2020).

⁴⁰ *Purpose Foundation, Steward Ownership* (2021) p 17–19.

⁴¹ Open AI still uses a non-profit structure; however, with a for-profit arm closely connected to Microsoft, see Hao, *Empire of AI*, 2025.

⁴² <<https://www.ecosia.org/>>.

⁴³ See for case studies: *Purpose Foundation, Steward Ownership* (2021) pp 41–100.

them even though a new business is often not able to pay full market salaries. In an exit-oriented startup, employees can participate in the growing value of the company when the company is sold to the highest bidder. In a long-term oriented startup with an asset lock, employees can be confident that a founder cannot gain a financial advantage when they sell the company while the employee accepted a lower than market wage to help the company's mission. Moreover, within a steward-owned business, control might be handed to the next generation without the need to buy the business, thus making it easier to hand over a business to workers or other interested parties, who will also pass on their position to the next generation of stewards, not investors.

In both Germany and the Netherlands, initiatives advocating **new legal forms** to allow SMEs to implement steward ownership have gained political traction. In Germany, the introduction of a new legal form for steward-owned businesses is part of the coalition agreement of the 2025-2029 government.⁴⁴ In 2024, at the request of three rapporteurs in the German parliament, an academic working group developed a new draft law to establish a 'steward-owned company' as a distinct legal form. This distinct legal form has members not shareholders and a special governance structure to safeguard the principles of steward ownership.⁴⁵ In early 2025, researchers and practitioners submitted a draft with principles for a Dutch legal form for steward-owned businesses to the Dutch Minister of Justice, following a parliamentary resolution of April 16, 2024. The Dutch ideas build on the Dutch limited liability company, the BV.⁴⁶

A European legal entity for steward-owned businesses seems unlikely, as supranational forms have faced challenges in the past and steward ownership is

not (yet) widely known in Europe. The proposal for a European Cross Border Association could be helpful for steward-owned businesses, because it allows economic activity as long as profits are not distributed. However, a public benefit purpose is necessary, and an association is not a legal form designed for economic activity.

A more realistic path than the introduction of a distinct supranational legal form is to support Member States in their experimentation with distinct corporate forms for steward ownership, such as currently developed in Germany and the Netherlands. In this way, a member state may also choose appropriate governance mechanisms and adjust these legal forms to national tax law, ensuring tax neutrality, and avoiding both discrimination as well as a preferential tax treatment of steward-owned businesses.

In the 28th regime, Member States could be requested to ensure that steward ownership can be implemented as an option in some form or another, either with a distinct legal form, an effective legal design supporting enterprise foundations or by designing appropriate articles of association of a company. Elements of steward ownership could be introduced as options in the 28th regime by providing sufficient flexibility to allow founders to adapt steward-ownership elements to their needs.

Transparency as regards such a special structure could be created through registration.⁴⁷ The implementation of governance structures like a mandatory audit, supervisory board or membership in a supervisory association would be advisable and could be chosen by Member States in line with their legal traditions. In case such entities aim to qualify as charities under national law, they must, of course, act in accordance with the specific national charity and tax laws.

⁴⁴ CDU, CSU, SPD, Verantwortung für Deutschland, Koalitionsvertrag 2025-2029 (2025) para 2815–2819. The idea was already part of the coalition agreement of the previous German government. See on the first drafts *Anne Sanders*, Binding Capital to free purpose: Steward Ownership in Germany, 19 ECFR 622 (2022); which was discussed controversially. For a critical assessment in English, see *Birgit Weitemeyer*, Germany in Dana Brakman Raiser, Steven A Dean and Giedre Lideikyte Huber, *Social Enterprise Law* (2023) p 249, 268.

⁴⁵ *Anne Sanders, Barbara Dauner-Lieb, Simon Kempny, Florian Möslin, Noah Neitzel and Christoph Teichmann*, Gesetz zur Einführung einer Gesellschaft mit gebundenem Vermögen (2024).

⁴⁶ For the German and Dutch discussion and proposals for legislation, see: *Anne Sanders and Noah Neitzel*, Steward Ownership – Concept, Potential and Implementation in Germany and the Netherlands available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5178366>.

