

ACCOUNTANCY EUROPE RESPONSE TO THE EUROPEAN COMMISSION'S 28TH REGIME PUBLIC CONSULTATION

Dear Commissioner McGrath,

Accountancy Europe is pleased to provide its views on the 28th regime public consultation. Our response is based on extensive feedback received from our members and practitioners who are active in company law and corporate governance matters. It represents the common view of the European accountancy profession, and has been formally approved by Accountancy Europe's Board.

Due to the narrow character limits to elaborate on some of the questions in the consultation, we provide below a full comprehensive overview of our elaborated responses to the questions. We remain at your full disposal to further contribute to the design and success of the future 28th regime framework.

QUESTION 2: WHICH ISSUES CONSTITUTE MAIN BARRIERS FOR SETTING UP, OPERATING OR CLOSING DOWN A COMPANY OR ATTRACTING FINANCE IN THE EU?

As per the Accounting Directive, most EU countries have a similar variety of company legal forms so this is unlikely to be a significant issue alone and in itself. Differences in company law may make some difference but after initial creation are only likely to be a matter of different deadlines and issues if a problem arises (e.g. trading whilst insolvent).

One big improvement that would help all businesses is a properly integrated set of digital tools to allow a once-only registration of the business with all relevant authorities at the same time etc. Digitalisation of processes has already improved significantly in past years, but some EU countries are still more advanced than others, thus potentially hampering a level playing field and posing burdens on companies operating in several Member States. In addition, processes such as amending articles of association should be allowed to happen digitally, using digital signatures, and without the mandatory use of intermediaries and related costs. Moreover, having the relevant tools and administrative processes available in another commonly accepted business language would also get rid of many hurdles.

QUESTION 4: WOULD ESTABLISHING AN EU-BRAND - INCLUDING A DISTINCT NAME AND AN ABBREVIATION - FOR 28TH REGIME COMPANIES BRING BENEFITS?

Without knowing the full range of potential benefits associated with the 28th regime, its legal structure and obligations etc. it is not possible to meaningfully answer these questions.

In principle, establishing a distinct EU brand for 28th regime companies could enhance recognition and trust among investors, consumers, and public authorities across Member States. This is because such a unified label could serve as a quality signal associated with legal clarity, digital readiness, comparable and reliable company data, and cross-border operability, helping reduce the perceived risk of engaging with lesser-known startups or SMEs from other countries. It could also, in theory, increase the visibility and competitiveness of EU-based companies globally by reinforcing the Single Market's identity as a coherent business environment. However,

this would again very much depend on the specific benefits to be associated with such companies, the quality of the underlying company law and company information provisions, effective and consistent enforcement and supervision etc.

QUESTION 5: IN YOUR VIEW, WHAT WOULD BE AN APPROPRIATE COMPANY TYPE FOR THE 28TH REGIME COMPANIES?

The 28th regime should ideally be available for a wide range of different company types, both private and public, to ensure long-term usability and minimise legal transitions as businesses grow. It would then be up to the markets, rather than regulation, to determine the appealing benefits – or not – of the 28th regime company form. A comprehensive regime would provide a unified framework that supports flexibility, legal certainty, and seamless cross-border scaling for a wide range of business models. Having said that, we understand if the Commission for practical reasons decides to at least start with a small innovative company only approach, for example if this is necessary to secure co-legislators' support. The most important first step is to get the regime in place in some shape or form. If the Commission then decides to limit the regime to small innovative start-ups, it should come up with a definition that ensures fair competition, avoids unnecessary market distortions, and is not overly complexity.

QUESTION 8: HOW CAN 28TH REGIME COMPANIES BE SET UP?

As elaborated in our response to question 5, we believe that in principle and ideally there should be maximum flexibility for the formation of 28th regime companies. This also means that both newly created companies and conversions of existing companies should be allowed under the 28th regime. Offering this flexibility may encourage uptake and support scale-up across borders without unnecessary administrative burdens. However, we recognise that such openness could create risks of regulatory arbitrage, for example, if the 28th regime includes distinct tax, insolvency, or incorporation rules. To prevent abuse, particularly by larger or highly mobile entities, we encourage the Commission to establish clear safeguards and anti-abuse mechanisms, including appropriate coordination with tax authorities and alignment with existing EU measures such as the ATAD exit tax provisions.

