



© Shutterstock.com/Miha Creative

Establishing the 28th Regime in Europe

A Unified Legal Framework to Support
Growth and Business

STUDY



European Economic
and Social Committee



Establishing the 28th regime in Europe

A unified legal framework to support growth and business

Study

The information and views set out in this study are those of the authors and do not necessarily reflect the official opinion of the European Economic and Social Committee. The European Economic and Social Committee does not guarantee the accuracy of the data included in this study.

Neither the European Economic and Social Committee nor any person acting on the European Economic and Social Committee's behalf may be held responsible for the use which may be made of the information contained therein.

General information

STUDY FOR	<i>The European Economic and Social Committee (EESC)</i>
-----------	--

REQUESTING SERVICE	<i>Secretariat of the Employers' Group</i>
--------------------	--

STUDY MANAGING SERVICE	<i>Foresight, Studies and Policy Assessment Unit</i>
------------------------	--

DATE	<i>01/10/2025</i>
------	-------------------

MAIN CONTRACTOR	<i>Ecorys and Centre for European Policy Studies</i>
-----------------	--



AUTHORS	<i>Apostolos Thomadakis, Judith Arnal, Pol Diestre, José Salcedo Jimenez, J. Scott Marcus</i>
---------	---

CONTACTS	EESC Employers' Group secretdegroupei@eesc.europa.eu
----------	---

IDENTIFIERS

		ISBN	doi
STUDY			
print	<i>QE-01-25-038-EN-C</i>	<i>978-92-830-6945-4</i>	<i>10.2864/4138382</i>
PDF	<i>QE-01-25-038-EN-N</i>	<i>978-92-830-6944-7</i>	<i>10.2864/4607879</i>

Table of Contents

Executive Summary	6
1. Introduction	1
1.1 Objectives and contribution	1
1.2 Methodology and structure	3
2. The case for the 28th regime	5
2.1 Regulatory fragmentation in the EU: scope and implications	5
2.2 Compliance burdens and barriers to cross-border activity	7
2.3 Why an optional regime?	9
2.4 Comparative advantages over full harmonisation	10
3. Lessons from previous EU initiatives	12
3.1 Review of relevant 28th regime-like cases	12
3.1.1 Pan-European Personal Pension Product (PEPP)	12
3.1.2 Undertakings for Collective Investment in Transferable Securities (UCITS)	13
3.1.3 Common European Sales Law (CESL)	13
3.1.4 Unitary Patent	14
3.1.5 Societas Europaea (SE)	14
3.1.6 Societas Privata Europaea (SPE) and Societas Unius Personae (SUP)	14
3.2 Success factors for scaling	15
3.2.1 A clear and quantifiable value proposition	16
3.2.2 Optionality and coexistence with national frameworks	16
3.2.3 Uniform core rules with minimal national discretion	16
3.2.4 Strategic use of legal instruments and procedures	17
3.2.5 Stakeholder engagement and political backing	17
3.2.6 Compatibility with existing institutions	18
3.3 Pitfalls and failure modes	18
3.3.1 Lack of fiscal integration and incentive alignment	19
3.3.2 Political sensitivities around labour, tax and sovereignty	19
3.3.3 Complexity of legal design	19
3.3.4 Inadequate legal basis and subsidiarity concerns	19
3.3.5 Absence of strong stakeholder coalitions	20
3.3.6 Disproportionate burden on smaller players	20
3.4 What past initiatives tell us about feasibility, uptake and risks	20
4. Defining a 28th regime: core principles and preconditions for success	23
4.1 Defining a 28th regime	23

4.1.1	Legal nature	23
4.1.2	Policy scope and appropriateness	24
4.1.3	Operational logic	24
4.2	Preconditions for feasibility and success	25
4.3	Conclusions and implications for legal design	26
5.	Structuring a 28th regime through business law: a layered and staggered approach	27
5.1	Corporate law: the foundational layer.....	28
5.1.1	Two limited company forms.....	28
5.1.2	Register once-only principle.....	29
5.1.3	Reduction of the cost of compliance	30
5.1.4	Harmonised recognition of activities.....	30
5.1.5	Multilingual interface	31
5.2	Tax law: the incentive layer	31
5.2.1	Legal form neutrality and fiscal non-discrimination	32
5.2.2	Cross-border loss relief and group taxation.....	33
5.2.3	Mobility rules	35
5.2.4	Incentive-compatible withholding tax and VAT treatment	35
5.3	Insolvency law: completing the lifecycle.....	36
5.3.1	Legal rationale and strategic importance	37
5.3.2	Core architecture of the insolvency framework.....	38
5.3.3	Implementation strategy and convergence mechanisms.....	39
5.4	Accounting standards: the transparency and comparability layer.....	40
5.4.1	Conceptual framework and strategic importance	41
5.4.2	The 28th regime accounting framework.....	41
5.4.3	Cross-border specific provisions	44
5.4.4	Governance and oversight framework.....	45
5.4.5	Implementation challenges and mitigation strategies.....	46
5.4.6	Future development and adaptability.....	47
5.5	Labour law: the constrained layer	48
5.5.1	The existing EU labour law <i>acquis</i>	48
5.5.2	Competence limitations and Treaty constraints.....	49
5.5.3	Institutional challenges for additional regulation	49
6.	Implementation pathways and governance.....	51
6.1	Options for piloting.....	51
6.2	Stakeholder perspectives.....	53
6.3	Enforcement and supervisory roles.....	54

6.4	Risk mitigation and safeguards	55
6.4.1	Legal coexistence through a two-tier framework	56
6.4.2	Ensuring user protection and trust	56
6.4.3	Preventing market fragmentation and ensuring systemic coherence.....	56
6.5	Phasing and flexibility mechanisms.....	57
7.	Policy recommendations	59
7.1	Foundational design and scope	59
7.2	Implementation strategy and institutional design	59
7.3	Political economy and stakeholder management	60
7.4	Legal architecture and safeguards.....	60
7.5	Accountability and continuous improvement	61
7.6	Substantive content and regulatory design.....	61
7.7	The role that the EESC should play	62
	REFERENCES.....	63

Figures and Tables

Figure 1. Estimates of Intra-EU trade barriers in 2020 – Goods (left) and Services (right)	6
Figure 2. Trade-off between company buy-in and political feasibility across legal layers of the 28th regime.....	28
Figure 3. Number of experienced founders starting companies per year (Europe and US, 2015-2024)38	
Table 1. Success factors of 28th regime-like initiatives.....	18
Table 2. Pitfalls of 28th regime-like initiatives	20
Table 3. Simulated stakeholder positions on the layered implementation of the 28th regime	54

Executive Summary

The European Union's internal market remains one of its most powerful economic assets, yet fragmentation across legal, administrative and regulatory frameworks continues to undermine its full potential. Despite progress in removing formal barriers, divergences in company law, taxation, employment rules, insolvency and accounting standards impose significant compliance costs and strategic uncertainty on firms operating across borders, particularly small and medium-sized enterprises (SMEs) and innovative scale-ups.

In this context, the 28th regime has emerged as a promising but underdeveloped instrument. It refers to an optional EU-level legal framework that coexists with, but does not replace, national laws. Such a regime allows firms and individuals to opt into a common EU rulebook in specific domains, facilitating cross-border activity without requiring harmonisation across all Member States. However, past attempts to introduce 28th regime-like initiatives have met with limited success, often due to conceptual ambiguity, political resistance and weak implementation design.

This study offers a comprehensive analysis of the concept, rationale, historical evolution, and prospects of the 28th regime in EU law. Drawing on legal doctrine, comparative policy analysis and lessons from prior initiatives, it presents a new blueprint for how an optional EU-level framework could be designed and deployed more effectively in the next phase of EU integration.

Diagnosing the problem: fragmentation and its costs

Despite decades of integration, substantial fragmentation persists across key areas of shared or non-exclusive EU competence, including company formation, employment regulation, taxation, insolvency and accounting. These divergences force firms to navigate overlapping national rules that differ in scope, procedure, and enforcement. For companies operating across borders – particularly SMEs – this results in higher compliance costs, duplicated administrative burdens and legal uncertainty. The complexity discourages market entry and expansion, especially for innovative firms that depend on the cross-border mobility of capital, talent and services. Differences in tax treatment, labour standards, or restructuring procedures not only reduce operational efficiency but also deter investment and raise perceived risks.

The macroeconomic impact of this fragmentation is significant. Estimates suggest that internal regulatory frictions impose tariff-equivalent costs far higher than those faced at external borders, particularly in services. These inefficiencies weaken the competitiveness of EU firms compared to counterparts in more integrated jurisdictions and undermine broader policy goals such as the green and digital transitions. Fragmentation limits economies of scale, slows innovation, and risks turning the single market into a patchwork of legal silos rather than a truly unified economic space. Without targeted solutions these structural barriers will continue to constrain the EU's capacity for sustainable growth and strategic resilience.

The promise and pitfalls of past 28th regime-like initiatives

Over the past two decades, the EU has pursued a variety of legal instruments aimed at facilitating cross-border activity through optional frameworks that complement rather than replace national systems. These so-called 28th regime-like initiatives were designed to allow firms or individuals to opt into a uniform set of EU rules in specific areas of law, thereby reducing complexity while respecting national

legal diversity. The concept has been applied across a range of policy domains – from pensions and investment products to company and contract law. Examples include the Pan-European Personal Pension Product (PEPP) and the Undertakings for Collective Investment in Transferable Securities (UCITS) in the financial sector; the *Societas Europaea* (SE) and the proposed European Private Company (SPE) in company law; the Common European Sales Law (CESL) in contract law; and the Unitary Patent in the area of intellectual property. Each of these initiatives represents an attempt to advance integration through voluntary adoption rather than compulsory harmonisation.

Yet, despite their conceptual appeal, these initiatives have had mixed success. Some failed to reach political agreement or saw limited market uptake because of weak user incentives or legal uncertainty. The study identifies several recurring pitfalls that have constrained their effectiveness. A lack of definitional clarity often blurred the distinction between optional frameworks and other EU legal instruments, such as harmonised directives or enhanced cooperation. Many initiatives failed to articulate a clear value proposition, offering limited practical advantages over existing national frameworks. In politically sensitive areas, proposals faced resistance amid concerns about harmonisation by stealth. Finally, legal design shortcomings, especially unclear coexistence with national law, created confusion and implementation challenges.

These experiences underscore that optionality alone is insufficient. To be effective, the 28th regime must combine clear legal architecture, meaningful user benefits and robust institutional support.

Reframing the approach: from concept to structure

In light of the limitations observed in past initiatives, the study introduces a more disciplined framework for defining and designing the 28th regime. At its core is a seven-principle test to determine whether a proposed initiative qualifies as a genuine optional regime. These principles ensure that any such framework remains voluntary for users but mandatory in availability for Member States, is territorially and institutionally anchored, and applies only in areas where the EU does not hold exclusive competence. To avoid regulatory overlap, it must steer clear of domains already densely governed by existing EU rules. It must also rest on a sound legal basis within the Treaties, be capable of practical and cost-effective implementation and have a clearly defined scope and purpose. This definitional rigour is essential to distinguish a true 28th regime from other instruments and to prevent conceptual drift or political misunderstanding.

Building on this foundation, the study proposes a layered and staggered legal structure for operationalising the 28th regime, beginning with business law as the most promising entry point. The framework would start with corporate law – covering company formation, governance rules and mobility rights – as the foundational layer. It would then extend, in a modular and phased manner, to include targeted tax coordination (such as cross-border loss relief and group taxation), simplified and harmonised accounting to enhance transparency, and core elements of insolvency law covering restructuring and liquidation. Labour law, by contrast, should be treated as the most challenging and politically sensitive layer, to be considered only at a later stage if evidence shows the existing *acquis* is insufficient to address cross-border challenges. This progressive design enables gradual implementation and political buy-in while giving firms a scalable, coherent compliance framework that supports cross-border growth and reduces legal friction – balancing strategic ambition with political realism.

Strategic and institutional design

To ensure that the 28th regime succeeds where previous efforts have fallen short, the study highlights the importance of embedding strategic discipline and institutional realism into its design. At the heart of this approach is a compelling and clearly articulated value proposition. Firms must see tangible and quantifiable benefits from opting in – whether through lower compliance costs, simplified regulatory procedures, enhanced legal certainty or smoother access to cross-border markets. These advantages should be identified early, validated through stakeholder consultation and supported by robust impact assessments. A phased, modular implementation strategy is also essential, enabling gradual roll-out based on real-world learning rather than an overly complex, premature full-scale framework.

The study also underscores the importance of leveraging existing administrative and supervisory infrastructures, rather than constructing new EU-level bureaucracies. Structured piloting mechanisms, such as those being explored through the Competitiveness Lab or national initiatives like Spain's Regime 20 (i.e. Régimen 20), can test individual components of the 28th regime in controlled environments before broader adoption. Legal safeguards are equally critical: firms opting into the framework must be shielded from overlapping or contradictory national obligations through clear conflict-of-law provisions and streamlined coexistence mechanisms. Institutional success also depends on early and sustained involvement of key stakeholders – including businesses, social partners, legal experts and Member State authorities – to ensure user-centric design and political viability. Finally, administrative simplification and digital enablement – such as a Business Single Entry Point (B-SEP) for multilingual registration, due diligence and document processing – should serve as the operational backbone of an effective 28th regime.

Policy recommendations

The study concludes with a set of fourteen concrete recommendations, grouped into six thematic areas, to guide the design and implementation of a 28th regime.

First, on foundational design, EU institutions should apply rigorous definitional criteria before launching any new initiative. A 28th regime must conform to the seven-principle test set out in Chapter 4, ensuring that only frameworks with genuine potential move forward. Equally important is the need for clear, quantifiable value propositions, validated through impact assessments and stakeholder consultation.

Second, on implementation strategy, the regime should adopt a modular and phased design. Rather than aiming for a fully-fledged framework from the outset, building blocks should be piloted, refined and scaled over time.

Third, on the political economy of reform, success depends on early coalition-building and stakeholder engagement. The regime should be framed primarily as a tool for business facilitation – reducing compliance costs, simplifying procedures and enhancing legal predictability – rather than as an integration project. At the same time, the narrative should highlight broader benefits for competitiveness, innovation, quality jobs and consumer choice.

Fourth, on legal architecture and safeguards, robust coexistence mechanisms are needed to avoid duplicative obligations. Clear conflict-of-law provisions, streamlined dispute resolution and fast-track

interpretation procedures must guarantee legal clarity. Proportionality mechanisms should protect SMEs, while anti-circumvention safeguards prevent misuse of the framework.

Fifth, on governance and accountability, the regime should embed periodic review clauses, sunset mechanisms and independent evaluation frameworks. Realistic timelines should be coupled with interim evaluation points to sustain political momentum and allow course correction.

Finally, on substantive scope and regulatory design, the study proposes a layered legal structure, starting with corporate law as the foundation and extending – gradually and in modular form – to tax, accounting and insolvency. Labour law is recognised as the most politically sensitive building block and should only be considered in later stages, if future evidence indicates that the existing EU *acquis* is insufficient. A digital-first approach should underpin all layers, centred on a B-SEP that enables ‘register once’ procedures, multilingual filings and harmonised compliance processes.

In addition, the **European Economic and Social Committee (EESC)** should play a dedicated role in the development and rollout of the 28th regime: first, by providing a neutral forum for dialogue between business and labour representatives during the legislative phase; and second, by offering guidance and outreach after adoption to help firms and trade unions make effective use of the new framework.

Together, these recommendations set out a realistic and actionable roadmap for an optional EU legal framework that is effective, politically viable and capable of delivering tangible value to firms, workers and investors across the Union.

Conclusion

The 28th regime is not a silver bullet for market integration. However, when designed with legal precision, strategic sequencing and stakeholder legitimacy, it can serve as a powerful instrument for deepening the single market in politically sensitive areas. It offers a middle ground between harmonisation and fragmentation, enabling the EU to support cross-border activity, innovation, and competitiveness while respecting national legal diversity.

This study presents a pragmatic roadmap for an optional 28th regime – one that is realistic in ambition, coherent in structure and capable of delivering tangible benefits to businesses and citizens alike.

1. Introduction

Despite decades of integration, the European Union's internal market remains fragmented, particularly in domains where EU competence is shared or constrained. While customs barriers have disappeared and monetary union has been achieved in much of the EU, national divergences in legal, tax, and institutional frameworks continue to impede cross-border economic activity. These divisions are especially problematic in areas such as company law, employment regulation, taxation and insolvency – where the absence of uniform rules results in legal uncertainty, administrative duplication and strategic barriers to scaling across Member States.

The cost of this fragmentation is substantial. Recent assessments by the International Monetary Fund estimate that internal barriers to trade in goods and services within the EU impose tariff-equivalent costs of approximately 45% and 110% respectively – several times higher than any external tariff faced by European businesses (IMF, 2024). For firms operating across borders, these frictions translate into elevated compliance costs, duplicative legal obligations and complex administrative procedures that disproportionately burden SMEs and innovative start-ups.

Against this backdrop, recent EU strategic documents – including the European Commission's Competitiveness Compass (European Commission, A competitiveness compass for the EU, 2025), the Letta Report on the Future of the Single Market (Letta, 2024), and the Draghi Report on Competitiveness (Draghi, 2024) – have called for a renewed approach to integration. Traditional harmonisation, though valuable, has often fallen short in politically sensitive areas. The unanimity requirements for direct taxation, subsidiarity constraints in company law and divergent labour traditions have all contributed to a legislative gridlock that hinders convergence.

This study explores a complementary strategy: the development of an optional EU-level legal framework, colloquially termed a '28th regime', operating in parallel with national systems. Rather than replacing domestic law, the 28th regime would offer a voluntary, harmonised legal pathway for cross-border activity (Thomadakis & Marcus, Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime, 2025). Its purpose is to reduce legal complexity, provide administrative simplicity and enhance legal certainty for firms and individuals active in multiple Member States. While the EU has experimented with 28th regime-like instruments in isolated domains, their broader potential remains underexplored.

This inquiry is rendered more urgent by global competitiveness pressures. As the US and emerging economies continue to consolidate large-scale, innovation-driven markets, Europe's ability to support pan-European business models, attract capital, and retain talent increasingly depends on resolving its internal regulatory disjunctions. A well-designed 28th regime could help unlock these opportunities while respecting the legal diversity and institutional pluralism that are central to the European project.

1.1 Objectives and contribution

This study aims to provide a comprehensive analytical framework for understanding, designing and implementing optional EU legal frameworks that can meaningfully reduce regulatory fragmentation while respecting national sovereignty and legal traditions. The research addresses three primary objectives.

First, the study seeks to establish a robust conceptual foundation for a 28th regime by developing a precise definition of what constitutes such a regime in an era where the term has become a policy buzzword applied to disparate initiatives. At a time when the term ‘28th regime’ is applied to fundamentally different approaches by various stakeholders, this research provides clear definitional criteria that distinguish it from related but distinct legal instruments. The study identifies seven core principles that define a 28th regime: 1) optionality for users but mandatory availability by Member States; 2) legal anchoring within national and territorial reality; 3) applicability in areas of non-exclusive EU competence; 4) avoidance of domains already governed by dense EU legislation; 5) reliance on sound Treaty foundations; 6) design for practical operability; and 7) potential scope ranging from sector-specific to universal application.