⁴⁷ See for that the proposal of *Florian Möslin*, Simplification of Registration of Companies in the 28th regime (2025) 3.3.

f) Tax Law

It should be borne in mind that national tax laws could affect the attractiveness of alternative ownership structures. While preferential tax treatment should not be offered unless charitable purposes are pursued, tax rules may discourage usage in the same way that the use of shares that allow workers to participate in the growing value of the company may be a challenge from a tax perspective.

g) Recommendations

1. See the diversity of **alternative ownership structures as a potential source of innovation and long-term orientation** that serve to assist rather than impede European competitiveness.
2. Consider giving entrepreneurs the **legal tools to commit to purpose, innovation and long-term strategies**.
3. Consider introducing tools to support **worker ownership** that are both helpful for tech-startups as well as for resolving the succession crisis of European SMEs.
4. Consider encouraging member states to reform national laws to **allow enterprise foundations**, taking into consideration the recommendations of the ELI project.
5. Consider granting entrepreneurs greater flexibility to **use elements of steward ownership**, such as multiple voting rights and veto-share models in the design of their companies.

In times of global adversity, it should not necessarily be the goal to become similar to Europe's global competitors, but perhaps rather to build a more innovative, competitive economy on the basis of European values for the benefit of Europeans. Alternative ownership structures may be an important tool in growing innovative companies in a European style.

2. Conflict Resolution

a) Adjudication as a Challenge of the 28th Regime

European innovative companies operating under the 28th regime might face the challenge of legal uncertainty if legal rules were applied diversely in different languages all over Europe, creating uncertainty and legal fragmentation. Such legal fragmentation and language barriers might discourage international investors. A solution could be – as suggested by the JURI draft report of the European Parliament – to establish a transnational European court, or specialised courts in the Member States, that are competent for deciding cases arising in relation to the 28th regime.⁴⁸ An example for a transnational European court could be the recently established Union Patent Court (<<https://www.unifiedpatentcourt.org/en>>), based on an agreement signed by (some) EU Member States. In Member States such as France, the Netherlands and Germany, commercial courts were recently established to offer businesses quick procedures of high quality in English, and Denmark, for example, has had a specialised maritime and commercial court since 1862, which hears cases in English. Such national initiatives could be taken into consideration and might be more cost-effective for parties as compared with a transnational European court.

Such courts must have highly competent judges, efficient procedures, and there should be at least an option to litigate cases in English, and to protect business secrets. A uniform application of the law concerning the 28th regime could be encouraged through organised exchange between these judges, building on European networks such as the EJTN (European Judicial Training Network).⁴⁹ While many businesses might still prefer arbitration, such specialised public courts may be a cheaper alternative and ensure that the law is applied uniformly throughout Europe.

⁴⁸ IMF Working Paper – Lifting Binding Constraints on Growth in Europe (2025) p 13.

⁴⁹ <<https://ejtn.eu/about-us/>>.

b) Recommendations

1. To ensure the uniform application of the law and reduce language barriers, **qualified national or European courts or judges** could be considered for deciding cases in relation to the 28th regime.
2. Such courts should offer **efficient procedures by competent judges in English** during which **business secrets are adequately protected**.

For the 28th regime to be successful, not only material law should be discussed, but also conflict resolution by competent, efficient courts which respect the needs of entrepreneurs and investors and offer litigation in English.

3. Insolvency law

a) Legal Landscape

The EU is experiencing a period of intense legislative reform, with two parallel initiatives aiming to reshape the business landscape. On the one hand, the proposal for a 28th regime seeks to establish an optional corporate legal framework that coexists with the national laws of the 27 Member States. On the other hand, in December 2022, the European Commission proposed a Directive to further harmonise insolvency laws (COM (2022) 702 final), addressing issues such as procedural efficiency, asset recovery, and the protection of creditors' interests.

The ongoing work on harmonising insolvency laws presents a unique opportunity to equip the 28th regime with a simplified and value-preserving insolvency framework. This solution is another essential building block to overcome the challenges posed by fragmented national regimes, which currently hinder the cross-border growth of SMEs and start-ups.

b) Simplified Winding-up and Restructuring Proceedings

Companies under the 28th regime, or at least small- and medium-sized limited liability companies (whose failure rate is up to 90% in some countries, with 10% of start-ups not surviving the first year⁵⁰), should be subject only to simplified voluntary liquidation or restructuring proceedings. This approach is based on the successful experience of national legal frameworks, particularly the Italian regime for innovative start-ups (dl 179/2012), which exempts them from ordinary bankruptcy proceedings. To incentivise timely action and prevent value destruction, a key element of the proposed insolvency framework is the introduction of harmonised liability for directors who fail to file for insolvency within a predefined period, as already envisioned in the proposed Insolvency Directive.

c) Workers' Protection

The insolvency framework of the 28th regime must go beyond simple economic efficiency to include mechanisms that also preserve workers' interests as well as social and employment value. In this regard, the law could incentivise and facilitate workers' buy-out (WBO) operations, possibly linked to the existence of special classes of shares issued to workers, and the recognition of steward-owned companies during crises.