QUESTION 10: IN YOUR VIEW, WHICH REQUIREMENTS FOR MINIMUM SHARE CAPITAL SHOULD APPLY TO THE 28TH REGIME COMPANIES?

We believe that in principle an initial minimum share capital requirement makes sense to ensure that companies opting in the 28th regime are serious ventures. However, this initial capital requirement should be proportionate to the size and nature of the company. For small entities, a smaller capital amount that avoids placing an excessive burden on genuine entrepreneurs while ensuring that the regime is not misused by non-viable or unserious ventures is needed. Alternatively, for such small entities, even a mere symbolic amount could be considered, as is for example the case in the UK. However, if a symbolic capital amount is allowed for smaller entities, this should be accompanied by other effective measures for example for creditor protection and for verifying the identity of shareholders. For larger entities, particularly those with more complex operations or higher risk profiles, a higher minimum capital requirement would be appropriate, as they are better equipped to meet such requirements and should demonstrate a greater level of initial financial commitment. This tiered approach would enhance the regime's credibility and reduce the risk of abuse or shell entity formation, especially in cross-border contexts. What these specific amounts for smaller or larger entities should be is a matter of careful balancing and assessment, which we urge the Commission to do. Moreover, the question of liability should also be considered in this context.

QUESTION 12: IF MINIMUM CAPITAL IS SET AT A LOW AMOUNT OR NOT REQUIRED FOR THE 28TH REGIME COMPANIES, SHOULD OTHER SAFEGUARDS BE PROVIDED FOR CREDITORS?

If the minimum capital is set to a low or no level, the Commission should set up robust, harmonized and pan-European safeguards. The Commission needs to assess whether the 3 above listed safeguards are sufficient either in combination or only some of them, or whether additional safeguards would be needed. This assessment should be based on existing best practices in Member States, and also consider their potential complexity for smaller start-ups. In any case and as a minimum there should be provisions for the verification of shareholders' identity, and dissuasive legal consequences for fraudulent trading, trading under insolvency etc. Moreover, the availability of company information, including digitally such as disclosed through the European Single Access Point (ESAP), as well as auditing, could provide an additional layer of protection for investors.

QUESTION 14: DO YOU CONSIDER THAT THE 28TH REGIME COMPANIES SHOULD BE ABLE TO CARRY OUT CROSS-BORDER CONVERSIONS, DIVISIONS OR MERGERS IN ACCORDANCE WITH EXISTING RULES ON COMPANIES' CROSS-BORDER MOBILITY (DIRECTIVE (EU) 2019/2121)?

In principle, the same rules, EU regulatory framework, legislation, Directives, Regulations etc. should apply to 28th regime companies as to others.

QUESTION 15: DO YOU CONSIDER THAT ALL TOOLS AND PROCESSES FOR THE 28TH REGIME COMPANIES SHOULD BE FULLY DIGITAL, WITHOUT PAPER-BASED ALTERNATIVES?

Digital-by-default is the right direction, including for processes such as amending articles of association, allowing the use of digital signatures, and without the mandatory use of intermediaries and related costs, as outlined in our response to Question 2. However, a fully paperless regime might not be feasible or inclusive in all situations. A hybrid approach that is 'tilted in favour of digital', meaning with digital in-principle but paper/offline option as a 'back-up', allows flexibility during transitional phases and respects the reality that not all users (especially small businesses or individual founders) may have equal access to digital infrastructure or trust in fully online systems. For both digital and non-digital procedures, company registration agents – including lawyers, accountants and notaries – should be enabled to support the companies when needed.

This 'tilted hybrid' option also guards against disruption or legal uncertainty in exceptional circumstances (e.g. system failures, authentication challenges, or cross-border legal conflicts requiring notarisation or physical documentation).

The 28th regime should therefore provide for procedures primarily digital, but with some exceptions, accompanied by a 'review clause' in the legal text where a transition to fully digital could be assessed after few years.

QUESTION 17: IN YOUR OPINION, WOULD THE FOLLOWING DIGITAL TOOLS AND SOLUTIONS CONTRIBUTE TO A FAST AND EFFICIENT SETTING UP OF 28TH REGIME COMPANIES AND TO WHAT EXTENT?