This definitional clarity reveals that many initiatives traditionally cited as successful ‘28th regimes’ do not, upon closer examination, satisfy all the requisite criteria. UCITS, while undoubtedly successful in creating pan-European market integration, functions as a harmonised framework that pre-empts national law within its field of application rather than offering genuine optionality alongside domestic alternatives. Similarly, the Pan-European Personal Pension Product (PEPP), despite its optional structure, fails to deliver the operational autonomy and fiscal coherence necessary for a truly self-standing regime. By establishing clear conceptual boundaries, this study provides policymakers and researchers with analytical tools to distinguish between different forms of legal integration and assess their respective merits.

Second, the study identifies the domains where a 28th regime is most likely to succeed and those where alternative approaches remain more appropriate. The analysis demonstrates that financial services, despite frequent citation as a promising area for optional frameworks, are generally unsuitable because of their dense regulatory framework of directly applicable EU regulations. In sectors governed by comprehensive EU legislation covering payments, banking, and capital markets, the persistence of market fragmentation stems not from the absence of common legal frameworks but from uneven implementation and supervisory practices. Here, the solution lies in strengthening supervisory convergence rather than creating parallel legal structures.

By contrast, business law emerges as the most promising domain for 28th regime development. The incremental, layered approach proposed in this study, beginning with corporate law as the foundational layer and progressively incorporating insolvency, accounting and tax elements, offers a pragmatic pathway for addressing regulatory fragmentation without overwhelming institutional capacities. Labour law, given its political sensitivity and Treaty limits, should only be considered at a later stage if evidence shows the existing *acquis* is insufficient. Within business law, corporate law represents the most tractable starting point, providing the legal foundation around which other components can be gradually constructed. The relative technical nature of corporate formation, governance, and mobility rules, combined with the clear economic benefits of harmonisation, suggests that this domain offers the greatest potential for early success and stakeholder acceptance.

Third, the research examines both supranational and national experiments with optional framework concepts, including emerging initiatives such as Spain’s Regime 20. This domestic initiative, aimed at reducing regulatory fragmentation across Spanish regions and municipalities, provides valuable insights into how the logic of optional, interoperable frameworks can be applied within federal or decentralised systems. Spain’s modular approach, covering shop opening ordinances, waste management labelling,

and business documentation requirements, demonstrates both the potential and the limitations of voluntary convergence mechanisms. The study analyses how lessons from such national-level experiments can inform the design of EU-wide optional frameworks, whilst acknowledging the different political and institutional contexts involved.

The study's contribution to the academic literature is threefold. Methodologically, it combines legal analysis with political economy insights, drawing on institutional theory to explain why some optional frameworks succeed while others fail. Empirically, it provides the most comprehensive assessment to date of EU experiments with optional legal frameworks, synthesising lessons from both successful and unsuccessful initiatives while correcting common misconceptions about which initiatives truly constitute 28th regimes. Theoretically, it advances understanding of differentiated integration by showing how optionality can be structured to promote convergence rather than fragmentation, and by identifying the institutional and design features that determine success.

For policymakers, the study offers actionable recommendations on legal design, institutional architecture and implementation strategy, grounded in a clear understanding of where a 28th regime can add value and where it may prove counterproductive. The study's policy recommendations span foundational design principles, implementation strategies, stakeholder management, legal architecture, accountability mechanisms, and substantive content, offering a comprehensive roadmap for the development of an effective optional framework. For businesses, it provides clarity on how optional frameworks could reduce compliance burdens and facilitate cross-border operations, particularly for SMEs and innovative enterprises. For researchers, it establishes a rigorous analytical framework for future analysis of voluntary integration mechanisms in the EU and beyond, whilst contributing to broader debates about the evolution of European integration in an era of political constraint and institutional complexity.

Taken together, these contributions provide a clear conceptual map and practical policy blueprint for designing a 28th regime that is both politically feasible and operationally effective. By identifying where optional legal frameworks can deliver the greatest impact, and by distinguishing them from superficially similar instruments, the study equips policymakers, businesses and researchers with the analytical tools needed to reduce regulatory fragmentation and advance deeper integration across the EU's fragmented legal and institutional terrain.

1.2 Methodology and structure

This study employs a mixed-methods approach that combines legal analysis, comparative case studies and stakeholder consultation to generate both theoretical insights and policy-relevant recommendations. It introduces a structured analytical framework that evaluates optional EU frameworks against a defined set of legal, political and operational feasibility criteria – offering a novel and replicable tool for future integration efforts. The research design reflects the inherently interdisciplinary nature of EU integration, drawing on legal scholarship, political economy and public administration.

Legal analysis forms the foundation of the research. It examines the Treaty basis for optional frameworks, the jurisprudence of the Court of Justice of the European Union, and the institutional architecture of relevant EU legal instruments. This includes a systematic review of regulations, directives and soft law measures that incorporate elements of legal optionality. A distinguishing feature

of this study is the application of a common evaluative lens across initiatives, enabling a structured comparison of legal design choices, subsidiarity considerations and regulatory coherence.

Comparative case study analysis complements the legal component by providing empirical grounding. The study reviews six key initiatives that reflect aspects of the 28th regime model: the UCITS framework for investment funds, the PEPP, the Common European Sales Law (CESL), the *Societas Europaea* (SE), the *Societas Privata Europaea* (SPE) and the Unitary Patent system. Each case is assessed in terms of its political origins, legal structure, implementation experience and observed outcomes. The structured comparison identifies recurring success factors and common failure modes, providing a cumulative evidence base for future institutional design.

Stakeholder consultation adds practical insights from those directly affected by regulatory fragmentation. In addition to desk research, we conducted semi-structured informal interviews with a range of stakeholders, including national ministries, regional authorities, business associations, professional organisations, financial sector representatives, and academic experts. The study also draws on evidence from recent European Commission consultations, public responses to relevant legislative proposals and position papers from business associations, trade unions and civil society organisations. This cross-initiative synthesis helps capture recurring concerns and operational constraints, especially from the perspective of SMEs and cross-border users.

The study is structured in seven chapters that move from conceptual framing to implementation strategy. Chapter 2 establishes the case for a 28th regime, highlighting the persistence of regulatory fragmentation, compliance burdens and the limitations of existing integration tools. Chapter 3 reviews past initiatives, drawing lessons from successful and failed attempts at optional frameworks. Chapter 4 develops definitional principles and feasibility criteria, identifying the legal, political and operational conditions under which a 28th regime can succeed. Chapter 5 sets out the core blueprint for structuring a regime through business law, organised in layered modules spanning corporate, tax, insolvency and accounting law, Labour law, given its Treaty-based constraints and political sensitivity, is not included in the initial design but could be considered at a later stage if evidence emerges that the existing *acquis* is insufficient to address cross-border challenges. Chapter 6 examines governance and implementation options, including piloting, supervisory architecture, enforcement and risk mitigation. Chapter 7 concludes with detailed policy recommendations for EU institutions, Member States and other actors.

The methodology has two limitations. First, the legal analysis focuses on EU law and does not include detailed comparisons with federal systems outside Europe, though relevant analogies are noted. Second, the implementation proposals necessarily rest on assumptions about institutional capacity and political feasibility that require further testing in real-world settings. Nonetheless, the combination of analytical approaches provides a robust foundation for assessing the potential of a 28th regime. By integrating legal reasoning, comparative evaluation and stakeholder insights, the study offers a coherent path from conceptual design to policy implementation.

2. The case for the 28th regime

The integration of the EU internal market remains uneven. While customs duties have disappeared and monetary union is a reality for much of the continent, national differences in legal, fiscal, and supervisory frameworks continue to obstruct seamless cross-border economic activity. These divergences are particularly salient in areas such as company law, insolvency, pension products, taxation, and financial services – domains where EU competence is shared or limited, and national systems remain deeply embedded. The resulting heterogeneity generates legal uncertainty, inflates compliance costs, and deters both firms and individuals from engaging in cross-border activity (Thomadakis & Marcus, Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime, 2025). These challenges are especially acute for SMEs, new entrants, and mobile professionals, who lack the scale and resources to navigate fragmented legal environments.

The urgency of addressing market fragmentation has been re-emphasised by recent EU strategic documents. The European Commission's Competitiveness Agenda and its Competitiveness Check in the 2024 Single Market Scoreboard both highlight regulatory complexity and legal divergence as major impediments to productivity and growth. Similarly, the Letta Report on the Future of the Single Market (2024) and the Draghi Report call for a step change in EU integration tools, particularly in areas where traditional harmonisation has stalled or failed to deliver meaningful convergence.

In this context, the EU has experimented with a number of legal innovations aimed at fostering integration without imposing full harmonisation. Among these, so-called 28th regime-like instruments – optional EU-level legal frameworks that operate in parallel with national systems – have emerged as a pragmatic and politically viable solution. These regimes offer a harmonised set of rules for cross-border activity, adopted voluntarily by firms or individuals, without requiring the repeal or replacement of domestic legislation. While the track record of such regimes is mixed, they represent an important legal instrument in the EU's integration toolbox, particularly for areas where the internal market remains fragmented despite decades of effort.

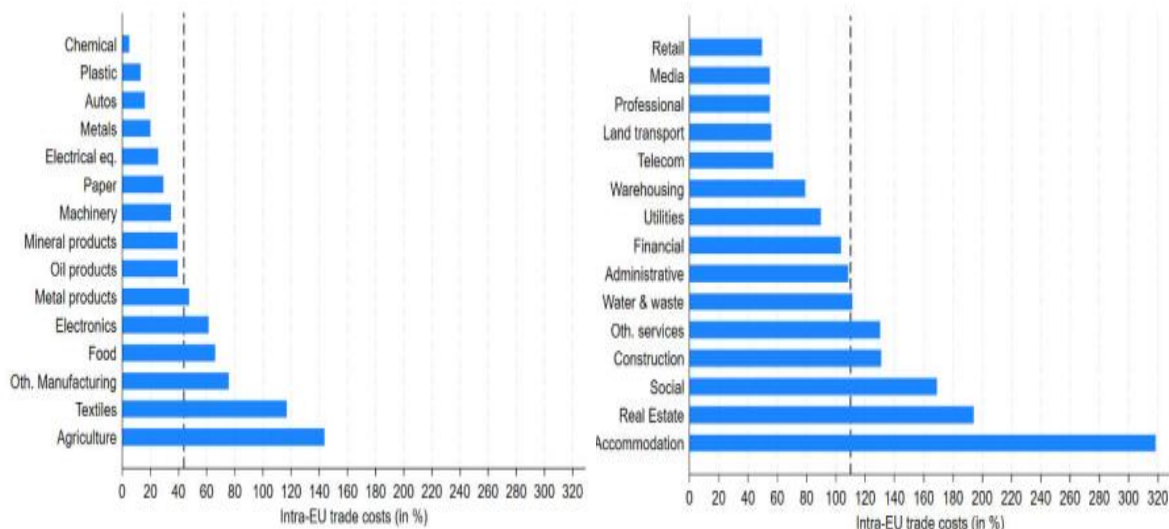
This chapter sets out the analytical case for further use of the 28th regime model. It begins by identifying the persistent structural barriers arising from regulatory fragmentation. It then examines how compliance burdens affect cross-border participation and the limitations of existing integration strategies. It proceeds to outline the rationale for optional regimes as a middle path between harmonisation and mutual recognition and details their comparative advantages. Finally, it anticipates the key preconditions that determine whether such regimes can be politically feasible, operationally usable, and legally robust.

2.1 Regulatory fragmentation in the EU: scope and implications

Despite decades of integration efforts, regulatory fragmentation remains one of the most persistent obstacles to the functioning of the EU internal market (see Figure 1). This fragmentation manifests not only horizontally across Member States, but also vertically, through inconsistencies between EU-level frameworks and their national implementation. The result is a multi-layered legal environment in which firms, investors and individuals face a patchwork of divergent rules, procedures, and enforcement mechanisms. While some degree of legal diversity is inevitable in a union of sovereign states, the current scale and complexity of divergence impose significant friction costs on cross-border activity.

Those frictions translate into tariff-equivalent costs of roughly 45% for goods and 110% for services traded inside the Union, confirming stakeholder warnings that ‘hidden’ barriers are several times higher than any external tariff confronting EU firms (IMF, 2024).

Figure 1. Estimates of Intra-EU trade barriers in 2020 – Goods (left) and Services (right)



Source: (IMF, 2024).

Fragmentation affects multiple legal domains central to business operations and market access:

- **Company law** varies significantly in terms of formation requirements, governance models, and rules on cross-border seat transfers or mergers. National procedures often require physical presence or duplicative formalities, limiting firms’ ability to scale or reorganise across borders (Thomadakis & Marcus, Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime, 2025). Three-quarters of companies expanding to a second Member State report that they must hire external legal counsel to navigate these differences, and SMEs estimate direct set-up costs of EUR 10 000-15 000 per market entered (Eurochambres, 2024).
- **Insolvency frameworks** remain among the least harmonised areas, with divergent approaches to creditor hierarchies, restructuring procedures, and discharge timelines. This hampers both cross-border business continuity and the development of secondary markets in distressed debt – a key channel for capital reallocation and post-crisis recovery.
- **Taxation** is subject to wide variation not only in rates, but in compliance regimes, reporting obligations, and the treatment of cross-border investment and pension products. These disparities introduce legal uncertainty and limit portability for individuals and capital alike.
- **Labour law and worker participation rules** differ widely in terms of codetermination, dismissal protections, and employee representation, often impeding the cross-border use of EU legal forms such as the SE or the proposed Statute for a European Private Company (SPE)/Single-Member Private Limited Liability Companies (SUP).
- **Financial services** are nominally harmonised, but regulatory gold-plating and inconsistent supervisory practices result in practical barriers to cross-border licensing, marketing, and product structuring. Even highly successful regimes such as UCITS continue to face interpretive fragmentation and tax inconsistencies. For example, a typical venture capital fund expanding

across four Member States must analyse ‘25-plus’ national company laws, including tax and labour-law permutations before the first investment closes. This can add three to six months to the average fundraising cycle¹.

The implications of this fragmentation are well documented. According to the European Commission’s Single Market Scoreboard and Competitiveness Check, legal and regulatory divergence is a top five concern cited by businesses operating across borders. The Justice Scoreboard further illustrates persistent disparities in the length and cost of judicial procedures, which act as indirect barriers to enforcement and dispute resolution. Recent reports from the European Court of Auditors and the SME Access to Finance Survey reinforce these findings, pointing to high compliance costs and limited legal certainty as key constraints on small and mid-sized firms expanding within the EU. Quantitative modelling suggests that if internal regulatory barriers were reduced to the level observed between US states, EU labour-productivity could rise by almost 7% in the long run – effectively halving the current EU-US productivity gap (Kammer, 2024).

These structural inefficiencies have macroeconomic consequences. Fragmentation undermines the scale effects and competitive dynamics that the internal market is meant to deliver. It reduces investor confidence, slows capital mobility and contributes to the persistent underdevelopment of EU-wide secondary markets. It also undermines the EU’s global competitiveness vis-à-vis jurisdictions like the US, where legal uniformity across state lines is maintained by federal supremacy. Europe’s start-ups are particularly affected: over 50% of high-growth ventures exit via acquisition by non-EU buyers – a pattern often linked to the time and cost of navigating 27 distinct legal systems (Botsari, Kiefer, Lang, & Pal, 2021).

Efforts to address fragmentation through mutual recognition, soft law, or sector-specific harmonisation have yielded important but partial gains. Where full harmonisation is politically unfeasible or substantively inappropriate, the 28th regime model offers a legally sound and operationally flexible alternative (Thomadakis, 2025). However, its viability depends on a clear understanding of where fragmentation is most acute and where optionality can deliver the greatest benefit – questions that this study seeks to answer in subsequent chapters.

2.2 Compliance burdens and barriers to cross-border activity

The compliance burdens created by legal fragmentation are a practical deterrent to cross-border activity in the EU. While large firms may have the internal capacity and resources to manage multi-jurisdictional compliance, smaller actors (particularly SMEs, startups, and digital-first firms) face disproportionate barriers (Thomadakis & Marcus, Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime, 2025). Consider a mid-sized fintech company seeking to expand into five EU countries. It may be required to: (i) establish legal entities under five different company law regimes; (ii) secure separate authorisations from national regulators; (iii) adjust consumer disclosures to meet local marketing standards; (iv) comply with divergent tax reporting and withholding obligations; and (v) navigate language requirements, administrative delays, and jurisdiction-specific enforcement cultures. These constraints not only increase fixed costs but also introduce delays and legal uncertainty. For example, the additional legal and administrative steps

¹ Evidence provided during the stakeholder consultations conducted for this study.

associated with multi-country expansion can extend a Series-B financing round by several months and add roughly EUR 0.2 million in external fees². As a result, firms often choose to operate only within their domestic market, even when cross-border expansion would be economically viable and strategically desirable.

Empirical data from the European Commission's Annual Burden Survey and the SME Access to Finance Survey consistently confirm this picture. In the 2023 edition, over 60% of SMEs surveyed cited 'legal complexity' and 'fragmented reporting requirements' as a major obstacle to cross-border scaling. Complementary polling (Eurochambres, 2024) shows that 75% of companies engaging abroad feel compelled to hire external lawyers to interpret foreign rules, highlighting how compliance costs scale non-linearly for smaller entities.

Startups and digital-native firms also pointed to barriers in online company registration, differentiated consumer rights across jurisdictions, and the absence of standardised compliance templates. The problem is not just legal divergence per se, but the lack of a single, navigable path that lowers the entry threshold for smaller market participants. As the Commission has acknowledged in its Competitiveness Check (2024), compliance burdens are a key factor in the productivity lag between EU and US-based SMEs, especially in high-growth sectors such as digital services and clean technology.

The issue is not limited to businesses. Consumers and mobile citizens also face fragmented protections and administrative hurdles. A cross-border worker may struggle to maintain or consolidate pension entitlements because of inconsistent portability rules. An investor wishing to purchase a financial product outside their country of residence may confront confusing disclosures, tax complications, or access restrictions. These frictions affect the everyday functioning of the single market and contradict the foundational promise of free movement for people, capital, goods and services. Retail investors, in particular, often abandon cross-border purchases because of these barriers. Tax complexity is a prime example: 31% of retail investors have considered stopping foreign equity investments altogether because of cumbersome withholding tax rules (Better Finance, 2023).

While the EU has sought to reduce these frictions through mutual recognition frameworks, administrative cooperation and supervisory convergence, these tools have achieved only partial success. Mutual recognition often relies on high trust and legal equivalence, which can break down when Member States interpret core directives differently or adopt gold-plated rules. Supervisory convergence, while important, does not resolve the underlying divergence of legal regimes or the duplicative reporting obligations they impose.

In this context, optional regimes offer a compelling alternative. By providing a ready-made, pre-approved EU framework – such as in company formation, investment fund authorisation, or pension savings – 28th regime-like instruments reduce the need for firms and individuals to comply with multiple, potentially conflicting national laws. When well-designed, they can function as legal fast-tracks for cross-border activity, particularly for users with limited compliance capacity. The success of UCITS, now encompassing over EUR 12 trillion in assets, demonstrates that an optional regime can

² Evidence provided during the stakeholder consultations conducted for this study.

evolve from a niche offering into the market standard when it effectively replaces, rather than merely supplements, national rules.

