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Feedback of

ACT | The App Association
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Rue Belliard 40,
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to the

European Commission

regarding its

28th regime – a single harmonized set of rules for innovative companies throughout the EU

I. Introduction

ACT | The App Association (hereafter 'App Association') welcomes the opportunity to submit comments to the European Commission's consultation on the revision of the 28th regime – a single harmonized set of rules for innovative companies throughout the EU.

The App Association is a policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem the App Association represents—which we call the app economy—is valued at approximately €95.7 billion and is responsible for more than 1.4 million jobs in the European Union (EU).[1]

II. Current challenges are holding back European SMEs and startups

Europe stands at a decisive moment for its innovation ecosystem. The EU's future competitiveness depends on its ability to foster growth, innovation, and scalability of companies across the Single Market. Yet despite the strength of Europe's entrepreneurial talent, companies, in particular innovative startups and scaleups, still face challenges that hold them back from reaching their full potential.

As both the Draghi[2] and Letta[3] Reports have underlined, Europe's fragmented legal and regulatory landscape is one of the main barriers to innovation and scale. Not only that, but difficulties in accessing finance, attracting talent, and overcoming the high cost of failure also act as barriers for European companies.

Today, 35,000 startups and 3,400 scaleups remain constrained by 27 separate sets of national rules,[4] which impose duplicative requirements, increase legal uncertainty, and ultimately weaken Europe's capacity to generate world-leading firms. This fragmentation is estimated to cost the EU economy €1.3 trillion annually.[5]

Across the business lifecycle, European entrepreneurs and investors encounter systemic barriers. Founders face lengthy and inconsistent incorporation procedures, with registration requirements and timelines varying across 27 Member States. In Estonia, a company can be incorporated in 15 minutes, while elsewhere it can take up to two weeks to complete the procedure,[6] and frequently involve physical meetings with multiple authorities and mandatory in-person notarisation (e.g. in Germany).

"We're already compliant with GDPR. The problem comes in with all the overlapping and contradicting rules on top of it. This is especially problematic if privacy and security tools like encryption are weakened. This level of complexity and risk make people want to start

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[1] See https://actonline.org/wp-content/uploads/220912_ACT-App-EU-Report.pdf
[2] Mario Draghi (2024), Report on the future of European competitiveness
[3] Enrico Letta (2024), Report on the Future of the Single Market
[4] European Commission (2025), Startup and Scaleup Strategy.
[5] European Commission (2025), Single Market Strategy.
[6] JURI (2025), Simplification of registration of companies in the 28th Regime, p. 25.

businesses elsewhere. If Europe wants to lead, it has to make it easier for SMEs to grow." — Adam Paton Stanley-Smith, Meaningful (based in Germany)

Growth is also hindered by a fragmented financial market, in which investors must carry out due diligence in each jurisdiction, a burden that discourages cross-border and external capital flows. Europe's fragmented financial markets show a cautious approach to risk: 82 per cent of scaleup deals involve a foreign lead investor, and 12 per cent of promising companies ultimately relocate, most often to the United States.[7]

Furthermore, innovative companies highly depend on talent, and, while in Europe we have high-skilled workers, it remains difficult to attract and retain them. Sixteen Member States operate their own startup visa or residence schemes, each with different eligibility rules, administrative burdens, and waiting times.[8]

"As an SME, we focus on delivering groundbreaking new experiences to our users. The cascading impact of confusing and conflicting rules and regulations leads to increased costs for SMEs like us and ultimately drives tech talent to other places." - Mitchel Volkering, vaic.at (based in the Netherlands)

Moreover, the cost of failure remains disproportionately high, with a long restructuring phase that can take up to years, while in the United States it often takes months.[9] This prevents entrepreneurs from starting over, and for early-stage companies, particularly in the digital economy, being locked out of the market for years is equivalent to being locked out entirely. Also, entrepreneurs in the European Union still suffer from stigma related to the failure, which, together with the cost of it, risks preventing them from starting again, undermining the very spirit of innovation.

The Commission has recognised some of these structural barriers. The March 2025 Communication on the Savings and Investments Union set out measures to unlock access to finance, while the subsequent Single Market Strategy[10] and Startup and Scaleup Strategy[11], adopted in May 2025, proposed actions to make the Single Market more accessible for small companies.

In this context, the announcement from the European Commission of a 28th regime, as a central instrument to simplify company law, reduce the cost of failure, and provide a single EU corporate framework, is a welcome initiative that can simplify the current landscape, while also ensuring a uniform approach across Member States. The App Association believes that with the correct implementation, this instrument could be transformative for European companies.