Providing a single access point and one-stop-shop to register 28th regime companies, harmonized registration forms and ensuring the exchange of relevant data between authorities are, in our view, necessary minimum elements to make the 28th regime an appealing option for companies. Accountancy Europe has for a long time



called for such one-stop-shop registration portals, common forms and better data exchange between authorities, as the benefits in terms of reduced administrative burdens are substantial. The successful application of these systems under the 28th regime could also encourage the uptake and help in the development of similar digital solutions for non-28th regime companies across the Single Market.

QUESTION 25: IN YOUR OPINION, HOW SHOULD THE SHAREHOLDERS AND DIRECTORS BE ABLE TO PARTICIPATE AND VOTE IN THE COMPANY MEETINGS?

Only online or only in-person are both restrictive and carry their own respective risks (inability to travel, internet connection failure etc.). A hybrid model provides reasonable flexibility. However, and in line with our response to Question 15, the direction of travel should be towards fully digital and this could be explicitly encouraged as part of the legislation, whilst still leaving the door open for the in-person option if this is deemed to be more suitable for the company. In such cases, the risk of ‘unequal participation’ should be explicitly addressed.

QUESTION 26: HOW SHOULD THE RULES ABOUT THE FORMAT OF THE GENERAL MEETINGS OR MEETINGS OF THE BOARD OF DIRECTORS OF THE 28TH REGIME COMPANIES (I.E. WHETHER THEY ARE VIRTUAL, IN- PERSON, OR IN HYBRID MODE) BE DEFINED?

If flexibility is granted for a hybrid format (see answer to Question 25 above), then it should be up to the companies themselves to define the most appropriate format for themselves. The Commission also needs to take into account that shareholders should be involved in approving changes to the Articles of Association.

QUESTION 38: DO YOU CONSIDER THAT THE PROPOSAL SHOULD INCLUDE PROVISIONS TO FACILITATE THE EVENTUAL ACCESS OF A 28TH REGIME COMPANY TO REGULATED MARKETS AS THE COMPANY GROWS?

Many companies evolve from early-stage ventures into mature, investment-ready firms, and a clear, streamlined pathway to listing would provide legal certainty and encourage long-term planning. Facilitating this transition, whether through alignment with EU listing rules or SME Growth Markets, could enhance the attractiveness of the regime and reduce the friction typically associated with legal restructuring or re-incorporation before accessing public capital markets.

QUESTION 40: WHAT ARE THE MAIN OBSTACLES RELATED TO TAXATION FOR COMPANIES, ESPECIALLY WHEN THEY DO BUSINESS IN MORE THAN ONE EU COUNTRY?

The main tax-related obstacles for companies operating in more than one EU country are many, and include inconsistent VAT rules and rates, diverging interpretations of permanent and fixed establishments, absence of cross-border group relief, differing tax treatments of employees and controlling shareholders, and varying filing deadlines, documentation requirements, and direct tax rules. These disparities create significant compliance burdens, increase legal uncertainty, and can discourage cross-border expansion particularly for SMEs.

While a 28th regime might struggle to eliminate these obstacles outright, especially given Member States’ tax sovereignty, it could contribute by promoting more predictable tax treatment and reducing administrative friction. For example, following the Pan-European Personal Pension Product’s (PEPP) model, 28th regime companies could be subject to the national tax rules of their main establishment, with additional EU-level guidance or coordination mechanisms to ensure consistent application. Ultimately, meaningful tax simplification

would likely require parallel initiatives under specific EU tax legislation. The upcoming tax omnibus, in particular, could help here.

QUESTION 41: ARE THERE ANY POTENTIAL TAX MEASURES, INCLUDING TAX INCENTIVES, THAT YOU WOULD CONSIDER HELPFUL TO SUPPORT THE FUTURE 28TH REGIME'S GOAL OF ALLOWING START-UPS AND SCALE-UPS TO DEVELOP IN THE EU?