The recently launched Competitiveness Lab, a Member State–driven governance initiative supported by the European Commission, offers an opportunity to pilot and refine such optional frameworks. As we discuss later in Chapter 6, the Lab functions as a voluntary policy sandbox in which a coalition of Member States can test reforms to reduce regulatory burdens and generate evidence for potential EU-wide action. While not designed specifically as a vehicle for creating a 28th regime, it could nevertheless serve as an experimental governance space to evaluate simplified EU-level legal frameworks under real-world conditions, before any broader rollout. By aligning administrative simplification with legal optionality, this approach could help the EU move from principles to practice in overcoming fragmentation and unlocking the full potential of the single market.

2.3 Why an optional regime?

In light of the political and legal limits of full harmonisation, the EU has increasingly relied on optional regimes as a pragmatic alternative. These are not imposed on Member States or economic actors; rather, they coexist with national regimes and are adopted voluntarily by those who find them advantageous. They provide a uniform EU-level legal framework that individuals or firms may choose to apply, without altering or repealing the corresponding national rules. This approach offers two key advantages: it allows progress in areas where political consensus on full harmonisation is lacking, and it enhances legal clarity and trust by signalling compliance with common EU standards.

This approach has proved useful in domains where harmonisation efforts have repeatedly failed or stalled because of political resistance, legal diversity, or constitutional sensitivities. Examples include company law (e.g. the proposed SPE), pensions (PEPP), or contract law (CESL), as well as technical areas where uniformity delivers scale economies and legal certainty, such as investment funds (UCITS) and intellectual property (Unitary Patent). These regimes illustrate the flexibility of EU law to legislate in a differentiated manner without breaching subsidiarity or requiring Treaty change.

The legal basis for optional regimes typically lies in Article 114 of the Treaty on the Functioning of the European Union (TFEU), which permits the approximation of laws necessary for the functioning of the internal market. For more ambitious optional regimes that touch on areas where the EU lacks explicit competence – such as taxation – Article 352 TFEU provides a possible legal basis, though it requires unanimity and is therefore politically contentious. In cases where unanimity is unattainable or harmonisation is blocked, enhanced cooperation offers another route, as demonstrated by the Unitary Patent. However, this mechanism is generally excluded in the field of the internal market, since Article 327 TFEU explicitly prohibits enhanced cooperation if it would distort competition among Member States. A further alternative is to structure optional regimes as standalone EU instruments, applying only to those who voluntarily opt in, thereby reducing potential conflicts with national legal orders.

From a political economy perspective, optional regimes offer a solution to one of the most intractable problems of EU integration: the lowest common denominator effect. When unanimity or political consensus is required, harmonised rules tend to be diluted to the least ambitious version acceptable to all Member States. This results in weak legislation that neither solves the fragmentation problem nor delivers real benefits to market participants. Optionality changes the equation: it enables the EU to

legislate for depth, not just breadth, by providing a fully integrated regime for those who want it, without forcing it on those who do not.

The appeal of optionality lies in this balance between unity and diversity. It enables integration where it is economically and functionally justified, while respecting national autonomy in areas of cultural, legal, or institutional divergence. It promotes legal innovation and regulatory experimentation without imposing uniformity. But optionality must be carefully managed. A poorly designed regime, burdened by legal ambiguity, fiscal misalignment, or weak uptake, risks adding complexity rather than resolving it. The challenge is therefore not merely to allow choice, but to pair it with commercial viability, operational simplicity and institutional compatibility.

2.4 Comparative advantages over full harmonisation

Optional EU regimes offer a number of compelling advantages over full harmonisation, particularly in politically sensitive or legally complex policy domains.

First and foremost, they offer greater political feasibility. Harmonisation of national laws, particularly in areas such as company formation, taxation, or social protection, often encounters significant resistance from Member States because of concerns over sovereignty, subsidiarity, and legal diversity. Optional regimes, by contrast, can be adopted through ordinary legislative procedures, typically requiring only a qualified majority in the Council. They allow dissenting Member States to maintain their existing national frameworks while enabling progress among those ready to adopt a common approach. This flexibility lowers the political threshold for integration, making it possible to advance EU-wide solutions even in areas where consensus on full harmonisation is unlikely.

Second, optionality promotes policy experimentation and regulatory innovation. By allowing firms, investors, or consumers to choose between national rules and a supranational alternative, optional regimes foster a form of controlled regulatory competition. This dynamic encourages the EU to design high-quality, user-centric legal frameworks that are attractive enough to be voluntarily adopted. If the optional regime proves more efficient or credible, it may induce imitation or alignment over time, thereby contributing to convergence by example rather than by imposition.

Third, optional regimes enhance legal clarity and certainty for cross-border users. Mutual recognition arrangements, where Member States agree to accept each other's rules as equivalent, often falter in practice because of diverging interpretations, enforcement gaps, or a lack of trust. In contrast, a standalone EU framework offers a uniform rulebook that applies identically across participating countries. This consistency is particularly valuable in fields such as contract law, corporate formation or financial product distribution, where fragmented legal environments can create significant compliance risks and discourage cross-border engagement.

Fourth, optional regimes lower entry barriers and reduce compliance burdens, especially for smaller actors. National diversity means that businesses seeking to operate in multiple Member States often face duplicative registration, reporting or licensing requirements. Optional EU frameworks can provide a single point of compliance, thereby reducing legal complexity, administrative costs and reliance on expensive legal or advisory services.

Fifth, optional regimes strengthen international visibility and credibility. A uniform legal framework adopted at EU level can be more easily promoted internationally than a fragmented set of national rules. The branding and recognition potential of such frameworks can improve the global standing of EU standards and simplify international engagement for firms operating under them.

Finally, optional regimes provide an incremental path toward deeper integration. Because they do not require immediate change to national laws, they can build practical experience and political confidence. As uptake increases and benefits become evident, policymakers may be more willing to consider formal harmonisation in the future. In this way, optional regimes act not as an end in themselves, but as stepping stones – transitional frameworks that facilitate convergence through gradual adoption rather than legislative compulsion.

3. Lessons from previous EU initiatives

The European Union has experimented with several 28th regime-like initiatives over the past decades – legal frameworks that operate alongside national systems and offer a voluntary, harmonised alternative for cross-border activity. These span domains from pensions (PEPP) and investment funds (UCITS) to company law (SE, SPE), contract law (CESL), and intellectual property (the Unitary Patent). While some succeeded and scaled, others faltered because of political, legal or practical constraints.

This chapter distils key lessons from these initiatives to guide future proposals for EU-level optional frameworks.

3.1 Review of relevant 28th regime-like cases

To ground the analysis of optional EU regimes in real-world experience, this section presents a structured review of similar initiatives across different policy domains. These cases were selected to reflect a diversity of legal instruments (Regulations, Directives, enhanced cooperation), sectors (finance, company law, contract law, intellectual property (IP)), and outcomes – ranging from global success (UCITS) to legislative withdrawal (CESL, SPE). Each illustrates distinct design choices and implementation trajectories, offering concrete lessons on what shapes feasibility, uptake and political sustainability.

The analysis focuses on six dimensions: value proposition, legal architecture, coexistence with national systems, institutional fit, stakeholder alignment and operational simplicity.

3.1.1 Pan-European Personal Pension Product (PEPP)

Launched by [Regulation \(EU\) 2019/1238](#), the PEPP was conceived as a flagship retail-finance initiative under the Capital Markets Union (CMU). It offers a single EU-wide personal pension framework with cross-border portability, standardised disclosures, capped fees (1% per annum for the Basic PEPP) and a default investment option. Structurally, it is very similar to a 28th regime: a voluntary, supranational framework layered above 27 diverse national systems, enabled by a single EU passport and centralised authorisation by the European Insurance and Occupational Pensions Authority (EIOPA).

Yet PEPP's real-world impact has been modest. As of mid-2025, only two providers (Finax and LifeGoals Financial Services) have been authorised under the regime, and the product was marketed in just five Member States. The regime's weak uptake stems largely from its incomplete integration with national tax systems: while the regulation permits Member States to provide fiscal incentives, there is no coordinated EU-wide approach. As a result, savers often find that PEPP offers no clear advantage over domestic pension products. Furthermore, the obligation to offer national sub-accounts to accommodate local payout rules and tax treatment has created operational burdens, especially for smaller providers. For these reasons, PEPP diverges from other 28th regime-like initiatives and cannot be fully classified as such; this distinction is discussed further in Box 1 below.

Despite these challenges, PEPP remains a significant regulatory experiment. It tested mechanisms such as sub-account modularity, default products with capped costs and legal portability across borders. As such, it provides critical lessons for future optional regimes regarding the limits of regulatory design in the absence of fiscal alignment and commercial incentives.

3.1.2 Undertakings for Collective Investment in Transferable Securities (UCITS)

The UCITS framework, established in 1985 ([Directive \(EU\) 85/611/EEC](#)) and progressively refined through five successive directives, is the EU's most successful and globally exported example of a 28th regime-like instrument. It demonstrates the power of incremental integration: each revision strengthened core protections, expanded eligible instruments and improved passporting procedures, reflecting a model of gradual legal convergence rather than a single legislative leap.

UCITS funds benefit from a single authorisation in one Member State and can be marketed across the Union under a harmonised rulebook that covers eligible assets, liquidity, diversification, depositary obligations and investor disclosures. Once authorised, the EU framework pre-empts most national law in its field of application, significantly reducing compliance costs for cross-border distribution. Precisely because of this substitutive character, UCITS cannot be fully classified as an optional regime: it replaces elements of national law rather than offering a voluntary alternative alongside them. This distinction is elaborated further in Box 1 below.

Today, UCITS funds manage over EUR 13 trillion in assets and are distributed in more than 80 countries. This success reflects the framework's clear legal structure, regulatory predictability and strong investor-protection standards, which together have created deep trust in the UCITS label. However, barriers remain. Tax treatment is still national and supervisory practices vary, leading to interpretive divergence and persistent market fragmentation. Moreover, the compliance burden is disproportionately heavy on smaller asset managers, raising long-standing concerns about regulatory proportionality and market concentration.

Nevertheless, UCITS remains a model for future 28th regimes, demonstrating that when a harmonised EU framework is legally robust, commercially attractive and internationally credible, it can achieve deep market integration.

3.1.3 Common European Sales Law (CESL)

[Proposed](#) in 2011 under Article 114 TFEU, the CESL was conceived as a bold legislative experiment to create an optional, fully harmonised contract-law framework for cross-border business-to-consumer (B2C) and SME business-to-business (B2B) transactions. It comprised 186 articles covering the full lifecycle of sales contracts – pre-contractual information, remedies, liability and unfair terms – and would have coexisted with national contract laws, applying only when expressly chosen by the parties.

While the European Parliament adopted CESL in 2014, it never gained traction in the Council. Member States raised fundamental objections on subsidiarity grounds, arguing that CESL effectively created a parallel legal order without sufficient justification under the internal market legal basis. The proposal also triggered an early 'yellow card' procedure under the subsidiarity protocol, with several national parliaments issuing reasoned opinions questioning its necessity and proportionality. Critics feared regulatory arbitrage and consumer protection dilution, while business groups opposed the compliance complexity of an additional legal layer. Crucially, CESL failed to secure broad stakeholder alignment.

The proposal was ultimately withdrawn in 2020 and replaced by narrower legislation on digital content. CESL's failure illustrates the institutional limits of the 28th regime model when stakeholder coalitions

are divided, the legal basis is contested, and the regime's scope is overly ambitious relative to its political support.

3.1.4 Unitary Patent

The [Unitary Patent](#), formally operational since June 2023, exemplifies a successful 28th regime-like initiative achieved through enhanced cooperation. It creates a single patent right with unitary effect across 17 participating Member States and a specialised Unified Patent Court (UPC) for enforcement and validity disputes. Businesses may opt for this system as an alternative to traditional national or European patent routes, gaining uniform protection with a single filing and renewal process.

The success of the Unitary Patent stems from its clear value proposition: it reduces the cost of pan-European patent protection by up to 80% and eliminates the need for multiple national validations. Politically, it succeeded where previous attempts failed by relying on enhanced cooperation to bypass the unanimity requirement and by limiting participation to willing states. Governance is shared between the European Patent Office (EPO), which grants the patents, and the UPC, a treaty-based international court aligned with EU law.

The Unitary Patent demonstrates that a well-designed optional regime can overcome entrenched institutional and linguistic barriers, provided it is anchored in an existing infrastructure, delivers quantifiable benefits and is flexible enough to accommodate differentiated integration.

3.1.5 Societas Europaea (SE)

Adopted in 2001 ([Regulation \(EC\) 2157/2001](#)), the SE statute created an optional EU-wide public limited-liability company form, enabling cross-border mergers, relocations of registered offices and EU branding. The SE operates as a hybrid framework: its core rules are contained in directly applicable EU regulation, while much of its functioning defaults to national company law. A companion directive on employee participation (Directive 2001/86/EC) ensures that SEs respect board-level representation rights during formation.

This hybrid structure offered flexibility and political compromise, allowing the SE to function across diverse legal systems. However, it also introduced significant complexity and fragmentation in practice, particularly for SMEs seeking predictable treatment across jurisdictions. National fallback rules often diverged, requiring bespoke legal advice and reducing the attractiveness of the SE for smaller firms.

As of 2025, fewer than three thousand SEs exist, most of them either micro 'shelf' companies or large corporates (e.g. Allianz, BASF, Airbus). Key barriers include a high minimum capital requirement (EUR 120 000), procedural complexity and the limited appeal for SMEs. Nevertheless, the SE's longevity shows that a hybrid EU company form can provide legal continuity and political compromise, even if uptake remains largely confined to niche use cases.

3.1.6 Societas Privata Europaea (SPE) and Societas Unius Personae (SUP)

Following the adoption of the SE, the European Commission [proposed](#) in 2008 the SPE – a simplified European private company form designed to facilitate SME cross-border operations. The SPE was conceived as a flexible, low-cost alternative to national company forms, with features such as minimal

capital requirements (EUR 1), digital registration and the freedom to transfer the registered offices across Member States without liquidation.

Like the SE, the SPE was intended as a voluntary EU-level framework operating alongside national laws. However, unlike the SE, it required no cross-border formation condition and was specifically tailored to reduce entry barriers for SMEs. Despite this targeted ambition, the SPE faced immediate and enduring political opposition. Member States with strong codetermination traditions (notably Germany) raised concerns about the absence of worker participation safeguards. Trade unions warned of the risk of ‘letterbox companies’ and social dumping, while several governments objected to the potential for tax arbitrage and legal uncertainty due to insufficient substance requirements.

Over five years of negotiations, eight rotating Council presidencies failed to resolve these disagreements. The lack of consensus on employee involvement, combined with fears that the SPE could bypass national protections, ultimately led the Commission to withdraw the proposal in 2013 as part of its REFIT (Regulatory Fitness and Performance Programme) regulatory simplification programme.

In 2014, the Commission [attempted](#) to salvage the project by narrowing its scope and relaunching it as the SUP. The SUP Directive was intended to create a harmonised legal form for single-member private limited liability companies, with provisions for online formation, template articles of association, and limited alignment with national accounting and tax rules. To mitigate subsidiarity concerns, the legal instrument was switched from a Regulation to a Directive, giving Member States greater implementation flexibility.

Nevertheless, the SUP ran into many of the same obstacles that had hindered the SPE. Concerns about regulatory shopping, insufficient worker protections and circumvention of national company laws re-emerged during Council deliberations. Several national parliaments issued reasoned opinions under the subsidiarity protocol, questioning whether the proposal added sufficient value to justify EU-level intervention. By 2018, the legislative procedure had stalled, and the proposal was formally dropped.

Taken together, the SPE and SUP highlight the institutional and political limits of optional company-law frameworks in areas closely tied to national traditions and social models. Even though both proposals preserved national regimes and were explicitly voluntary, they encountered resistance rooted in fears of regulatory arbitrage, social dumping and erosion of domestic safeguards. They also show that narrowing the scope (from multi-shareholder companies to single-member ones) is insufficient to overcome structural opposition when underlying issues of subsidiarity, labour rights and fiscal integrity remain unresolved.

3.2 Success factors for scaling

The experience of past 28th regime-like initiatives demonstrates that optional EU-level legal frameworks can succeed, but only when specific enabling conditions are in place. This section distils the critical design features and institutional choices that have contributed to the relative success of high-performing frameworks. These include a clear and measurable value proposition, uniform legal rules, strategic use of legislative procedures and broad stakeholder coalitions. By identifying these characteristics, the section provides a practical foundation for designing future EU initiatives that are both politically feasible and commercially attractive.

3.2.1 A clear and quantifiable value proposition

Successful frameworks offer a compelling economic rationale that is both easily understood by users and demonstrable to policymakers. UCITS, for instance, reduced compliance costs for fund managers by providing a single authorisation to market retail funds across the EU. It also created a globally recognised regulatory ‘brand’, attracting trillions in assets and becoming Europe’s most successful financial-services export. Its early launch gave it a first-mover advantage in shaping global regulatory standards for retail funds, reinforcing both credibility and international uptake.

Similarly, the Unitary Patent delivered substantial cost savings. Under the traditional European Patent Convention (EPC) route, validating a patent across all EU countries could cost upwards of EUR 30 000 – largely owing to translation and administrative expenses (Taylor, 2011). The Unitary Patent reduced that cost by up to 80%, offering a single filing, uniform renewal fees and one judicial forum for enforcement. This clearly identifiable efficiency gain proved decisive in securing both industry support and political will.

By contrast, PEPP and CESL lacked such clarity. PEPP’s potential advantages (e.g. portability, transparency) were undermined by fragmented tax treatment, leaving savers with little tangible benefit compared to domestic products. CESL promised harmonised contract law but failed to show how it would deliver real savings or certainty relative to national rules, particularly given its narrow application to B2C and SME B2B transactions.

3.2.2 Optionality and coexistence with national frameworks

The design of successful 28th regime-like frameworks has relied on voluntary adoption, both at the Member States level (through enhanced cooperation or opt-outs) and at the user level (firms and individuals). This dual optionality preserves national sovereignty and reduces political friction, particularly in sensitive domains.

The SE, Unitary Patent and PEPP all preserved national systems while offering an additional, non-exclusive EU option. This ensured that firms could choose the European framework when advantageous, without being forced to abandon national forms. Such coexistence was politically essential to overcoming initial resistance. For example, the SE only succeeded after it was made clear that national company forms would remain intact.

However, coexistence must be carefully calibrated. PEPP’s sub-account structure, while politically necessary to accommodate divergent tax and pay-out rules, reintroduced operational complexity that weakened its appeal. The lesson is clear: optionality is valuable for legitimacy, but it must not erode the simplicity and efficiency that make a common framework attractive in the first place.

3.2.3 Uniform core rules with minimal national discretion

Uniformity across Member States in key legal and supervisory aspects is essential for predictability, market confidence and smooth cross-border use. UCITS owes much of its success to a harmonised core rulebook that governs eligible assets, diversification, investor disclosures and depositary responsibilities. This standardisation means that a UCITS product authorised in one Member State is automatically trusted across the Union, with minimal additional requirements.

Similarly, the Unitary Patent provides uniform protection across participating countries through a single registration and enforceability mechanism. By minimising national deviations and ensuring equivalent legal effect everywhere, it sharply reduces legal fragmentation and compliance costs.