[7] EPRS (2025), Scaling up European innovation - What is the potential European added value of a 28th regime?, p. 6.
[8] https://home-affairs.ec.europa.eu/document/download/6487ed6a-5196-41ae-adfa-8db3b0d75421_en
[9] Y. Coatanlem, O. Coste (2024), Cost of Failure and Competitiveness in Disruptive Innovation.
[10] European Commission (2025), Single Market Strategy
[11] European Commission (2025), Startup and Scaleup Strategy.

III. Why the 28th regime must be a Regulation

The choice of the legal instrument is decisive to overcome barriers and help small businesses grow and thrive in the European ecosystem. A Directive, as currently suggested by parts of the debate[12], would fail to resolve the core problem that the 28th regime is meant to address: fragmentation.

Directives rely on national transposition, inevitably leading to uneven and conflicting transposition across Member States. This would mean 27 different versions of a new company form that multiplies complexity instead of reducing it, leaving SMEs and startups still dealing with a set of different national rules, facing different requirements depending on the country, and investors would still need to adapt the due diligence process across borders. Instead of reducing fragmentation and unifying the Single Market, this approach risks creating an additional layer of fragmentation.

The purpose of the 28th regime should be to establish a truly supernational legal form, which should consist of a company form governed directly by EU law and applicable across all Member States. Such a supranational instrument cannot be delivered through a Directive, which by definition depends on national implementation. Only a Regulation can guarantee the necessary level of uniformity, legal certainty, and administrative unification, including the creation of a single EU-level registry and standardised procedures.[13]

For these reasons, only a Regulation under Article 352 TFEU can deliver a clear, uniform, and directly applicable framework, while also speeding up the process of entering into force by avoiding the required time for the national transpositions. By fostering identical rules across the EU, a Regulation would ensure that the same predictable regime would apply to every European startup and scaleup, regardless of the place in which it has been constituted. Investors would also benefit from this regime, allowing small companies to attract capital in a faster, clearer, and predictable way.

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[12] MEP René Repassi (2025), Draft Report with recommendations to the Commission on the 28th Regime: a new legal framework for innovative companies.

[13] JURI (2025), Simplification of registration of companies in the 28th Regime, p. 17.

IV. Key pillars of the 28th regime

a. Simplification and digitalisation

One of the main barriers that SMEs and startups face in the early stages is the weight of administrative and compliance requirements. These procedures are often complex, fragmented across jurisdictions, and time consuming, creating uncertainty for founders who should be focusing on building their business. They also carry significant costs, from the notary fees to the duplicate filings across Member States. For these reasons, it is important to streamline and simplify the incorporation and legal processes that young companies face, to reduce entry barriers and give them a fair chance to grow and compete.

"Simplification is the most important thing. Less rules. More clarity. And as fast as possible."
- Sveatoslav Vizitiu, Rhuna.io (based in Romania)

The purpose of the 28th regime must be particularly focused on a radical simplification and digitalisation of all the procedures governing company life. It is therefore important to ensure the establishment of a central and EU-wide digital incorporation platform. Founders should be able to access this platform to incorporate their companies, upload and file documents, and manage compliance obligations online using an EU-standard template for articles of incorporation and shareholder agreements. This platform and all standard templates should be available in English as the reference, and in all the EU languages to ensure clarity across Member States. According to the Letta Report, the goal of this framework should be to incorporate companies within 48 hours, a feasible approach, as recently, Estonia has demonstrated.[14]

Another key pillar of this platform must be to ensure the so-called 'one-stop shop' to register companies, which should allow founders to register their companies through an EU-wide platform and have them fully operative in all the EU Member States. This would significantly speed up the process, avoid duplication of administrative and bureaucratic requirements, and provide clarity, efficiency, and accessibility for innovative companies, ensuring the regime supports growth and cross-border scaling.

b. Insolvency and the cost of failure

The cost of failure is closely linked to the fragmentation of insolvency regimes across Member States. As mentioned, the procedures for restructuring or winding down a company can take years in some jurisdictions, while in the United States or other global markets, the same process is often completed within months. This delay results in a fatal loss of market, especially for innovative businesses and companies. Combined with the stigma attached to failure in Europe, it further discourages risk-taking. Moreover, SMEs and startups, which lack the resources of larger firms, are disproportionately affected by lengthy and costly procedures, often forcing founders into personal financial loss.

"Funding in Europe is an uphill battle; weak incentives for angels and VCs create gaps across the start-up lifecycle. Other regions provide easier access to capital, leaving European founders

[14] JURI (2025), Simplification of registration of companies in the 28th Regime, 2025.

disadvantaged. Personally, I've had to sell my car just to keep my business afloat. If we don't support the startups, we won't get the scale-ups, and without the scale-ups, Europe won't have the 35,000 SMEs that drive its economy." - Jason Culloty, SkillsVista (Ireland)

The absence of harmonisation also adds to the burden, with 27 national insolvency frameworks, cross-border investors face uncertainty and higher risks when supporting European companies. The 28th regime offers a unique opportunity to change this dynamic.

