

European Family Businesses response to public consultation on the 28th regime.

European Family Businesses (EFB) considers the European Commission's proposal to develop a 28th regime to have a lot of potential for 'innovative companies' particularly, when it comes to introducing smart digital solutions for setting up a business in the EU.

Moreover, EFB is of the opinion that the 28th regime could be seen as a blueprint on how to navigate sensitive policy topics such as company law, insolvency and labour law provided all EU member states and institutions work cohesively towards the goal of completing the Single Market.

Outlined below are some of our suggestions on how to make the 28th regime proposal accessible and easily applicable from the beginning.

The 28th regime should be open to all companies to opt-into voluntarily.

Professor Enrico Letta, in his report on the Single Market, noted that a European Code of Business Law (a 28th regime) would unify the Single Market by helping to reduce the fragmentation experienced by businesses and by directly addressing and overcoming the current patchwork of national regulations. The idea was to have a system that could act as a tool to unlock the full potential of free movement within the EU. **As such, to only make it available to 'innovative companies' may impact the application of this system.** Moreover, clarity on what is meant by the term 'innovative companies' is needed.

A 28th regime that is proportionate and complementary to the Single Market must be the starting point of the proposal's design.

As the discussions on the 28th regime have proliferated across the EU institutions, to business associations and stakeholders it is clear that there will be issues pertaining to Corporate law, taxation, labour law and insolvency that will bring challenges to the proposal's design especially, as these decisions will require unanimity at the Council of the EU level. **Therefore, we argue that it is vital that the proposal stays focused on facilitating the establishment of a business, their development and growth within the single market** as there are real threats to this proposal if it is deemed by legislators as over reaching into Member States' national affairs such as taxation.

A pan-European Labour law should be considered to promote a constant labour flow within the Single Market, provided the social security complexities are addressed upfront.

There is perhaps potential for a pan-European labour law fix provided the proposal does not complicate the flow of labour and the process of establishing a business in the EU further. However, a pan-European labour law will come with its own complexities. For instance, if a company is established under the 28th regime, which country's labour laws are applicable? Which social security system rules are applied? Which pension schemes do those employed at the company adhere to if the 28th regime applies? Is it determined by where the head office of the company is established or will there be a social security system within the 28th regime aimed at solving this issue? The latter would raise its own particular challenges. **It is critical that whatever solution is made is clear and void of legal uncertainty.** There is no room for ambiguity if the proposal is to be easy to implement.

The 28th regime must ensure a level playing field for companies within and outside of it.

The issue of market distortion must be tackled from the outset of the proposal. The proposal must be designed in such a way that ensures companies within and outside of the 28th regime have a level playing field.

It would perhaps be of great benefit to have regulatory sandboxes to test the provisions that the proposal envisions so that there is time to adjust and correct as required.

The 28th regime must be accessible in as many EU languages as possible.

To ensure that the 28th regime is a complementary tool of the Single Market, it is important that it is available digitally in as many – if not all- European languages as possible.

Digital-by-design must become the norm.

Moreover, the idea to include digital-by-default solutions, to help companies overcome barriers in setting up, scaling up and operating companies across the Single Market should be incorporated regardless of the 28th regime. This should be the norm, not the exception. Moreover, since there is already the Business register for interconnection systems (BRIS) then the focus ought to be on making that register as easy to navigate as possible and publicising its utility.

The use of the “once-only” and “think small first” principles should be at the forefront of the development of any legislation within the EU.

Since a vast majority of EU companies are SMEs and Mid-Caps, EU legislation must be made with them at the starting point and then expanded towards the larger companies and not the other way around.

It is pivotal that the 28th regime is not an end in and of itself, but rather is a complimentary proposal helping to complete the Single Market. It is possible that if the EU institutions get it right, more practical solutions to solving the existing fragmentation issues within the Single Market will be unlocked.

EFB is of the opinion that the 28th regime should be proportionate and offered to companies as a creative voluntary solution to closing existing fragmentation gaps within the Single Market. It should be a compliment to the Single Market and focus on facilitating business as they seek to operate across Member States.

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***European Family Businesses (EFB)** is a federation of national family businesses associations. Our aim is to make political decision makers aware of the contribution of family businesses to society at large and to promote policies that are conducive to long term entrepreneurship. Our members represent turnover in excess of one trillion Euro, 10% of European GDP.*