By contrast, frameworks such as PEPP and SPE left too many critical issues – notably tax, labour and employee participation – to national discretion. The result was hybrid structures that undermined the very simplicity and predictability users seek from an EU-wide regime.

3.2.4 Strategic use of legal instruments and procedures

The political design of 28th regime-like initiatives is often as decisive as their substantive content. When unanimity proves impossible, enhanced cooperation (as in the Unitary Patent) has sometimes offered a viable way forward. It allows a ‘coalition of the willing’ to advance, bypassing gridlock while leaving the door open for later participation. This model broke a 50-year deadlock on patent integration and delivered a functioning legal framework in under a decade. Still, examples of enhanced cooperation in the EU remain rare, having been used only four times to date. Moreover, as explained earlier, Articles 326-334 TFEU impose strict limitations on its use. In particular, Article 326 TFEU explicitly prohibits enhanced cooperation where it would undermine the internal market, distort competition between Member States or affect economic, social and territorial cohesion.

Given such limitations, flexibility in legal form is often the more viable path to ease political resistance. For example, shifting from a Regulation to a Directive – as the Commission attempted when relaunching the failed SPE as the SUP – was meant to address subsidiarity concerns by giving Member States greater implementation leeway. Although the SUP ultimately failed for political reasons, the procedural pivot reflected institutional learning about how to balance centralisation with national autonomy.

The key lesson is clear: legal innovation must be matched by procedural adaptability. Choosing the right legal instrument (Regulation v Directive), the right adoption path (ordinary procedure, enhanced cooperation) and the right institutional partners (e.g. leveraging the EPO or national registries) can determine whether an initiative succeeds or stalls.

3.2.5 Stakeholder engagement and political backing

No optional regime can succeed without broad and sustained stakeholder support – from businesses, consumer groups, trade unions, legal practitioners and a critical mass of Member States. UCITS thrived because it combined strong industry support, alignment with consumer interests (disclosure and protection) and a shared political objective (deepening capital markets). The SE only became politically viable after a parallel directive on employee participation was added to address trade union concerns.

By contrast, CESL faced united opposition from both business and consumer groups, who feared added complexity, regulatory arbitrage and legal uncertainty. SPE and SUP ran into fierce resistance from labour representatives and legal communities in Member States with strong co-determination traditions. Without broad alliances, even well-crafted proposals proved politically unsustainable.

Early and continuous stakeholder consultation is therefore not a procedural formality but a precondition for viability. Crucially, engagement should begin in the pre-legislative phase – not only during

interinstitutional negotiations – so that concerns are incorporated into the design from the outset rather than addressed retroactively.

3.2.6 Compatibility with existing institutions

Successful regimes have typically built on existing institutional infrastructures, avoiding the need to create new supervisory or enforcement bodies. The Unitary Patent leverages the EPO’s established procedures and introduces a specialised court (UPC) only where necessary. UCITS relies on Member State authorities for supervision, coordinated by the European Securities and Markets Authority (ESMA), without requiring a new licensing structure.

In contrast, CESL would have established a parallel legal order with its own code of contract law, remedies and information rules. This duplication raised concerns about judicial coherence, legal fragmentation and unnecessary administrative burden.

The lesson is clear: pragmatic institutional design – reusing what works and innovating only where unavoidable – is a key condition for success in the EU’s multilevel governance system.

Taken together, these elements illustrate the main design choices that determine whether an EU-level optional framework succeeds or fails. Table 1 summarises the critical success factors identified across past initiatives.

Table 1. Success factors of 28th regime-like initiatives

Dimension	Success Factor
Value proposition	Quantifiable benefits (e.g. cost savings in UCITS and Unitary Patent)
Optionality	Voluntary uptake ensures political feasibility (e.g. SE, PEPP)
Uniformity of rules	Standardised core rules reduce friction (e.g. UCITS passport)
Legal form/ procedure	Enhanced cooperation or shift to Directive to bypass gridlock (e.g. Unitary Patent, SUP attempt)
Procedural design	Flexible legal instruments and adoption tracks improve feasibility (e.g. use of enhanced cooperation or Directives)
Stakeholder support	Broad alliances (e.g. UCITS support from asset managers, SE trade union deal)
Institutional compatibility	Built on existing bodies (e.g. EPO for Unitary Patent, National Competent Authorities (NCAs) for UCITS)

Source: Authors’ elaboration.

3.3 Pitfalls and failure modes

While some EU-level optional regimes have scaled successfully, others failed to gain traction because of legal, institutional, or political shortcomings. This section identifies the common failure modes that have undermined adoption despite formal optionality. These include misaligned incentives, excessive legal complexity, unresolved subsidiarity concerns and weak stakeholder coalitions. Understanding these pitfalls is essential to avoid repeating design flaws that have constrained otherwise promising EU legal innovations.

3.3.1 Lack of fiscal integration and incentive alignment

Regulatory harmonisation alone is insufficient if economic incentives remain fragmented. PEPP is instructive: despite a harmonised framework for product features and disclosures, the absence of coordinated tax treatment meant savers saw little advantage over domestic schemes. Providers faced dual compliance burdens – once under PEPP and again under national tax and payout rules.

UCITS, while operationally harmonised, still contends with 27 divergent tax-reporting regimes, undermining efficiency in cross-border distribution. Future 28th regime frameworks must therefore address fiscal implications explicitly, whether through aligned incentives (e.g. EU-level deductions), fast-track withholding tax refunds, or minimum tax coordination mechanisms.

3.3.2 Political sensitivities around labour, tax and sovereignty

Optionality does not neutralise resistance in highly sensitive domains. Proposals such as the SPE and SUP faltered largely because Member States and trade unions feared companies would use EU legal forms to circumvent national worker-involvement rules. CESL was widely criticised as an overreach into deeply rooted contract-law traditions and judicial systems.

Even when regimes were strictly voluntary, governments worried about regulatory arbitrage, erosion of national standards and incremental ‘salami-slicing’ of sensitive competences.

3.3.3 Complexity of legal design

Excessive complexity has repeatedly undermined usability, especially for SMEs. CESL’s 186 articles, dual opt-in mechanism and heavy formalism for consumer consent made the regime unwieldy for its intended users. PEPP’s national sub-account model, introduced to respect national tax rules, produced convoluted structures that discouraged providers. The SPE, while flexible in theory, left too much uncertainty about fallback to national law, reducing legal predictability.

Overly complex or hybrid regimes risk generating compliance fatigue, legal uncertainty and resistance from practitioners and courts. For optional regimes to work, they must be clear, lean and operationally simple.

3.3.4 Inadequate legal basis and subsidiarity concerns

Some proposals collapsed under legal scrutiny. CESL, relying on Article 114 TFEU (internal market), was criticised by national parliaments as lacking sufficient justification for such a sweeping parallel legal order. SPE, based on the old Article 308 EC (now article 352 TFEU), required unanimity – a political dead end. These legal-base issues exposed initiatives to subsidiarity challenges and both judicial and political pushback.

While Article 114 TFEU remains a viable legal basis for internal-market measures, its boundaries must be clearly justified from the outset, particularly in hybrid domains such as civil or procedural law, where national traditions run deep. Future regimes must therefore be grounded in clear Treaty competence, backed by evidence of cross-border market failures and framed consistently with the constitutional principles of the EU legal order.

3.3.5 Absence of strong stakeholder coalitions

Proposals that failed to unite key constituencies rarely survived. CESL, SPE and SUP all suffered from a lack of alignment between business groups, consumer organisations and national authorities. By contrast, the success of UCITS and the Unitary Patent rested on durable coalitions of political, industry and institutional support.

Any future 28th regime must secure consensus not only among Member States, but also across end-users, intermediaries, supervisors and social partners. Broad coalitions are not optional add-ons – they are a precondition for adoption and sustained legitimacy.

3.3.6 Disproportionate burden on smaller players

Even where regimes succeeded, SME access was often limited. The SE was taken up mainly by large corporates; shelf SEs proliferated in jurisdictions with low entry costs, but few became operational. UCITS compliance and capital requirements continue to deter smaller asset managers from meaningful cross-border expansion. PEPP's dual obligations – national compartments and a capped fee structure – created fixed costs that discouraged smaller pension providers.

Future regimes must embed proportionality mechanisms, such as tiered compliance thresholds, streamlined digital registration tools or shared service platforms, to ensure that smaller actors can participate meaningfully rather than being crowded out.

Taken together, these pitfalls highlight why otherwise promising EU-level regimes often failed to scale. The recurring issues range from missing fiscal alignment and politically sensitive design choices to excessive legal complexity and insufficient stakeholder support. Table 2 summarises the most common failure modes across initiatives, illustrating how they have undermined adoption in practice.

Table 2. Pitfalls of 28th regime-like initiatives

Dimension	Pitfall
Fiscal integration	No tax harmonisation undermines uptake (e.g. PEPP)
Sensitive policy areas	Labour, tax, and sovereignty concerns block proposals (e.g. SPE, CESL)
Legal complexity	Too many legal layers deter use (e.g. CESL, PEPP compartments)
Legal basis/subsidiarity	Weak or contested legal base (e.g. CESL under Art. 114 TFEU)
Stakeholder coalitions	Failure to align consumers, businesses, MS (e.g. CESL, SPE)
SME accessibility	Overly burdensome for small firms (e.g. SE capital threshold, PEPP sub-accounts)
Supervisory inconsistency	Divergent enforcement cultures or lack of EU-level oversight weakens user confidence (e.g. CESL, PEPP)

Source: Authors' elaboration.

3.4 What past initiatives tell us about feasibility, uptake and risks

The analysis of past 28th regime-like initiatives shows that legal optionality is neither a guarantee of success nor a shield against failure. While voluntary adoption can help navigate political sensitivities, feasibility ultimately depends on deeper structural, legal and economic conditions. The difference between high-performing initiatives (e.g. UCITS and the Unitary Patent) and faltering or aborted ones (e.g. PEPP, CESL, SPE, SUP) lies in the interplay of legal design, institutional context and stakeholder alignment.

UCITS and the Unitary Patent illustrate two distinct but effective pathways to feasibility. UCITS succeeded through incremental harmonisation, strong supervisory coordination and international scalability. The Unitary Patent achieved breakthrough via enhanced cooperation, showing that political feasibility can also be reached through flexible integration mechanisms – provided the economic benefits are clear and administrative structures are ready to deliver. The lesson is that there is no single institutional formula: viability depends on matching legal design with domain-specific political realities.

Feasibility is highest when a proposed regime targets a specific cross-border problem that cannot be solved nationally, such as duplicative fund registrations, fragmented IP protection or barriers to pan-European investment. The most effective initiatives are those that leverage existing legal and institutional structures, offer a compelling value proposition and maintain internal coherence. UCITS and the Unitary Patent both succeeded because they delivered tangible efficiencies while fitting smoothly into the EU's existing market and governance architecture.

Uptake, however, depends not only on political feasibility but also on commercial incentives and legal usability. Even where a regime is politically accepted, adoption will remain limited if the product or legal form offers little added value, or if operational complexity outweighs benefits. PEPP shows how weak fiscal coordination and administrative burdens can undermine an otherwise ambitious framework. Similarly, the low uptake of the SE among SMEs demonstrated that a theoretically attractive legal form can fail in practice if it is not tailored to market needs.

Risk factors for 28th regimes are multiple. First, institutional opposition (especially in sensitive domains such as labour law, taxation or contract law) can block or derail initiatives, even if participation is voluntary. Second, excessive legal complexity risks alienating users and complicating implementation, particularly where hybrid systems are introduced without clear default rules. Third, insufficient stakeholder mobilisation – especially from SMEs, trade unions or national regulators – undermines legitimacy and political momentum. Fourth, weak Treaty grounding or subsidiarity concerns can prevent proposals from advancing procedurally, regardless of their policy merits.

Box 1. Why UCITS and PEPP do not constitute genuine 28th regimes

UCITS and PEPP are often presented as flagship examples of 28th regime-like initiatives in the EU policy discourse. However, a closer legal and operational analysis reveals that neither initiative fully conforms to the defining criteria of a 28th regime.

UCITS – harmonisation without optionality

UCITS is frequently cited as a successful model for market integration – and rightly so, given its global recognition and scale. Yet it does not meet the threshold of a 28th regime. Rather than offering an EU-level alternative that coexists alongside national regimes for the same type of product, UCITS

supersedes them within its field of application. It constitutes a harmonised legal framework with pre-emptive effect over national law. Fund managers do not choose between a national and a European regime for retail fund distribution; they either comply with the UCITS directive or remain confined to domestic markets. There is no parallel, voluntary legal route for cross-border retail distribution. In this sense, UCITS exemplifies traditional top-down harmonisation, not legal optionality. It lacks the core feature of coexistence with national alternatives that defines a true 28th regime.

PEPP – optionality without autonomy

PEPP comes closer to the conceptual model of a 28th regime. Designed as an optional, pan-European personal pension product, it aims to function as a voluntary alternative to domestic pension schemes. However, in practice, PEPP fails to deliver the legal and functional autonomy required of a self-standing regime. The core problem lies in its structural dependence on national sub-accounts. Each PEPP must embed country-specific modules to comply with divergent national rules on payout structures, tax treatment and even certain investment parameters. This patchwork undermines the regime's coherence and defeats the purpose of a single, uniform EU framework.

Moreover, the absence of coordinated or harmonised fiscal incentives means that, in many cases, savers gain no additional tax benefit from choosing a PEPP over a national product. Supervision is also fragmented: day-to-day oversight remains with national authorities, while EIOPA plays only a limited role in registration and standard-setting. As a result, PEPP does not provide a meaningfully superior or stand-alone alternative for savers or providers – making its optionality largely theoretical.

Conclusion – superficial resemblance, not structural equivalence

These two cases illustrate a crucial distinction: optional applicability alone is not sufficient to define a 28th regime. To meet the conceptual threshold, such a regime must:

- offer a coherent and complete legal framework operating in parallel to national regimes
- be governed predominantly by EU law, with minimal reliance on national backstops
- provide operational accessibility across all participating Member States
- rely on clear, unified supervision and enforcement structures
- deliver tangible commercial or regulatory advantages to users.

UCITS and PEPP, while both important and innovative in their own right, fall short of these criteria. Their frequent inclusion in the 28th-regime canon reflects surface similarity rather than structural compliance. Recognising this distinction is essential to avoid conceptual drift and to ensure that future EU initiatives deliver truly optional, scalable legal frameworks that complement – rather than entangle – national systems.

4. Defining a 28th regime: core principles and preconditions for success

Although the idea of a 28th regime has gained traction in EU policy debates, its meaning remains fluid and often contested. To serve as a credible legal and policy instrument, it must be clearly defined and grounded in principles that distinguish it from other forms of legal integration. This section outlines the essential features that constitute a genuine 28th regime and identifies the legal, institutional and political conditions under which such frameworks are most likely to succeed. Together, these principles and preconditions form a conceptual and operational foundation for the development of optional EU-level instruments that are both legally sound and practically usable.

4.1 Defining a 28th regime

A 28th regime is an EU legal framework that creates a self-standing and optional legal order for participants, which Member States are required to make available and ensure is operational. It is based on the idea that an additional EU layer of law may be introduced alongside national legislation, coexisting with but not replacing or fully harmonising it.

A genuine 28th regime rests on seven core principles, which fall into three interrelated dimensions: legal nature, policy scope and operational logic.

4.1.1 Legal nature

Optional for the user, mandatory in availability for Member States: a 28th regime must be voluntary for firms or individuals (the administered parties), who may choose to operate under this EU framework instead of their national legal regime. However, for Member States, its availability must be mandatory. This means that, once the regime has entered into force, national authorities are obliged to ensure it is legally and administratively accessible within their jurisdiction. The national and European frameworks would therefore coexist in parallel, with users free to opt into the latter.

Legally anchored in national and territorial reality: a 28th regime cannot exist in a legal vacuum. It must be implemented through public authorities, operate within territorial jurisdictions and apply to concrete legal and economic actors. The regime is not a floating legal construct but one embedded in the EU's multilevel governance structure, interacting with national administrations, courts and markets. Its effectiveness depends on functional integration with existing legal and institutional ecosystems, rather than abstract detachment.

Based on a sound Treaty foundation: a 28th regime must rest on a clearly defined legal basis under the EU Treaties. In most cases, the appropriate basis will be Article 114 TFEU, which allows for measures aimed at improving the functioning of the internal market in the presence of regulatory divergence. In areas more closely linked to freedom of establishment, such as company law or legal forms, Article 50 TFEU may also provide a suitable foundation. Only in exceptional cases (where no other Treaty provision is adequate) might Article 352 TFEU (the flexibility clause) be invoked – though this requires unanimity in the Council and is politically more sensitive. Given the need for uniform application and legal certainty, a Regulation is generally the preferred legal instrument for establishing a 28th regime. Using a Directive, even one containing an internal market clause, would risk divergent transposition and undermine the regime's optional but harmonised character.

4.1.2 Policy scope and appropriateness

Applicable in areas of non-exclusive EU competence: by definition, a 28th regime presupposes that there is no full EU-level harmonisation in the policy domain in question. It is designed for fields where legal competence remains primarily with the Member States, or where shared competences have not led to substantive convergence. The 28th framework is best suited to under-integrated areas where progress through harmonisation has been politically blocked or legally constrained.

Not appropriate for domains already governed by dense EU legislation: while the 28th regime model is particularly suited to areas of low integration and persistent divergence, it is not appropriate for domains already covered by dense and directly applicable EU legislation. In fields such as financial services – covering payments, banking and capital markets – the internal market is primarily built through EU Regulations that pre-empt national law. In these sectors, fragmentation persists not because of missing frameworks but because of uneven implementation, enforcement and supervisory practices across Member States. Here, the solution lies not in creating an optional regime but in strengthening supervisory convergence and ensuring uniform application of existing rules³. This may require enhancing the resources, coordination mechanisms and, if necessary, the legal mandates of the European supervisory authorities (ESAs), rather than introducing a parallel legal construct.

4.1.3 Operational logic

Designed for practical operability and institutional alignment: a 28th regime must be not only legally sound but also operationally viable. Its success depends on clear governance arrangements, alignment with existing supervisory architectures, and minimal disruption to national administrative systems. Frameworks that can build on existing EU or national authorities (rather than requiring new structures) are more likely to be adopted and implemented effectively. Political feasibility is equally essential: optional regimes must secure support from a critical mass of Member States. Finally, any proposed regime must offer a clear and compelling value proposition to users, balancing simplicity, legal certainty and proportionality – particularly for smaller firms or less sophisticated actors. Without such institutional and political alignment, even well-designed legal frameworks risk limited uptake or fragmentation.

Open to all or tailored to specific profiles – the scope dilemma: a 28th regime may be conceived as either a sector-specific framework targeting particular categories of firms, such as innovative start-ups and scale-ups, or as a universal framework accessible to all companies regardless of size, sector or profile. Recent EU-level initiatives reflect both approaches. The former offers simplified legal treatment in areas like company law, insolvency and tax for high-growth firms. The latter proposes a general-purpose, digital-first framework simplifying cross-border activity for all businesses. While targeted regimes are often more feasible and politically attractive, they risk undermining the principle of equal access and may create a fragmented regulatory landscape. Universal regimes, by contrast, preserve the

³ A 28th regime could be envisaged for shared corporate services within financial groups (e.g. IT, data processing, compliance or HR) that are not themselves core-regulated financial activities. While such a vehicle might bring administrative efficiencies, it would not address the main sources of fragmentation in financial markets, which stem from supervisory divergence rather than from the absence of a common legal form.

inclusive logic of the 28th model but require greater institutional ambition and legal coherence. The choice of scope should reflect both policy priorities and practical implementation capacity.