By establishing a uniform and simplified EU insolvency framework, embedded within the supranational company form, Europe can provide entrepreneurs with a genuine second chance, reduce costs for creditors and debtors, and strengthen investor confidence. Faster and more predictable restructuring procedures would make the European innovation ecosystem more resilient, allow resources to be reallocated more efficiently, and bring Europe closer to global best practices. Ensuring that the 28th regime includes such a modern insolvency system will be essential if the initiative is to deliver real impact for SMEs and startups.

c. Attracting finance and investment

Access to capital remains a great challenge for European startups seeking to scale. The EU is lagging behind the United States and China when it comes to venture capital intensity. The maturity gap is even wider: while early-stage funding has improved, late-stage capital is scarce, forcing European firms to eventually relocate.[15]

The 28th regime can help address these issues by reducing investor risk and lowering barriers to cross-border finance. A uniform EU company form would make due diligence more straightforward, reducing the 'home bias' that discourages investors from backing companies outside their jurisdiction. With one legal framework and one registry, investors could allocate capital more confidently across the Union.

"As a small business, we don't have the resources to pay teams of lawyers to tackle long legal documents. So, my request to policymakers would be: please make compliance simpler and easier for small businesses to interpret and implement. This will allow us to attract more investment, grow, and compete on the global stage" - Faizan Alam, REMODID (located in Austria)

d. Attracting and retaining talent

Innovation is driven by people, and Europe must become a destination of choice for entrepreneurial talent. The current framework makes this objective difficult to achieve. The landscape of 16 fragmented national startup visa regimes is unfit for purpose, creating uneven burdens and uncertainty for founders and entrepreneurs who increasingly operate across borders.[16] To address this, the EU should establish a single, harmonised entrepreneurial mobility scheme that enables founders to move and operate freely across the Union. Such a

[15] EPRS (2025), Scaling up European innovation - What is the potential European added value of a 28th regime?, p. 6.
[16] EPRS (2025), Scaling up European innovation - What is the potential European added value of a 28th regime?, p. 7.

measure would reflect the reality of modern entrepreneurship, which is inherently cross-border, while also support Europe’s innovators.

Equally important is the ability of startups to attract and retain skilled employees. A harmonised EU employee stock option plan (EU-ESO) would be a decisive step forward. Today, divergent national regimes make employee equity complex and, in some jurisdictions, unattractive. An EU-ESO would allow startups to reward employees with equity in a predictable and competitive manner, matching the attractiveness of the U.S. model.

Finally, the EU must ensure a robust talent pool in areas critical for Europe’s future competitiveness, such as artificial intelligence and new technologies. This requires not only fostering talent mobility but also strengthening Europe’s own skills base. Targeted EU programmes for reskilling and upskilling in digital and emerging technologies should be empowered, with a particular focus on SMEs that often lack the resources to invest in workforce training. Building stronger links between universities, research centres, and SMEs will also be key to equipping Europe’s workforce with the skills demanded by fast-changing innovation ecosystems.

A company form that integrates fair, competitive, and simple rules for attracting and retaining talent will therefore be a cornerstone of Europe’s long-term innovation leadership.

V. Conclusion

The need for a bold 28th regime regulation is clear. Europe’s SMEs, startups, and scaleups cannot succeed if they are forced to navigate a patchwork of national regimes. The costs of fragmentation, measured in lost capital, lost talent, and lost opportunities, are simply too high. To remain competitive, Europe must guarantee its innovators with a framework that allows them to grow and thrive across the Single Market without barriers and unnecessary burdens.

The 28th regime must therefore be established through a Regulation under Article 352 TFEU, ensuring uniformity and legal certainty across the Union. It should create a single, digital-first company form with incorporation possible within 48 hours, while simplifying restructuring and insolvency procedures so that entrepreneurs have a second chance. It should also harmonise the legislation to attract talent and capital, reducing cross-border barriers to investments. For these reasons, a Directive will only perpetuate fragmentation and uncertainty, while a Regulation will ensure a certain and cohesive framework.

A true 28th regime, designed with simplicity, ambition, and global competitiveness in mind, can help Europe’s small companies to innovate, empower, and succeed.

The App Association stands ready to continue working with EU policymakers, bringing the voice of European SMEs and startups into the dialogue, and ensuring that the final design of the 28th regime truly reflects the needs of those who will rely on it most. Finally, please find here a sign-on letter from the European startup ecosystem highlighting the needs we have described above.

Sincerely,

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