Any tax measures or incentives under the 28th regime should be grounded in solid evidence and policy evaluation. Many existing national tax incentives, such as R&D credits, investment allowances, or startup reliefs, have shown mixed effectiveness in terms of promoting growth, innovation, or job creation. We would therefore encourage the Commission to conduct a thorough review of existing Member State schemes to assess what works, what doesn't, and why.

Rather than introducing new EU-level tax incentives, the focus could be on improving coordination and transparency across Member States, reducing administrative burdens, and ensuring fair access to existing schemes for cross-border startups and scale-ups. For example, one possibility could be to introduce something similar to the Head Office Tax System for SMEs (HOT) for 28th regime companies, but unlike HOT this should also include subsidiaries in the framework's scope. Incentives, if used, should be simple, targeted, time-limited, and accompanied by rigorous cost-benefit analysis to ensure value for taxpayers and a level playing field in the Single Market.

QUESTION 49: IN YOUR OPINION, WOULD THE DEVELOPMENT OF A EUROPEAN BUSINESS CODE BE BENEFICIAL FOR COMPANIES OPERATING IN THE SINGLE MARKET?

Accountancy Europe broadly and in principle supports the direction towards a European Business Code, with at least initial emphasis on soft law instruments. The Commission should carefully assess the relative pros and cons of each option. Accountancy Europe and its members stand ready to support this process with expertise and insights.

QUESTION 50: IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO SHARE ABOUT THE PROBLEMS COMPANIES FACE (E.G. HANDLING OF INTELLECTUAL PROPERTY RIGHTS)?

We are happy to share here some additional considerations for the Commission to consider when designing the future 28th regime.

For starters, we invite the Commission to consider whether there could be an option to also enable purpose-driven/benefit companies to opt in to the 28th regime, and what are the Commission's ultimate policy objectives for the 28th regime, from an EU economy perspective (e.g. supporting European companies specifically), and whether the design of this regime align with these objectives.

Beyond the above questions, we also have the following final reflections. The 28th regime's success depends on it becoming a strong and reliable brand, both for companies themselves as well as for investors to have trust in the robustness of such companies. This means that there is also the need to determine which information 28th regime companies should annually disclose publicly, the so-called financial and sustainability reporting, as well as the level of audit on this reporting.

As far as financial reporting is concerned, the EU Accounting Directive includes a framework for reporting and can be applied for the 28th regime companies as well. However, it does not require a specific set of accounting and financial reporting standards, as these are currently determined on EU Member State level. 28th regime companies would need to use a widely understood set of accounting and reporting standards to cater for investors from different origins and background, to ensure comparability, transparency and trust.

As far as sustainability reporting is concerned, the requirements of the revised Corporate Sustainability Reporting Directive (CSRD), currently under revision, could be considered for application to the 28th regime company as well.

As far as auditing is concerned, we would assume that the requirements of the Statutory Audit Directive would be applicable for the 28th regime companies as well, in line also with our response to question 14. As stated above, audits would not only enhance investor trust and reliability in the '28th regime brand', but would also provide an additional safeguard level in case the Commission opts for low or no minimum capital requirements (see question 12).

We would also propose for the Commission to design relevant financing instruments that would make the 28th regime attractive especially for small innovative start-ups. Here the financing and capital aspects are particularly crucial. We have understood that the Commission together with the EU's Intellectual Property Office (EUIPO) will explore the potential of intellectual property (IP) valuation, to subsequently improve IP-valued companies' attractiveness towards finance providers. We would recommend setting up an IP-backed financing guarantee instrument, for example backed by the European Investment Fund (EIF), to explore the potential of IP in fostering SMEs' access to funding. This could be integrated as part of the 28th regime's design, if legally feasible.

Overall, we trust that the Commission will design a robust 28th regime, and it will then be up to the market to demonstrate whether this regime is too complex to be attractive or too loose to warrant additional legal safeguards. The most important thing is to get started.

We look forward to continue supporting your work on the 28th regime and beyond. Should you wish to contact us regarding our response, you can reach out to Johan Barros, Policy Director, johan@accountancyeurope.eu.

Yours sincerely,



Eelco van der Enden

CEO

About Accountancy Europe:

Accountancy Europe unites 49 professional organisations from 35 countries that represent 1 million qualified accountants, auditors and advisors. Accountancy Europe is in the EU Transparency Register (No 4713568401-18).