4.2 Preconditions for feasibility and success

While optional EU regimes offer clear advantages over full harmonisation in certain domains, their feasibility and success depend heavily on how they are designed, governed and positioned within the broader institutional and political context. The appeal of legal optionality must be matched by practical viability and institutional support. This section identifies the key preconditions that increase the likelihood that a 28th regime will be adopted, used and scaled across Member States. These conditions also serve as the basis for the analytical framework used in the following chapters of this study.

Legal basis and Treaty compatibility

A clear and defensible legal basis under the EU Treaties is fundamental. Most optional regimes rely on Article 114 TFEU (internal market approximation), which has been accepted by the Court of Justice as a sufficient foundation for the creation of harmonised or supplementary frameworks – provided they address identifiable obstacles to the functioning of the internal market. However, where a proposed framework touches on politically sensitive areas, subsidiarity and proportionality tests become more salient and legal challenges may arise. In such cases, feasibility improves when the regime is narrowly scoped, underpinned by a robust impact assessment and explicitly linked to internal market failures that cannot be addressed by national action alone.

Institutional fit and supervisory architecture

Successful optional regimes typically build upon existing institutional infrastructure rather than duplicating it. For example, some initiatives may leverage national competent authorities (NCAs) under the coordination of ESMA, while others may rely on already established EU procedures. Conversely, frameworks that require the creation of new judicial or supervisory bodies face significantly higher implementation barriers. Feasibility increases when the regime aligns with existing EU agencies (e.g. ESMA, EIOPA) or proposes a hybrid supervisory model that distributes responsibilities in line with subsidiarity while ensuring consistency and oversight at EU level.

Fiscal neutrality and incentive alignment

The success of a 28th regime often depends on its fiscal treatment. A technically robust regulatory framework can be undermined by the absence of tax or fiscal incentives. While direct EU-level competence in taxation is limited, regimes that intersect with national tax systems must either ensure fiscal neutrality (i.e. no worse off than national alternatives) or offer clear added value in other respects. Where appropriate, soft coordination (e.g. guidance, equivalence mechanisms or political commitments on equal treatment) can increase feasibility and uptake.

Political feasibility and early coalition-building

Optional regimes are politically feasible only if they attract a minimum critical mass of Member State support. In some cases, particularly where unanimity would otherwise block adoption, enhanced cooperation (Article 20 TEU and Articles 326–334 TFEU) can allow a subset of Member States to

proceed. While not a default solution, it provides a potential fallback when political constraints prevent uniform adoption. However, as noted earlier, its application is constrained in areas related to competition in the internal market. The choice of legal basis also matters: Article 114 TFEU requires qualified majority, whereas Article 352 TFEU requires unanimity, thus shaping the size and composition of the coalition needed. In all cases, early coalition-building – particularly among large and systemically important Member States – is critical to enhance both the credibility and feasibility of a 28th regime.

Clear value proposition and proportionality

Finally, any optional regime must offer a compelling and clearly articulated value proposition to its intended users. Whether the target group consists of SMEs, mobile professionals, asset managers, or cross-border service providers, the regime must simplify rather than complicate their legal reality. Tangible benefits – such as reduced costs, faster procedures or expanded market access – must be demonstrable and easy to communicate. Furthermore, regimes should incorporate proportionality mechanisms to reduce administrative burdens for smaller entities (e.g. simplified registration, digital onboarding, or tiered compliance thresholds). Without this, uptake will be limited to large firms with the legal and financial capacity to absorb complexity.

These preconditions are not abstract criteria but concrete design parameters. They provide a reference point for evaluating whether a proposed regime is both legally viable and politically scalable. Taken together, the definitional principles and feasibility conditions outlined in this section form the basis for constructing an operational framework that is aligned with institutional realities, responsive to user needs and capable of delivering real integration benefits in fragmented areas of the internal market.

4.3 Conclusions and implications for legal design

The conceptual clarity and feasibility criteria developed in this chapter offer more than an abstract framework – they establish the conditions under which optional regimes can function as credible instruments of EU legal integration. Any attempt to operationalise a 28th regime must therefore embed these principles in a coherent legal architecture that accommodates both the diversity of national systems and the practical demands of cross-border activity.

In this context, business law provides a particularly promising entry point. Its technical neutrality, direct operational relevance for firms and strong compatibility with Treaty competences make it an ideal foundation for a layered and expandable regime. The next step is to explore how the 28th model can be applied in practice through legal structures that are modular, scalable and tailored to the needs of high-growth and cross-border firms.

5. Structuring a 28th regime through business law: a layered and staggered approach

A credible and operational 28th regime must be grounded in a coherent legal structure. As outlined in previous sections, five key building blocks define the conceptual foundations of any such regime:

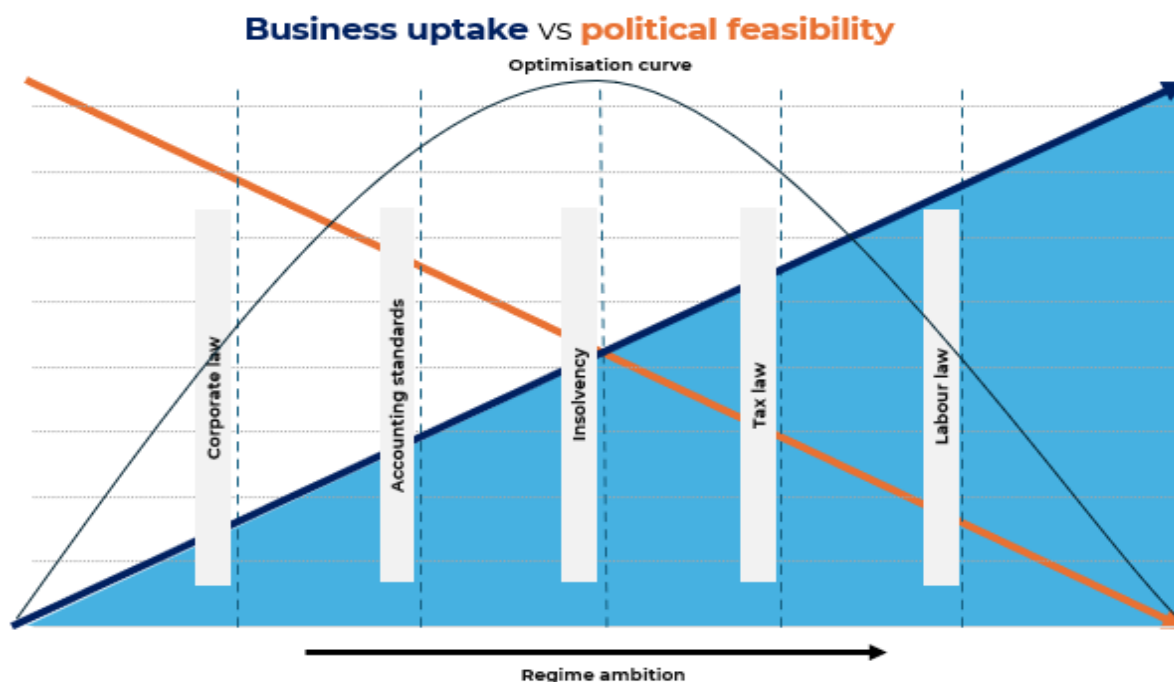
- (i) optionality for users and mandatory availability by Member States
- (ii) legal anchoring in territorial and institutional reality
- (iii) applicability in areas of non-exclusive EU competence
- (iv) reliance on a sound legal basis under the Treaties
- (v) the potential for general-purpose legislation accessible to all firms.

These five principles offer the architectural blueprint of a 28th regime. Yet to bring them to life, a functionally integrated legal structure is needed – one that can be progressively constructed in layers and adapted over time. In this context, business law offers the most promising and pragmatic starting point. As the body of rules governing the creation, operation, reorganisation and closure of companies, business law is particularly well-suited to enabling cross-border activity and supporting legal modularity.

Crucially, the business law domain allows for a staggered and flexible legal design, one that accommodates both political constraints and implementation realities. Among the various possible layers, corporate law stands out as the most tractable and immediately actionable: the proverbial low-hanging fruit. It forms the legal core around which complementary components – such as tax, insolvency and accounting law – can be progressively developed, either in parallel or in successive phases. Labour law, by contrast, represents the most politically sensitive and institutionally constrained area, and should be considered only at a later stage if evidence shows that the existing *acquis* is insufficient to address cross-border challenges.

An alternative option would be to launch a comprehensive package from the outset, designed to be sufficiently attractive for businesses to engage with. Such an approach could help secure immediate uptake, yet it would likely face strong resistance from Member States. This illustrates a fundamental trade-off between political feasibility and business attractiveness. Figure 2 depicts this trade-off, situating each legal layer along an ambition–feasibility curve to motivate the staggered approach that follows.

Figure 2. Trade-off between company buy-in and political feasibility across legal layers of the 28th regime



Notes: The optimisation curve illustrates the balance between business attractiveness and political feasibility. Blue = business uptake; orange = political feasibility; black curve = illustrative optimisation.

Source: Authors' elaboration.

What follows is a proposal to structure the 28th regime through interrelated legal layers, moving from foundational to complementary, with each reinforcing the regime's operational viability, legal coherence and political feasibility.

5.1 Corporate law: the foundational layer

Corporate law constitutes the innermost layer of the proposed 28th regime and provides the legal backbone for a unified and operationally effective European business structure. Rather than harmonising national models or offering a menu of legal forms, the regime would establish a single, uniform legal entity accessible across the EU, under a coherent and self-contained legal framework.

Key components of this corporate layer would include: i) two limited company forms, ii) the register only once principle, iii) a reduction of the cost of compliance, iv) a harmonised recognition of activities, and v) a multilingual interface.

5.1.1 Two limited company forms

The regime would introduce two standardised legal entities: a European private limited company and a European public limited company, each with legal personality and limited liability. These could be phased in through a staggered approach. Both forms would be available across all Member States and deliberately detached from national legal traditions or requirements. Crucially, they would be open not only to newly incorporated firms but also to existing companies in any Member State wishing to migrate

into the regime. Taken together, the two forms would provide a full legal ‘toolkit’ for firms at different stages of development – from start-up to scale-up and, ultimately, to accessing public capital markets.

The minimum capital requirement for the European private limited company would be as low as one euro. In the case of the public limited company, the minimum threshold could be set at a level (e.g. EUR 25 000 or EUR 40 000) that facilitates uptake and avoids the limitations of the SE explained above. In practice, this would partially amend the Council regulation 2157/2001 (SE) and add the private limited company. An upper limit would not exist to avoid a ‘threshold’ effect: if companies lose their ‘28th regime’ status once they reach a certain size, they may impose limitations on their own growth.

In terms of governance, companies operating in the 28th regime would be able to choose between a one-tier or two-tier board, respecting the existing traditions in Member States.

The regime would set out a uniform set of fiduciary duties, including care, loyalty and diligence, along with baseline liability protections for directors acting in good faith. Rules governing general meetings, voting rights and minority protections would be standardised under the regime, ensuring consistent shareholder treatment throughout the EU.

The Commission should facilitate the recognition of this company form also outside the EU, issuing the necessary e-certificates once the company is registered.

5.1.2 Register once-only principle

Today, there is no single, centralised EU companies register. Instead, national business registers remain the sole legal source of company information across the Union. The EU has made important progress with the establishment of the Business Registers Interconnection System (BRIS), a digital infrastructure that enables cross-border access to company records. However, BRIS does not replace national registers. It reflects a federated model, which – while a step forward – continues to impose a heavy administrative burden on companies operating in more than one Member State. Firms must still submit annual accounts, ownership updates, and licensing documentation to each national authority individually.

To address this fragmentation and strengthen the integrity and usability of company data across borders, the recently adopted Directive (EU) 2025/25 lays the groundwork for significant simplification. In line with the once-only principle, it enables automated data retrieval and exchange between national registers via BRIS, eliminating the need for duplicative filings when establishing subsidiaries or branches in another Member State. Furthermore, it introduces the EU Company Certificate, a harmonised, multilingual, digitally authenticated document that serves as legal proof of incorporation and other core company details, accepted across all Member States without the need for legalisation or translation.

The 28th regime would build on this work and include the creation of a B-SEP providing the EU Company Certificate. This would establish a secure, centralised and digital EU interface through which companies can submit key corporate data, such as incorporation records, annual accounts, and beneficial ownership information, once only. A company registration number would be issued within minutes. This information would then be automatically transmitted to all relevant national authorities and registers.

The B-SEP would extend and enhance the existing BRIS infrastructure, implementing the once-only principle long advocated by European stakeholders. Companies registered under the 28th regime would be automatically recognised across all Member States, thus removing duplicative obligations and reducing compliance costs. Authentication and legal certainty would be ensured through the electronic Identification, Authentication and trust Services (eIDAS) framework, allowing companies to use any nationally recognised digital identity tools across the EU.

The governance of the B-SEP does not necessarily need to be centralised. Experience with previous 28th regime-like initiatives shows that additional institutions are not required if existing ones can be leveraged effectively. Instead, the B-SEP could function as a single-entry platform linked to national registers, which would remain ultimately responsible for verification and certification. This would avoid the need to create additional infrastructure at EU level.

5.1.3 Reduction of the cost of compliance

Another persistent obstacle for companies is the duplication of customer due diligence requirements. Despite EU legislation establishing minimum standards for anti-money laundering (AML) checks, national divergences and legal uncertainty continue to generate disproportionate burdens for firms, especially start-ups and SMEs seeking to scale in the single market.

Over recent years, banks have significantly expanded their compliance checklists, often driven not by risk, but by fear (e.g. of supervisory sanction, reputational damage, legal liability). Although the AML Directives provide for a common set of minimum data fields, each Member State has transposed these provisions differently. Supervisory authorities have issued their own interpretations, further fragmenting the regulatory landscape. As a result, banks are routinely forced to over-collect documentation, from notarised leases to certified translations of board minutes, simply to shield themselves from the risk of being found non-compliant.

A new company registered in the 28th regime would still face these obstacles if the compliance standards were still fragmented. The Anti-Money Laundering Regulation (AMLR) ([Regulation \(EU\) 2024/1624](#)) offers the tools to break this cycle. For the first time, customer due diligence is fully harmonised at EU level. This Regulation provides a solid legal foundation to introduce a true ‘know-your-customer once’ system across the Union.

The 28th regime could build on this regulation and create a customer due diligence (CDD) passport – a standardised, machine-readable file that encapsulates all relevant CDD data in a secure, verifiable and portable format. Once a company fills this in and is approved, it should be recognised by any financial entity in the Member States (following article 48 of AMLR), without the need for additional paperwork that imposes an additional burden on companies, particularly SMEs. By doing so, companies across the EU would gain faster and cheaper access to financial services, freeing up resources to invest in growth and innovation.

5.1.4 Harmonised recognition of activities

The definition of activities that companies can perform is also different across Member States. There is no common legal classification at the EU level, even if statistical classification of economic activities (NACE) codes exist for statistical purposes. The legal taxonomy that matters for licences, prudential

rules and objects clauses is still national, so cross-border recognition of what a company is legally allowed to do is patchy and often forces firms to set up separate subsidiaries or redraft their constitutional documents each time they enter a new Member State.

In the optional 28th regime, companies that opt in would be assessed once against a single EU act (and single activity list) and could then operate anywhere in the Union without having to map their business into 27 different national lists. Some areas could stay outside this regime if considered too sensitive for Member States (for example, defence). However, the most common activities should be easily transferrable across legislations.

Finally, a company operating in the 28th regime should easily be able to start a different activity. For example, in the UK, according to the 2006 Companies Act, companies may pursue any lawful activity unless their articles restrict them, giving previous notice to the register. This would be useful for innovative companies whose activities are often difficult to classify and for which flexibility is needed.

5.1.5 Multilingual interface

Businesses operating across borders are confronted with a complex patchwork of national language and translation requirements. Company documents such as articles of association, annual accounts or regulatory licences must often be submitted in the official language of the Member State concerned, frequently accompanied by costly certified or sworn translations. These requirements must often be repeated, placing a disproportionate burden on SMEs and generating significant legal uncertainty, especially for companies seeking to expand cross-border for the first time.

To address these challenges, the proposed 28th regime would include automatic multilingual filing via the central B-SEP. This would allow statutory company documents to be submitted once, in a harmonised machine-readable format such as XBRL (Extensible Business Reporting Language) or JSON (JavaScript Object Notation). The narrative content of these filings would be instantly translated into all 24 official EU languages using the Commission's eTranslation system.

As mentioned above, legal authenticity and evidentiary value would still be ensured through the use of qualified electronic signatures in accordance with the eIDAS Regulation. In practice, this means that a company registered under the 28th regime would prepare and sign its statutory documents once, in its language of choice. From that single act, legally valid, multilingual versions would be generated on the spot. Any competent authority, financial institution, court or business partner in the Union would be able to access this information in their own language. Only in case a court or an administration has a substantial question on the automatic translation of the documents, a certified translation would be required, reducing the administrative burden for companies to cases where it is strictly needed.

5.2 Tax law: the incentive layer

While tax policy remains one of the most sensitive and jealously guarded areas of national sovereignty, its role in enabling – or obstructing – the uptake of a 28th regime cannot be overstated. Businesses make location and legal structure decisions not only based on regulatory simplicity but also on fiscal predictability, neutrality and efficiency. For the 28th regime to become a credible and attractive alternative, it must offer a coherent tax treatment that does not penalise firms for opting in.

At the same time, full tax harmonisation is neither legally feasible under current Treaty provisions (given the unanimity requirement in direct taxation) nor politically realistic in the near term. Therefore, the tax layer of the regime must be functionally effective but politically calibrated, providing material advantages within the limits of existing competences.

We propose four core components of such a tax layer: i) legal form neutrality and fiscal non-discrimination, ii) cross-border loss relief and group taxation, iii) mobility rules, and iv) incentive-compatible withholding tax and VAT treatment.

5.2.1 Legal form neutrality and fiscal non-discrimination

A fundamental prerequisite for the viability of any 28th regime is the assurance that firms opting into the regime are not fiscally penalised or disadvantaged merely because of their legal form. If the 28th regime is to compete on equal footing with national legal forms, its tax treatment must reflect neutrality, recognition and procedural clarity – in both home and host Member States. Without such guarantees, the regime risks being legally robust but economically unattractive.

5.2.1.1 *Home/host state recognition for tax purposes*

To avoid fiscal discrimination, Member States must be required to treat entities established under the 28th regime as tax-resident entities under their domestic tax laws, on the same footing as companies formed under national law. This recognition must be consistent across key domains – most notably corporate income tax (CIT), value-added tax (VAT) and withholding tax (WHT).