AWBO is an operation in which employees of a company, often in times of crisis, acquire ownership and control of the business, usually by creating a cooperative. This model represents a reactive solution to a crisis, aimed at preventing closure and liquidation.

Experiences in various member States show that WBOs can preserve company assets, productive know-how, and employment levels, transforming workers into owners and entrepreneurs. One could suggest that the 28th regime include specific provisions that simplify and accelerate the transfer of assets and the conversion into cooperatives during

⁵⁰ The last Report from Eurostat (European business statistics methodological manual for business demography statistics, 2025, p 152, <<https://op.europa.eu/en/publication-detail/-/publication/94ba422e-57bf-11f0-a9d0-01aa75ed71a1/language-en>>) show a 20% failure rate in the first year and a five-year failure rate overall of 55%.

an insolvency procedure when the business is still economically viable.

The insolvency law of the 28th regime could also explicitly recognise and protect steward-owned companies or cooperatives formed by workers to perform a WBO, preventing control rights from being transferred to third parties not aligned with the company's mission during a financial crisis. This would protect the intangible value of the company, its purpose, and its long-term independence.

d) Recommendations

1. The EU should consider taking the opportunity to equip the 28th regime with a **simplified and value-preserving insolvency framework**.
2. LLCs under the 28th regime should be subject only to **simplified voluntary liquidation or restructuring proceedings**.
3. Timely action should be incentivised by **harmonised directors' liability**.
4. The insolvency procedure of the 28th regime should allow **worker buyouts and alternative ownership structures**.

The 28th regime should be equipped with a **simplified and value-preserving insolvency framework** that protects value and incentivises timely restructuring to allow for a second chance after failure.

VI. Overall Conclusions

The 28th regime could reshape the conditions under which European entrepreneurship can flourish. Its purpose would not be to replace national frameworks but to provide a complementary option that could resolve obstacles identified by the Draghi and Letta reports and highlighted by President von der Leyen: legal fragmentation, costly compliance, uneven access to finance, and the lack of ownership structures that secure long-term European competitiveness.

Given the goals of the 28th regime, a good argument can be made that **practicality should be the central design principle**. The 28th regime is likely to succeed only if it makes the daily realities of starting and growing a business simpler, cheaper, and faster. This could be achieved by a flexible supranational LLC form, accompanied by model statutes and shareholders' agreements that can be applied across borders. Such a tool could significantly lower transaction costs, especially for SMEs, and encourage more entrepreneurs to operate on a European rather than purely national scale.

Second, the **integration of digitalisation may be argued to be a core element**. A single EU-level digital register, interoperable with national authorities and anchored in secure electronic identification, could not only streamline incorporation but also symbolise Europe's preparedness for the 'Digital Decade'. This approach could align entrepreneurship with the Union's broader digital and green transitions, making compliance 'smarter' while preserving trust through safeguards.

Third, the regime should **address financing gaps in the course of the corporate life cycle**. Startups, scaleups, and SMEs alike face systematic disadvantages in access to capital. This Response discusses innovative financing tools – from lending-based crowdfunding and profit-participating loans to harmonised frameworks for incubators, accelerators, and employee share ownership – and, thereby, the 28th regime could bridge the double 'valley of death' and keep promising companies in Europe. A more flexible capital structure, harmonised 'work for equity' schemes, and clear investor protections could also be discussed to support long-term growth.

Fourth, **Europe's diversity of ownership models could be embraced as a competitive advantage**.

Purpose-driven enterprises, worker-owned firms, enterprise foundations, and steward-owned businesses demonstrate resilience, long-term orientation, and deep societal integration. By creating space for these structures within the 28th regime, the EU could cultivate forms of entrepreneurship that combine profitability with sustainability and social value – an approach that resonates with Europe's citizens and talent base, and differentiates it globally.

Fifth, a credible framework also requires a discussion of **effective adjudication and insolvency rules**.

Entrepreneurs and investors must trust that disputes will be resolved quickly, competently, and consistently. A tool to achieve this and prevent cases from going to arbitration could be the option of English-language proceedings in specialised courts. Likewise, simplified **insolvency proceedings** to deal with restructuring issues and worker buyouts could prevent value destruction and allow viable firms a second chance. Together, these safeguards should be discussed in order to foster confidence in the regime and strengthen its legitimacy.

Finally, the **28th regime should be seen as part of a broader European project**.

Its success depends on careful political design, balancing ambition with feasibility. Even if a fully supranational form proves politically difficult, targeted harmonisation combined with optional EU-level instruments may still be discussed to bring meaningful improvements. What matters most is that the regime delivers tangible benefits to entrepreneurs, lowers the barriers to scaling, and reinforces Europe's capacity to innovate on its own terms.

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