Under CIT, 28th regime firms should be treated as regular taxpayers, entitled to the same deductions, rates and filing rules as national companies. In the VAT area, they should qualify for registration and access to credit and refund mechanisms and be allowed to use the One-Stop Shop (OSS) or Import OSS (IOSS) frameworks when applicable. With respect to WHT, any payments made to or by a 28th regime entity – such as dividends, interest or royalties – should be subject to the same obligations or exemptions as those applicable to domestic firms.

Crucially, this tax recognition helps prevent uncertainties around the entity's tax residency, the qualification of its operations as a permanent establishment and the risk of hybrid mismatches – where the same entity is classified inconsistently across jurisdictions. Without harmonised recognition, such mismatches could give rise to situations of double taxation or unintended non-taxation, undermining the predictability and reliability of the regime.

5.2.1.2 *Ensuring legal form neutrality*

Beyond recognition, neutrality requires that Member States refrain from imposing discriminatory taxes, administrative burdens or reporting obligations based solely on the firm's use of the 28th legal regime. This includes prohibiting registration or licensing fees that apply only to 28th regime firms, avoiding duplicative reporting requirements not faced by domestic firms and ensuring that eligibility for tax incentives or reliefs is not curtailed owing to the use of a European legal form.

Such provisions are essential to preserve substantive equality of treatment. They ensure that firms choosing the 28th regime are not penalised fiscally for opting into an EU-wide structure, thereby

safeguarding the freedoms of establishment and capital movement. Ultimately, legal form neutrality reinforces the principle that a firm's European identity should not be a tax handicap when operating across borders.

5.2.1.3 Mechanisms to embed neutrality and recognition

To ensure these principles are operational and binding, targeted amendments to the EU legal framework should be pursued. The Parent-Subsidiary Directive (2011/96/EU) should be amended to explicitly include 28th regime entities as qualifying companies. This would guarantee that dividend payments between 28th regime and national firms are exempt from withholding taxes, subject to standard conditions such as minimum ownership thresholds and anti-abuse clauses.

Similarly, the Anti-Tax Avoidance Directives (ATAD I and II) should clarify that 28th regime entities are within the scope of the existing provisions on controlled foreign companies, interest limitations and hybrid mismatches. This would prevent interpretive gaps and avoid potential abuse or overreach by national administrations.

Under the Administrative Cooperation Directive (DAC), references to 28th regime firms should be integrated into DAC6 (on mandatory disclosure), DAC7 (on digital platforms) and DAC8 (on crypto and financial assets). This would ensure that 28th regime entities are fully embedded in EU tax transparency and reporting frameworks and treated consistently across Member States.

Finally, where relevant, EU accounting directives and classification guidelines – such as the criteria underpinning the EU list of non-cooperative jurisdictions – should be updated to reflect the legal and economic substance of the 28th regime. This would ensure that firms are not inadvertently penalised or flagged simply because of a misunderstanding of the regime's structure.

Taken together, these changes would entrench legal form neutrality and fiscal recognition within the EU's tax framework, ensuring that 28th regime firms are treated fairly, predictably and consistently – thereby strengthening the regime's appeal and credibility.

5.2.2 Cross-border loss relief and group taxation

One of the key fiscal frictions that hinders cross-border business activity within the EU is the limited availability of mechanisms for consolidated taxation and loss relief across Member States. National tax systems typically operate on a standalone basis, recognising profits and losses within their own jurisdiction but not beyond. For firms operating in multiple countries, this fragmentation can lead to a misalignment between economic activity and tax liability, creating inefficient tax outcomes and dampening the appeal of cross-border expansion.

To address this, a 28th regime could incorporate a set of optional rules allowing for cross-border intragroup loss relief and group taxation, applicable exclusively to firms established under the regime and meeting transparency and reporting requirements. These mechanisms would support fiscal neutrality, improve capital allocation efficiency and reduce the administrative and financial distortions caused by siloed national tax systems.

5.2.2.1 Cross-border loss carry-forward

Central to this proposal is a mechanism allowing firms to carry forward losses incurred in one Member State and apply them against profits realised in another. At present, such treatment is rarely available under national tax law, and where it exists, it is typically confined to domestic group structures or limited to parent-subsidiary arrangements within one country.

The 28th regime would instead create a harmonised framework for recognising and deferring cross-border losses. Losses would be subject to common eligibility and verification conditions: they would need to be recorded in accordance with harmonised accounting standards, supported by auditable documentation (such as validated tax filings or independent audit reports), and certified using a standardised EU-wide template, jointly recognised by the tax administrations of the Member States involved.

This framework would also need to maintain legal consistency over time – particularly in terms of carry-forward periods, deduction caps, and sunset clauses – to ensure that firms could rely on stable treatment of prior losses when expanding or restructuring operations across the EU. In turn, this would reduce disincentives to enter less profitable or higher-risk markets, where losses are more likely in early stages of development.

5.2.2.2 Optional EU group consolidation schemes

Beyond bilateral or deferred loss relief, the regime could offer a more ambitious option: the ability for eligible firms to consolidate the profits and losses of all 28th regime entities across Member States into a single EU-wide tax base. This group taxation option would allow a company operating in several Member States to treat its operations as one fiscal unit, subject to specific conditions and safeguards.

Eligibility for such a consolidation scheme would likely require meeting common ownership thresholds (e.g. a minimum of 75% control), uniform application of the regime across group entities and adherence to harmonised transparency and anti-abuse rules. Once established, the group's consolidated taxable base could be apportioned among Member States using an agreed formula – for example, number of employees, fixed assets or possibly turnover. This apportionment logic would be consistent with the principles of the former common consolidated corporate tax base and current Business in Europe: Framework for Income Taxation proposals, and it would better reflect where value is created.

By allowing loss-making affiliates to offset profits earned elsewhere, this model would help prevent the phenomenon of 'loss lock-in' and offer a powerful tool for EU-based start-ups and SMEs seeking to grow across borders. It would also support legal certainty and capital efficiency for larger firms aiming to centralise financial operations under a coherent EU legal structure. It would also significantly reduce any concerns of illegitimate transfer pricing within a closely held group.

5.2.2.3 Administrative and dispute resolution tools

Effective implementation of these mechanisms depends on the availability of clear administrative tools and conflict-resolution mechanisms. To that end, the regime should be supported by common templates for documenting losses and verifying eligibility, a centralised EU-level reporting interface for filing consolidated tax returns or loss claims, and a simplified cross-border dispute resolution process.

This latter element could take the form of a fast-track ruling mechanism or a dedicated mediation panel to resolve disagreements between Member States over loss recognition, allocation of taxable profits, or double taxation risks. In doing so, it would enhance cooperation between national tax authorities, reduce litigation costs, and provide greater certainty for firms navigating complex cross-border tax situations under the regime.

5.2.3 Mobility rules

Tax disincentives to business mobility remain one of the most persistent obstacles to deepening the single market. When companies seek to move their registered office, transfer key assets or reorganise cross-border operations, they frequently face immediate and disproportionate tax liabilities – sometimes even in the form of exit taxation. These fiscal barriers not only penalise business dynamism but also undermine the core freedoms of establishment and capital movement enshrined in the Treaties. A functioning 28th regime must therefore include clear, proportionate and legally coherent rules on business mobility and associated tax consequences.

The regime should start by embedding simplified and standardised tax rules that apply uniformly across participating Member States, enabling companies to opt for the 28th regime. These rules would also apply to 28th regime entities wishing to transfer their registered office, economic operations or substantial assets to another Member State. Under this approach, tax liabilities arising from latent capital gains would not be due at the point of transfer, but only when the gains are actually realised through liquidation or economic use. Special rules may be required if a company under the 28th regime relocates to a jurisdiction outside the EU. A competitive 28th regime would ensure that very few such cases would emerge.

To support legal clarity and continuity of treatment, the regime would define a common concept of economic continuity. This concept would ensure that a change in location alone – when not accompanied by a change in ownership, business activity or legal form – would not trigger requalification of prior tax attributes such as accumulated losses, depreciation schedules or group relationships. The preservation of these attributes is essential to avoid artificial discontinuities in tax treatment that would otherwise penalise firms for legitimate intra-EU restructuring.

A further innovation of the regime would be the availability of optional advance cross-border tax rulings. These would enable companies considering a cross-border transfer to obtain binding tax treatment in advance, under a coordinated administrative procedure involving both the Member State of origin and that of destination. This would draw on the cooperation framework established by DAC (Directive 2011/16/EU), ensuring that rulings are consistent, transparent and mutually recognised. Such rulings would reduce legal uncertainty, shorten compliance timelines and offer reassurance to firms making strategic relocation or restructuring decisions (European Economic and Social Committee, 2025).

In sum, these provisions would ensure that tax rules do not become a de facto barrier to mobility within the EU. By facilitating transfers of business activity under fair, proportionate and predictable conditions, the 28th regime would reinforce the economic rationale of the single market and promote a culture of entrepreneurial adaptability across borders.

5.2.4 Incentive-compatible withholding tax and VAT treatment

Administrative friction in cross-border taxation remains a major operational burden for firms active in multiple Member States, particularly SMEs and high-growth firms. Two areas that consistently generate complexity and delay are WHT procedures on cross-border payments and VAT registration and refund mechanisms. While harmonisation of direct and indirect taxation remains politically constrained, the 28th regime could introduce targeted solutions that significantly reduce compliance burdens without requiring full legal alignment.

First, a central feature of the regime would be the introduction of a fast-track withholding tax relief system, grounded in a unified EU framework. Currently, relief from withholding taxes on dividends, interest, and royalties often requires cumbersome refund procedures or treaty-by-treaty declarations, resulting in long delays and liquidity constraints (especially for SMEs). Under the 28th regime, qualifying entities would benefit from an automatic exemption or reduced WHT rate at source, based on their registration and compliance with the regime's reporting and transparency standards. This would be enabled through a standardised EU certificate of residence, electronically issued via the regime's central registry and mandatorily recognised by all Member States for tax treaty purposes.

To complement this, the regime would facilitate expedited refund mechanisms for cases where withholding has already occurred. These processes would be coordinated through the EU's administrative cooperation channels, such as Eurofisc and the Central Electronic System of Payment Information, allowing tax authorities to verify eligibility and exchange information in real-time. The result would be a substantial reduction in the time and administrative effort required to obtain rightful refunds or treaty-based exemptions, thereby improving cash flow and legal certainty for cross-border investors and operators.

Second, the regime would address VAT complexity through a simplified single-point registration and compliance mechanism. Inspired by OSS and IOSS models introduced under the VAT e-commerce package, the 28th regime could allow qualifying firms to register once for VAT purposes and file returns through a unified interface, regardless of the number of Member States in which they operate. This system would be optional and limited to entities fully operating under the 28th regime, but its availability could transform the administrative experience for mobile firms, especially in services, digital goods, or platform-based activities.

In addition to registration and filing, the regime could also ensure streamlined VAT refund procedures, coordinated through the same centralised platform. Refund claims would be submitted via the regime's portal, validated against cross-border transaction data and relayed to the relevant national administrations for execution. By reducing reliance on bilateral refund procedures and ensuring uniform documentation requirements, the regime would improve efficiency, reduce delays and enhance trust between tax authorities and businesses.

Together, these mechanisms do not require full VAT or WHT harmonisation. Instead, they offer practical interoperability and administrative coordination, which are well within the EU's legal and institutional reach. By doing so, the 28th regime would tackle some of the most persistent pain points in cross-border taxation, offering firms tangible benefits in terms of liquidity, simplicity and cost reduction.

5.3 Insolvency law: completing the lifecycle

The lifecycle logic of a business regime is incomplete without a coherent framework governing its end phase – insolvency. While firm formation, operational rules and expansion tools enable economic activity, it is equally important to provide predictable, fair and efficient mechanisms for exit, whether through restructuring or liquidation. Insolvency regimes, when functioning well, protect creditors, preserve viable firms, support second-chance entrepreneurship and ensure the integrity of markets. When poorly designed or overly fragmented, they impose disproportionate costs, prolong uncertainty and discourage both investment and business creation.

Insolvency law remains one of the most fragmented areas of Member State competence in the EU. Despite repeated efforts to promote convergence, notably through the Insolvency Directive ([Directive \(EU\) 2019/1023](#)) on preventive restructuring frameworks, national approaches still diverge sharply in terms of procedural design, creditor rights, judicial capacity and treatment of entrepreneurs. These divergences result in significant frictions for cross-border business activity, leading to risk premiums, reluctance to scale across jurisdictions and in many cases, underinvestment – particularly from institutional investors wary of unpredictable recovery prospects in the event of firm failure.

Within the context of the 28th regime, insolvency plays a dual role. First, it completes the legal architecture of the regime by enabling a seamless transition from entry to exit, including procedures for restructuring, reorganisation or winding down. Second, it serves as a strategic enabler of trust. Investors and business partners are unlikely to engage with a supranational company form if they cannot rely on a clear, effective and proportionate insolvency framework that protects their claims and ensures timely resolution. The absence of such a framework would place the regime at a competitive disadvantage compared to national forms in more creditor-friendly jurisdictions. While insolvency reform is politically and technically complex, the 28th regime’s modular and voluntary nature allows for a staged approach, with a dedicated framework potentially introduced once sufficient convergence has been achieved.

Although Treaty constraints and subsidiarity concerns limit the scope for full harmonisation, the optional and self-contained nature of the 28th regime creates a unique legal opportunity. Since participation in the regime is voluntary, and its scope limited to entities established under its provisions, it is legally and politically feasible to design a parallel insolvency track, administered through national courts but governed by a unified European framework.

5.3.1 Legal rationale and strategic importance

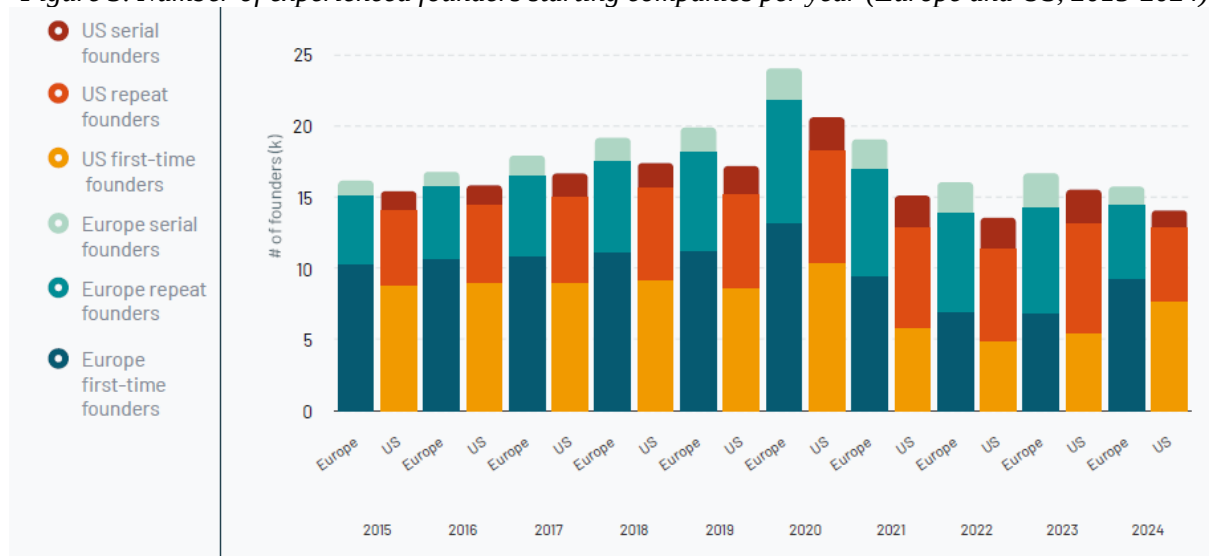
The inclusion of an insolvency layer within the 28th regime addresses both structural and strategic deficiencies in the current EU landscape. At present, investors and creditors must navigate 27 different insolvency regimes, each shaped by distinct legal traditions, procedural timelines and creditor hierarchies. This complexity not only increases transaction costs and legal risk but also entrenches a home bias in capital allocation. Firms incorporated under a less predictable or more debtor-unfriendly regime are often penalised through higher interest rates, lower credit ratings or reduced access to finance.

As the Commission’s High-Level Forum on the CMU explained, ‘... investors’ concerns about the lack of efficiency of insolvency law in different jurisdictions contribute to a home bias. Investors [...] shy away from legal risks and costs, which, however, they would incur if dealing with an insolvency regime different from their own, and third country investors are reluctant to familiarize themselves with all 27

of these national regimes. This is why legal convergence in insolvency (with a view to efficient systems) is a key element of the Capital Markets Union’ (European Commission, 2020)

Furthermore, the absence of harmonised second-chance mechanisms undermines entrepreneurial dynamism. Evidence consistently shows that a substantial proportion of successful startups are created by entrepreneurs on their second or third attempt (see Figure 3). Yet in much of the EU, protracted insolvency proceedings and limited discharge options prevent failed entrepreneurs from returning to the market, tying up human capital and reinforcing structural risk aversion. This stands in stark contrast to more flexible systems such as those in the US or the UK, where discharge is faster, stigma lower and re-entry into business activity more feasible. Regimes that delay or prevent discharge impose a hidden cost on the entrepreneurial ecosystem and hinder innovation.

Figure 3. Number of experienced founders starting companies per year (Europe and US, 2015-2024)



Source: Atomico.

The strategic objective of the 28th regime’s insolvency component is thus twofold: i) to ensure legal certainty and procedural coherence for firms operating under the regime and ii) to promote a culture of responsible risk-taking by making failure manageable, fair and recoverable. By establishing a standalone but interoperable insolvency framework, the regime would provide a level playing field for cross-border investors, reduce barriers to expansion and support the internal market’s broader goal of efficient capital allocation.

Even sophisticated investors struggle to assess risk when insolvency regimes are unpredictable or overly fragmented. Without clear answers to basic questions – such as the order of creditor claims, the expected duration of proceedings or the procedural safeguards available – investors may avoid certain jurisdictions altogether. Legal fragmentation thus acts as a deterrent to risk-sharing, cross-border scaling and deeper financial integration within the internal market.

5.3.2 Core architecture of the insolvency framework

The insolvency component of the 28th regime would consist of a unified legal framework applicable to firms opting into the regime, administered by designated national courts but governed by common procedural rules and substantive standards. This framework would include both restructuring and

liquidation procedures, tailored to the needs of cross-border activity and proportionate to the size and complexity of the firm.

The starting point would be a simplified restructuring procedure based on the debtor-in-possession model. This approach allows financially distressed but viable firms to initiate early-stage restructuring without the immediate displacement of management. A temporary stay on creditor enforcement actions would provide breathing space for negotiations, while the involvement of a neutral facilitator (e.g. a court-appointed restructuring practitioner) would ensure that the process remains transparent, balanced and time-bound. The procedure would require court approval only at key milestones, such as the confirmation of a restructuring plan, thereby reducing administrative burden while preserving judicial oversight.

To facilitate creditor coordination and reduce collective action problems, the framework would introduce a simplified class-based voting mechanism. Plans would be binding on dissenting creditors if they receive approval from a qualified majority in each affected class, with additional safeguards for vulnerable creditors and workers. In cases of disagreement, cross-class cram-down would be available under defined conditions, consistent with the preventive restructuring directive but with streamlined evidentiary thresholds.

For firms that are not economically viable, the framework would offer an equally efficient liquidation track. Proceedings would be initiated either by the debtor or creditors and administered in a time-bound manner with digital filing, remote creditor participation and minimal formalities. A harmonised order of priority for creditor claims would be established, ensuring predictable outcomes across Member States. This order would preserve preferential treatment for secured creditors and workers, while allowing Member States to retain certain flexibilities on matters such as fiscal claims or environmental liabilities.

The regime would also embed discharge rules for natural persons involved in insolvent entities, particularly relevant for SMEs and startups where entrepreneurs often assume personal guarantees or informal obligations. A maximum discharge period of three years would apply, measured from either the opening of proceedings or the implementation of a payment plan, whichever comes first. Courts would retain discretion to impose restrictions in cases of fraud or repeated abuse, but the general presumption would favour rehabilitation over exclusion.

Finally, to ensure consistency and efficiency, the insolvency procedures would be fully digitalised. Standardised filing formats, virtual creditor meetings and multilingual communication tools would be developed, aligned with the regime's broader digital infrastructure. Where appropriate, machine-readable documents and real-time notification systems would allow for automated transmission of information to public authorities, credit registries, and business partners.

5.3.3 Implementation strategy and convergence mechanisms

The rollout of the 28th regime's insolvency framework would follow a staged and adaptive implementation strategy. Initially, the framework would be available only to private limited companies formed under the regime and operating across at least two Member States. This scope limitation would allow for targeted piloting and institutional learning without immediate impact on domestic systems.

Participating Member States would designate competent courts or administrative bodies to handle regime-governed insolvency cases. These bodies would apply the uniform rules established by the regime, but retain procedural autonomy in matters such as language, fee structures and appeal mechanisms, provided these do not contradict the core principles of the framework.

To monitor effectiveness and promote convergence, the Commission (e.g. through a specialised Insolvency Coordination Unit) would establish a dashboard of performance indicators. These would include average duration of proceedings, cost as a percentage of asset value, creditor recovery rates and discharge timelines. Data would be collected systematically from national registers and judicial reports, enabling benchmarking and identification of best practices.

However, data scarcity remains a significant challenge (Marcus & Rossi, 2024). The discontinuation of the World Bank's Doing Business project in 2021 has left a gap in cross-country insolvency indicators, and available alternatives remain limited in scope or inconsistent in methodology (World Bank, 2021). This underscores the importance of building a robust EU-level monitoring capacity for the 28th regime from the outset, not only to assess its performance, but also to generate reliable evidence for potential future reforms.

Training and capacity-building would be integral to the implementation process. Judges, practitioners and insolvency administrators in participating jurisdictions would receive tailored guidance, case-handling templates and cross-border cooperation protocols. The European e-Justice Portal could be extended to include a dedicated 28th regime insolvency module, with multilingual resources for creditors and entrepreneurs.

Past efforts to harmonise insolvency rules through soft law have largely failed. The Commission's 2014 Recommendation on a new approach to business failure and insolvency (2014/135/EU) was followed only sporadically, leading to inconsistent and fragmented national reforms rather than convergence (European Commission, 2022). More recently, the Commission scaled back its legislative ambitions after public authorities in many Member States opposed further harmonisation. These experiences highlight the political infeasibility of uniform reform and reinforce the case for an optional framework. A 28th regime can demonstrate added value in practice, enabling institutional learning and gradually building pressure for voluntary alignment over time.

Coordination with existing EU instruments would be essential. The insolvency framework of the 28th regime would be designed to complement the Recast Insolvency Regulation ([Regulation \(EU\) 2015/848](#)), ensuring mutual recognition of judgments, cooperation between courts and clarity on applicable law. Equally, alignment with the Insolvency Directive would be maintained, with the 28th regime building upon its logic but offering a more integrated and future-proof alternative for regime entities.

In time, the insolvency component of the 28th regime could serve as a laboratory for broader convergence. By demonstrating the benefits of a unified, efficient and socially balanced insolvency system, the regime could gradually influence national reforms, generate empirical evidence for future harmonisation, and contribute to the overall strengthening of the CMU.

5.4 Accounting standards: the transparency and comparability layer

The accounting layer of the 28th regime provides the transparency backbone essential to a functioning and trustworthy internal market. Reliable and comparable financial information underpins investor confidence, reduces compliance burdens and ensures that firms can scale cross-border without duplicative reporting requirements. While the EU has made considerable progress in harmonising accounting for listed companies, fragmentation persists for non-listed firms, especially SMEs. The 28th regime offers a unique opportunity to streamline this landscape.

5.4.1 Conceptual framework and strategic importance

At present, EU accounting rules (i.e. [Accounting Directive](#)) are bifurcated. Listed companies are subject to full International Financial Reporting Standards (IFRS) for consolidated accounts under the IAS Regulation, while Member States maintain discretion for non-listed entities (European Commission, Financial Reporting, 2025) (International Financial Reporting Standards, 2024). Some use national Generally Accepted Accounting Principles, often diverging in their treatment of recognition, measurement and disclosure, while others apply varying exemptions for micro- and small undertakings, leading to inconsistencies in financial transparency.

While flexibility in national regimes may be justified in purely domestic contexts, it becomes a liability for cross-border operations. Firms seeking to expand or merge across jurisdictions often face dual accounting obligations, incompatible year-ends and divergent audit requirements. The result is duplication, uncertainty and unnecessary compliance costs, particularly burdensome for SMEs.

The 28th regime proposes to break this cycle by offering a single accounting track aligned with business size and complexity, providing consistency without sacrificing proportionality. Its accounting component would be designed to fulfil three interrelated objectives: i) transparency for users of financial information, ii) comparability across jurisdictions and business models, and iii) proportionality for firms of different sizes.

This unified accounting framework would align with international best practices and be explicitly designed to facilitate cross-border operations. It would be based on IFRS principles – widely adopted and globally recognised – but include tailored adaptations for SMEs and digital-first firms (Smith, 2025). By establishing a common accounting language, the regime would directly support its broader goals: enabling seamless mobility, supporting financial supervision and reducing the reporting burden for firms operating across borders.

5.4.2 The 28th regime accounting framework

To implement the accounting objectives set out above, the 28th regime requires a dedicated and fully integrated financial reporting framework. Rather than replicating existing national or sectoral models, this framework would establish a single, interoperable standard for all firms operating under the regime – whether large or small, listed or unlisted. Its aim is to minimise duplication, reduce compliance burdens and ensure that financial information is consistent, intelligible and reliable across borders.

The framework consists of two core components:

- a unified set of reporting standards proportionate to firm size and complexity

- a suite of comparability mechanisms to ensure usability of financial information across jurisdictions and business models.

5.4.2.1 *Unified reporting standards*

A core feature of the 28th regime's accounting architecture is the introduction of a single, coherent financial reporting framework applicable to all entities operating under the regime, irrespective of size, legal form or listing status. This unified framework would be grounded in international best practices but adapted to the specific operational, legal and cross-border realities of regime-governed firms.

IFRS-based foundation for larger entities

For medium-sized and large entities, the regime would mandate the use of full IFRS as the baseline. IFRS provides a globally recognised accounting language, offering comparability, transparency and investor confidence across jurisdictions. This ensures that financial statements prepared under the 28th regime are compatible with both EU capital markets and global investor expectations. Using IFRS also facilitates alignment with existing requirements for EU-listed companies, thereby avoiding duplicative reporting obligations and enabling seamless transitions for firms already reporting under IFRS in at least one jurisdiction.

The regime would, however, include targeted clarifications to IFRS application in a cross-border SME context, such as streamlining segment reporting or setting uniform interpretations of common options, to minimise divergences in implementation and reduce compliance complexity.

Tailored simplification for SMEs

Recognising that full IFRS may be disproportionately burdensome for smaller, non-listed entities, the 28th regime would establish a simplified accounting track inspired by the IFRS for SMEs standard (PwC, 2025). While this standard is already used in many jurisdictions, criticisms persist that it retains undue complexity by incorporating references to full IFRS and maintaining high disclosure burdens (European Parliament, 2008). The 28th regime would therefore go further, offering a truly SME-proportionate framework that retains the benefits of comparability and consistency, while dramatically reducing technical and administrative burdens.

This SME-tailored framework would:

- eliminate all references to full IFRS provisions not relevant for SMEs
- provide clear, modular and standalone guidance, free from interpretive ambiguity
- focus disclosure obligations on key performance, solvency and liquidity indicators
- use simplified valuation and depreciation rules that are intuitive and automatable
- offer pre-structured, digital-first reporting templates compatible with common ERP/accounting tools.

This dual-track system – full IFRS for larger entities and a simplified, IFRS-aligned SME framework – ensures proportionality without sacrificing the regime's goal of cross-border financial transparency and comparability. All entities under the regime would operate within a unified architecture, with consistent

core principles and presentation logic, thereby enabling supervisory convergence, reducing investor confusion and enhancing access to finance across borders.

5.4.2.2 Enhanced comparability mechanisms

Establishing a unified accounting framework is a necessary but insufficient condition for cross-border financial transparency. To enable meaningful analysis, regulatory oversight and investment decisions, the 28th regime must also ensure that financial information is presented in a format that is directly comparable across jurisdictions and entities. This requires addressing the persistent divergences in how financial data is structured, timed and measured under national implementations of accounting rules – even when nominally aligned with IFRS.

Despite widespread adoption of IFRS by listed entities, the regime must tackle three critical sources of fragmentation that impede comparability and increase compliance burdens for cross-border firms.

i) Standardised chart of accounts

A harmonised chart of accounts (CoA) would serve as the backbone of financial data structure under the 28th regime. It would provide a common classification system for financial transactions and balance sheet items, enabling automated aggregation, validation and benchmarking across entities and Member States.

For preparers, this would reduce mapping and translation costs when consolidating data from subsidiaries across jurisdictions. For auditors and supervisors, it would facilitate consistent enforcement and efficient risk assessment, while for investors and analysts, it would improve the reliability of cross-company comparisons. The CoA would be fully digitalised and integrated into the regime's reporting templates and interoperable with national systems via standardised crosswalks where needed.

ii) Uniform reporting periods

To ensure that financial information can be compared temporally across entities, the regime would harmonise financial year-end dates and interim reporting intervals. All entities under the regime would be required to adopt a common fiscal year-end (e.g. 31 December), unless justified by sector-specific or operational needs. Interim reports would follow a harmonised semi-annual or quarterly schedule, with deadlines aligned to allow cross-entity data synthesis. This temporal alignment would reduce discrepancies caused by asynchrony in financial disclosures and would enable more accurate macro-level assessments of regime performance.

iii) Consistent measurement approaches

One of the most persistent challenges in achieving comparability lies in the interpretive flexibility embedded within IFRS, particularly in areas such as fair value estimation, impairment testing and revenue recognition. Even when using the same standard, different national traditions and supervisory cultures result in material variation.

The 28th regime would therefore introduce binding implementation guidance to ensure uniform application of key valuation and recognition rules, including:

- prescriptive methodologies for fair value estimation, including hierarchical input preferences and disclosure requirements
- uniform triggers and estimation models for impairment testing of goodwill and intangible assets
- standardised rules for revenue recognition, especially for multi-jurisdictional contracts and bundled services.

Together, these comparability mechanisms would transform the quality and usability of financial data under the 28th regime, turning accounting transparency into a driver of cross-border trust, supervisory convergence and capital market integration. They represent not just a technical layer, but a strategic enabler of the regime's ambition to reduce fragmentation and enhance financial mobility in the single market.

5.4.3 Cross-border specific provisions

Entities operating across several Member States face accounting complexities that go beyond technical compliance, directly affect the reliability, comparability and usability of financial reports. To ensure the 28th regime delivers meaningful simplification and integration, it must address these cross-border frictions through bespoke rules that clarify treatment of multi-jurisdictional activities. These provisions form the operational backbone of the regime's accounting layer, supporting consistency in how financial information is structured, consolidated and interpreted across borders.

Currency and translation standards

Multinational firms often operate in multiple currencies, creating challenges for consistency and comparability in financial statements. Under the 28th regime, clear rules would be established to determine an entity's functional currency, taking into account factors such as primary economic environment and operational centre of gravity. Standardised translation methods would apply to foreign currency transactions and balances, based on uniform exchange rate policies and revaluation rules. To mitigate volatility in reported earnings, simplified but robust hedge accounting rules would be introduced – reducing the reliance on complex mark-to-market adjustments and offering practical alternatives for SMEs using basic financial instruments to manage currency risk.

Consolidation and group reporting

For firms with subsidiaries, branches or joint ventures in multiple Member States, the regime would implement unified principles for group accounting. These include harmonised definitions of control, joint arrangements and significant influence – streamlining the process of determining the scope of consolidation. Standardised elimination procedures for intercompany transactions, as well as uniform treatment of intra-group dividends and balances, would further simplify consolidated reporting. Importantly, enhanced geographical and segment reporting obligations would ensure that users of financial statements can assess the cross-border footprint and risk exposure of regime-governed groups with greater precision.

Together, these cross-border provisions would not only reduce administrative complexity, but also contribute to supervisory convergence, investor clarity and more effective functioning of the internal market.

5.4.4 Governance and oversight framework

The credibility of the 28th regime's accounting component depends not only on the quality of its standards but also on the effectiveness of the institutions responsible for their development, implementation and enforcement. A robust governance architecture is essential to ensure consistency, responsiveness to market developments, and alignment with global practices, while safeguarding proportionality and subsidiarity across Member States.

Standards development and institutional coordination

The core of the regime's governance would be a newly established European Accounting Standards Board (EASB), mandated to set and interpret accounting rules for all entities opting into the 28th regime. This body would work closely with the European Financial Reporting Advisory Group (EFRAG), national standard-setters and international institutions such as the International Accounting Standards Board (IASB) to ensure compatibility and avoid duplication.

The EASB would issue technical guidance, interpretative notes and sector-specific application rules. These will be subject to: i) mandatory stakeholder consultation, including preparers, auditors, investors and national authorities; ii) transparency requirements, such as public exposure drafts and reasoned opinions; and iii) regular review cycles, requiring each standard or guidance to be evaluated every five years for relevance, clarity and market impact.

Audit quality and enforcement

To ensure reliability of financial information, all entities under the 28th regime would be subject to audit requirements aligned with International Standards on Auditing. National audit oversight bodies would retain supervisory responsibilities, coordinated by the Committee of European Auditing Oversight Bodies to ensure convergence in enforcement practices and quality assurance reviews. Key enforcement features would include:

- simplified cross-border audit mandates, allowing audit firms to serve 28th regime entities across multiple jurisdictions under a single licence
- joint inspections and peer reviews, coordinated at EU level, to monitor audit quality and harmonise supervisory methodologies
- corrective mechanisms, enabling enforcement action against systematic non-compliance, including public censure and regime access restrictions for repeat offenders.

Continuous improvement through feedback loops

The oversight system would be supported by a real-time feedback mechanism, using data analytics from structured digital reports (e.g. XBRL) to identify trends, anomalies and systemic issues. Findings from audit inspections, preparer consultations and investor feedback would feed into periodic updates to the regime's standards and practices, enabling it to remain agile, trusted and fit for purpose.

By combining centralised rulemaking with decentralised enforcement and continuous market engagement, the governance framework would ensure that accounting under the 28th regime remains coherent, credible and adaptable to the evolving needs of Europe's cross-border business environment.

5.4.5 Implementation challenges and mitigation strategies

The successful rollout of a harmonised accounting framework under the 28th regime will require more than legislative design. It will hinge on the practical capacity of firms, auditors, regulators and IT systems to adopt and apply the new standards effectively. Transition challenges are particularly acute for SMEs and cross-border companies operating in Member States with limited experience in IFRS-based reporting. Left unaddressed, these hurdles could delay adoption, create uneven implementation and undermine the regime's objectives of comparability and cost reduction.

Capacity-building and technical support

The transition to a unified accounting framework will require extensive investment in training, systems upgrades and procedural alignment. To support this shift: i) a targeted capacity-building programme should be established at EU level, offering technical assistance and modular training for preparers, accountants and national regulators; ii) public-private collaboration with accounting bodies and business associations should be leveraged to co-develop toolkits, sector-specific guidance and sample disclosures; and iii) digital reporting infrastructure (e.g. XBRL-based platforms) should be co-financed and promoted to ensure timely, structured and interoperable reporting, especially for SMEs lacking in-house IT capabilities.

Cultural and legal diversity

Europe's accounting traditions reflect deep-rooted legal, economic and fiscal structures. In some Member States, accounting serves primarily a tax or prudential function; in others, it aligns more closely with investor transparency. These divergent traditions present an ongoing challenge for convergence. Thus, the regime must provide interpretative guidance that balances fidelity to core standards with sensitivity to national legal environments. A 'comply or explain' phase-in mechanism could be used to allow gradual adoption, particularly for SMEs or entities operating under dual-reporting obligations. Moreover, pilot implementation in willing Member States and among early adopter firms can serve as proof-of-concept to build institutional knowledge and calibrate technical instruments before broader rollout.

Political and administrative ownership

A final set of challenges relates to institutional inertia and differing levels of political commitment. Without strong ownership at both national and EU levels, implementation risks becoming fragmented or superficial. To mitigate this, formal coordination mechanisms should be established between the European Commission, EFRAG and Member States, including implementation scoreboards and progress monitoring. Incentives (e.g. funding, technical support, access to simplified compliance channels) could also be used to encourage early adoption, particularly among high-potential sectors or cross-border clusters.

Taken together, these strategies aim to transform implementation from a barrier into a strategic opportunity. Rather than merely managing transition risk, the regime should use the implementation phase to build trust, demonstrate value and foster a new culture of cross-border financial transparency that supports Europe's capital market integration agenda.

5.4.6 Future development and adaptability

The accounting standards component of the 28th regime must be designed as a living framework – capable of adapting to economic, technological and regulatory transformations. Rather than locking firms into a fixed model of reporting, it must enable continuous evolution in response to structural changes in how businesses operate and create value across borders. This responsiveness is essential not only for maintaining the regime’s internal coherence but also for ensuring that participating entities remain competitive and comparable on a global scale.

The first area of adaptation concerns emerging economic phenomena. As business models increasingly revolve around intangible assets, data and decentralised networks, the accounting framework must evolve accordingly. For example, the regime should provide standardised treatment for digital assets such as cryptocurrencies and tokenised instruments, offering clarity on their classification, valuation, and recognition on the balance sheet. Similarly, as the European economy shifts toward knowledge-intensive sectors, the regime must develop improved approaches for disclosing intellectual capital, algorithmic tools and internally generated intangibles that are currently underrepresented in traditional financial statements. Finally, the growing integration of environmental and social objectives into corporate strategy necessitates closer interaction between financial and non-financial reporting, allowing for more meaningful reflection of environmental, social and governance-related revenues, climate-related risks and sustainability performance within the accounting framework.

Second, the regime must integrate technological innovation into its core design. Digitalisation is not merely a reporting tool but a structural enabler of real-time oversight, comparability and efficiency. The regime should be built around structured, machine-readable reporting formats that allow for automated validation, cross-firm benchmarking and real-time monitoring by supervisors. It must also accommodate emerging technologies such as AI-assisted accounting and cloud-native enterprise resource planning systems, ensuring that reporting obligations remain aligned with how companies actually operate. A digital-first approach should support both regulatory compliance and internal decision-making by enabling continuous reporting capabilities and seamless integration between firm-level systems and supervisory platforms.

The third area of future development is alignment with global standard-setting. To ensure that companies operating under the 28th regime remain credible and investable in international markets, the framework must maintain close coherence with global developments, particularly those led by IASB and EFRAG. At the same time, the regime should retain the flexibility to introduce EU-specific clarifications or adaptations where needed. Regular review cycles should involve formal consultation processes with preparers, users and regulators, allowing the standards to evolve in line with market developments while maintaining transparency and legitimacy.

Finally, institutional responsiveness must be built into the governance structure of the accounting framework. Rather than relying on lengthy legislative revisions, the EASB should be empowered to issue modular updates, technical clarifications and rapid interpretive guidance where necessary. The regime should also establish structured pilots or sandboxes for testing innovative disclosures, new valuation methods, or emerging data standards before broader implementation. Horizon-scanning capabilities within the governance architecture would ensure that the regime stays ahead of market

trends, technological change and user expectations, enabling it to evolve in a timely and coherent manner.

In sum, future adaptability is not an optional feature but a foundational requirement of the accounting standards component. It ensures that the 28th regime can remain relevant, forward-looking, and capable of supporting the financial infrastructure of an integrated and innovation-driven European economy.

5.5 Labour law: the constrained layer

Labour law within the European Union operates within a distinctive institutional and legal architecture that sets it apart from other areas of EU integration such as financial services, consumer protection or company law, making it a uniquely challenging domain for consideration within a 28th regime. This specificity stems from explicit Treaty provisions that establish both the limits of Union competence and the central role of social partners in shaping labour policy.

Articles 154 and 155 TFEU enshrine the principle of social dialogue, granting workers' and employers' representatives a formal and Treaty-based role in the process of developing EU labour policy. This institutional framework means that any initiative in the labour domain must carefully balance Union-level objectives with national traditions of industrial relations, while fully respecting the autonomy of collective bargaining processes – a constraint that significantly limits the scope for optional EU-level frameworks. The social partners' involvement is not merely consultative but constitutes a fundamental element of the EU's approach to labour law governance.

5.5.1 The existing EU labour law *acquis*

Over the past three decades, the EU has gradually developed a substantial *acquis* in labour law. This body of legislation primarily establishes minimum standards designed to ensure a common baseline of protection for workers across Member States while explicitly respecting national diversity and allowing for more protective rules at national or sectoral levels.

The current *acquis* encompasses several core areas:

Health and safety at work, initiated with the 1989 [Framework Directive](#) (89/391/EEC) and supplemented by numerous specific measures addressing particular risks and sectors.

Working time regulation, codified in [Directive 2003/88/EC](#), which establishes minimum requirements for daily and weekly rest periods, maximum weekly working hours and paid annual leave entitlements.

Non-discrimination and equal treatment, implemented through a comprehensive framework of directives covering gender equality in employment ([Directive 2006/54/EC](#)), equal pay principles ([Directive \(EU\) 2023/970](#)), and broader equality measures addressing discrimination based on racial or ethnic origin, religion or belief, disability, age, or sexual orientation (based on Article 19 TFEU).

Information and consultation of workers, encompassing directives on European Works Councils ([Directive 2009/38/EC](#)), transfers of undertakings ([Directive 2001/23/EC](#)), collective redundancies ([Directive 98/59/EC](#)), and insolvency protection ([Directive 2008/94/EC](#)), all designed to ensure worker participation in corporate decisions affecting their interests.

Transparency and predictability of working conditions, recently updated through [Directive 2019/1152](#) to guarantee workers access to written information on essential aspects of their employment relationship.

Posting of workers, providing a [regulatory framework](#) for the free movement of services while attempting to balance fair-competition concerns with workers' rights protection.

These instruments collectively create a baseline of rights and obligations that all Member States must transpose into national law, while deliberately preserving substantial room for more protective rules at national or sectoral levels. In many countries, critical issues such as wage formation, working-time flexibility, training obligations and other core employment conditions are primarily or exclusively defined through collective agreements negotiated between employers' associations and trade unions.

5.5.2 Competence limitations and Treaty constraints

The Treaty framework imposes significant structural limitations on the EU's capacity to legislate in the labour field. While Article 153 TFEU permits the Union to support and complement Member States' actions in employment matters, Article 153(5) TFEU explicitly excludes several fundamental areas from Union competence: pay, the right of association, the right to strike and the right to impose lock-outs.

Additionally, in the domain of social security, Article 153(4) TFEU makes clear that Member States retain exclusive authority to define the fundamental principles of their social security systems, although the EU may adopt measures to ensure coordination between national systems for the purpose of facilitating worker mobility.

These competence boundaries are not merely technical limitations but reflect deeper political compromises about the appropriate division of responsibilities between the EU and national level in areas touching the core of national sovereignty and social models.

5.5.3 Institutional challenges for additional regulation

The institutional reality of EU labour law generates several significant challenges for any consideration of additional regulatory layers within a potential 28th regime framework:

Diversity of industrial relations systems: the substantial variation in industrial relations traditions across the EU means that additional parallel rules could conflict with deeply embedded national practices. In Nordic countries, for instance, collective bargaining covers the vast majority of workers and shapes most employment conditions with minimal legislative intervention, while in other Member States, legislation plays a more prominent regulatory role. Additional EU-level rules could be perceived as undermining national practices and threatening the autonomy of social partners.

Legal complexity and coherence: introducing new layers of labour regulation alongside the existing *acquis* would create significant challenges in ensuring legal certainty for both companies and workers. Questions would arise regarding the interaction between EU-level standards, national legislation and collective agreements, potentially creating overlapping or contradictory obligations.

Political feasibility: given the sensitive nature of labour law and its connection to national social models, any attempt to introduce new substantive EU-level rules in core aspects of the employment relationship would likely provoke significant political controversy among Member States and within national constituencies of workers and employers. The negotiation process could extend over many years, potentially delaying or preventing the establishment of a workable regime.

Social-partner consultation requirements: the Treaty-mandated role of social partners means that any labour law initiatives must undergo extensive consultation processes at both EU and national levels, adding complexity to the legislative process and requiring broad consensus among diverse stakeholder groups.

Taken together, the limits of EU competence under the Treaties, the diversity of national industrial relations systems and the high political sensitivity of employment rules all point to the same conclusion: labour law should not form part of the initial design of a 28th regime. Including it prematurely would risk legal incoherence, political deadlock and diminished legitimacy. However, adjustments to labour law could be considered in the future, should evidence emerge that the existing framework is insufficient to address cross-border challenges. In all cases, respect for the existing *acquis* and the central role of social partners must remain non-negotiable.

6. Implementation pathways and governance

This chapter explores how a 28th regime could move from design to operational reality. It examines pathways for experimentation, piloting and scaling, as well as the governance structures needed to ensure accountability, supervision and policy coherence. The focus is on institutional feasibility: what mechanisms, actors and safeguards are necessary to make such a regime implementable in practice; while ensuring it remains legally robust, politically viable and responsive to market needs.

6.1 Options for piloting

Developing a 28th regime from concept to practice requires not only sound legal design but also political traction and real-world validation. One promising pathway is through pre-legislative piloting – structured experiments that allow Member States or national actors to test new ideas in a controlled, non-binding setting. Such pilots can generate empirical evidence, stakeholder buy-in and institutional learning necessary to scale up a voluntary regime into an enforceable EU-wide framework. In this context, two emerging initiatives are particularly relevant: the Competitiveness Lab, launched in 2025 at EU level, and Spain’s Regime 20, a national initiative aimed at overcoming internal regulatory fragmentation.

Box 2. The Competitiveness Lab and its relation to the 28th regime

The Competitiveness Lab is a governance initiative aimed at fostering deeper coordination among a group of EU Member States, without challenging the prerogatives of the European Commission or undermining the unity of the single market. It was proposed by Spain in 2024, driven by mounting frustration over the slow-paced progress on initiatives such as the CMU. The initiative is currently being piloted by Spain, Germany, France, Italy, Poland, Luxembourg and the Netherlands, with the first ministerial-level meeting taking place in Brussels on 13 March 2025. A second ministerial-level meeting was held in Paris on 5 June 2025, during which the Finance Europe savings label was formally launched.

Crucially, the Lab should not be confused with enhanced cooperation, a formal mechanism under the Treaties that is triggered only when consensus among 27 Member States proves unachievable for a legislative proposal already tabled. Nor is it a vehicle for advancing a two-speed Europe. Instead, the Competitiveness Lab operates as an *ex ante* coordination platform – more akin to a policy sandbox – that enables a subset of Member States to jointly explore reforms, test ideas and generate policy evidence that may eventually inform EU-wide action.

Participation is voluntary, and pilot projects are explicitly designed to be legally non-binding. Each project follows a two-stage procedure involving the European Commission: an initial screening ensures alignment with EU competences and law, followed by a second-stage assessment to evaluate the design, impact and potential for broader adoption. The intention is that, should a pilot prove successful, it could feed into a Commission-led legislative proposal that applies across all 27 Member States.

The Lab’s first concrete test case is the development of a voluntary Finance Europe savings label for financial products that allocate at least 60-70% of their assets to EU-based investments. The label is

intended to help channel household savings towards European growth and resilience objectives. Although politically sensitive, the concept has opened the door to future fiscal incentives. In parallel, the European Commission is working on a recommendation concerning EU-wide savings accounts, with adoption expected in the third quarter of 2025. Coordination is underway to ensure that the two initiatives remain complementary. Concerns have been raised by Member States with well-developed national savings schemes, who fear disruption to their existing models. To address these, the voluntary and non-disruptive nature of participation has been repeatedly emphasised.

At present, the Competitiveness Lab remains distinct. The Lab is designed to inform future legislation through voluntary pre-legislative experimentation. While it is conceivable that the results of a Lab pilot could inspire or evolve into an optional regime structure, this is not its primary purpose. The Lab is best understood as a flexible, transparent platform to build political momentum, develop evidence-based proposals and foster convergence in areas where formal agreement at 27 may be premature. By contrast, Spain's Regime 20, discussed in the following box, is already functioning as a more immediate expression of this logic at national level.

While the Competitiveness Lab exemplifies an EU-level platform for voluntary pre-legislative coordination, similar forms of regulatory experimentation are emerging at the national level. Spain's Regime 20 initiative, outlined in Box 3, reflects how the logic of an optional, streamlined framework can be applied to reduce regulatory fragmentation within a Member State. It serves as a bottom-up case study of how differentiated but interoperable rules can support business mobility and administrative simplification – principles that also underpin the broader concept of a 28th regime.

Box 3. Spain's Regime 20 – a national-level implementation of the common framework logic

Spain's Regime 20 is a domestic initiative aimed at reducing regulatory fragmentation across regional and municipal levels (Comunidades Autónomas y Ciudades Autónomas). It seeks to streamline business regulation by establishing uniform rules and procedures that can be voluntarily adopted by sub-national authorities. The initiative was launched by the Ministry of Economy and Trade and is currently being developed through a combination of sectoral conferences and working groups involving regional and national administrations.

Several workstreams are already under way:

- a model ordinance for shop openings, intended to bring greater coherence to local-level business regulation
- labelling standardisation in three priority areas:
 - waste management (with a view to future EU alignment)
 - accessibility (building on Spain's leadership in inclusive regulation)
 - multilingual labelling, with an emphasis on digital formats
- a national 'business folder', that allows firms to reuse previously submitted documentation when interacting with different authorities across regions.

Rather than relying on a single overarching legal instrument, Regime 20 follows a modular approach. Legal bases are tailored to the distribution of competences in each policy area, with implementation tools ranging from ordinances to framework agreements. The Spanish authorities are also exploring

the possibility of extending the model to Portugal, creating an ‘Iberian regime’ for cross-border business facilitation.

Despite broad political interest, differences among regional governments make a single uniform model unlikely. Instead, two or three interoperable variants may emerge, reflecting the diverse legal and political preferences of regional authorities. Even this partial convergence could lead to significant simplification, given the current patchwork of 19 distinct regulatory systems.

A notable example of local innovation within this context is the *Ley de Mercado Abierto* (Open Market Law) adopted by the Community of Madrid. This law allows companies authorised in any Spanish region to operate in Madrid without additional administrative steps, provided they do not establish a physical presence. Based on mutual recognition, this approach is being promoted to other regions as a replicable model of administrative streamlining.

Regime 20 demonstrates how the logic of a common framework – voluntary, modular and built around existing legal competences – can be applied at the national level. It provides a valuable precedent for how a European 28th regime might be operationalised in decentralised governance systems. Success will ultimately depend on the ability to balance legal flexibility with political coordination and to translate voluntary convergence into meaningful simplification on the ground.

These initiatives demonstrate that both top-down and bottom-up experimentation can play a critical role in shaping future common frameworks at EU level. However, transforming such pilots into durable legal instruments will require more than voluntary coordination. It will depend on establishing a clear interface between experimental outcomes and the EU legislative process, and, crucially, on designing mechanisms that can translate tested innovations into enforceable and trusted rules across Member States.

6.2 Stakeholder perspectives

In addition to institutional pathways, stakeholder perspectives will play a decisive role in shaping both the design and eventual uptake of a 28th regime. Based on interviews and available evidence, Table 3 simulates potential positions across stakeholder groups. Although most positions remain uncertain because of the absence of a formal Commission proposal and position papers, the stakeholder acceptability matrix provides a preliminary view that will likely evolve significantly over time.

Table 3. Simulated stakeholder positions on the layered implementation of the 28th regime

Stakeholder group	Corporate law	Insolvency law	Accounting standards	Tax law	Labour law
Large companies	Support EU form for core rules (digital one-stop, low capital, board choice, uniform duties); complement, not replace, national forms.	Exclude insolvency initially; address later via EU package.	Possible later, piecemeal work; not first act.	Exclude tax (exit taxes, base, listing incentives); handle separately.	Keep labour outside core; safeguard existing participation; add rights at thresholds.
SMEs, mid-caps, start-ups	Support if it simplifies formation/operations (digital one-stop, once-only); optional/switchable.	Prioritise insolvency with company law as first EU rules.	No explicit position.	No explicit position.	No explicit position.
Trade unions	Strongly critical; risk of forum shopping/bypassing rights. Fix abuses first.	No explicit position.	No explicit position.	Warn of tax-avoidance risks; address before regime.	Oppose inclusion; risk of downward convergence; demand strong safeguards.
Academia	Favour maximum unification via regulation to avoid fall-backs.	Strongly favour deep harmonisation with corporate law.	No explicit position.	Common tax base unrealistic; avoid risking regime on tax.	Note tension: strong-representation states fear undercutting; others resist importing it.
Investors	Support deep optional EU form, attractive as default.	Prioritise uniform creditor ranking and fast restructuring.	Welcome later convergence; secondary priority.	Prefer single tax base to remove hidden costs and uncertainty.	Seek aligned restructuring-related procedures (avoid race to bottom).
Insurers	Little value; activity local (contracts, courts, damages).	Limited convergence only (ranking, administrator powers).	No harmonisation; avoid added costs.	Exclude tax; past products conflicted with national rules.	Keep labour national; no appetite for EU layer.

Notes: Colours indicate simulated stakeholder positions derived from interviews and available evidence. Green indicates likely supportive/include; yellow indicates likely cautious/conditional; red indicates likely opposed/keep outside; grey indicates no explicit position anticipated. Assessments are preliminary and may evolve as formal proposals and position papers emerge.

Source: Authors' elaboration.

6.3 Enforcement and supervisory roles

The success of the 28th regime will depend not only on its legal design but also on the credibility, clarity and efficiency of its enforcement architecture. Ensuring compliance, resolving disputes and fostering

consistent interpretation across Member States are critical prerequisites for market confidence and legal certainty. Yet designing a supervisory model that is both proportionate and politically acceptable poses several challenges, particularly when the regime sits alongside national frameworks.

Three main supervisory models can be observed across existing EU frameworks:

- **National-first supervision**, where NCAs retain primary enforcement responsibility, coordinated through EU-level networks or soft instruments. This is the model underpinning frameworks such as UCITS and the Alternative Investment Fund Managers Directive, where passporting is based on home-state supervision but subject to coordination via ESMA and peer review mechanisms.
- **Joint supervision**, where supervisory tasks are shared between the EU and national authorities. The Single Resolution Mechanism in the banking union exemplifies this hybrid model, with the Single Resolution Board overseeing systemically important banks while NCAs retain oversight of less significant institutions.
- **EU-centralised supervision**, where an EU agency exercises direct supervisory authority over specific actors. This applies to credit rating agencies and trade repositories, which are directly supervised by ESMA under sectoral regulations.

For a 28th regime, the choice between these models must be driven by both the sensitivity of the framework and administrative feasibility. A lightweight or narrowly scoped arrangement – for instance, focused on corporate forms or SME access – could plausibly rely on NCAs, supplemented by an EU-level coordination mechanism to ensure consistency. By contrast, frameworks with a stronger cross-border consumer dimension, or those where reputational risks are high (e.g. involving green claims or digital rights), may require stronger central oversight, potentially via ESMA or EIOPA.

One possible innovation would be the establishment of a Regime 28 Coordination Board – a joint body composed of Member State representatives, relevant EU agencies and Commission services. While not a full supervisory authority, such a board could issue non-binding guidance, facilitate horizontal learning among NCAs and coordinate supervisory approaches where uniformity is critical. It could also serve as a forum to resolve interpretive disputes before they escalate to litigation or political deadlock.

To support dispute resolution and legal clarity, the regime should embed mechanisms for fast-track interpretation and issue resolution. A formal ‘interpretation request’ procedure could allow NCAs or firms to submit questions to the Commission or the Coordination Board, with non-binding opinions issued in a timely manner. In parallel, the use of soft-law instruments – including FAQs, templates and technical guidance – can help standardise implementation across jurisdictions, especially during the early stages of regime rollout.

Ultimately, enforcement should reflect the principle of proportionality: lean where possible, robust where necessary. Centralisation should not be the default, but it should remain an available tool in frameworks where fragmented enforcement would undermine effectiveness or trust.

6.4 Risk mitigation and safeguards

To ensure political viability and minimise unintended consequences, the 28th regime must incorporate safeguards that balance legal innovation with regulatory certainty, user protection and market integrity.

While the voluntary nature of such a regime can help mitigate sovereignty concerns, past experiences demonstrate that optionality alone does not eliminate the need for clear legal boundaries, consumer safeguards, and structural coherence.

6.4.1 Legal coexistence through a two-tier framework

A foundational feature of the 28th regime approach is its coexistence with national frameworks. This two-tier model offers firms the flexibility to choose between a harmonised EU-level framework and domestic legal systems, preserving subsidiarity and reducing political resistance. However, for this arrangement to function effectively, the interface between national and EU frameworks must be clearly delineated. In particular, firms that opt into the 28th regime must not be subject to overlapping or duplicative national rules in the same regulatory domain.

To avoid regulatory duplication and legal uncertainty, the regime must include clear conflict-of-law provisions and a legal guarantee of mutual recognition across Member States. A firm operating under the 28th regime in one Member State should be able to do so throughout the Union without triggering parallel compliance obligations under national law. This principle of exclusive application, already seen in the functioning of UCITS passports, is critical for encouraging uptake and ensuring legal predictability. Without it, the benefits of a simplified, uniform regime would be quickly undermined by the reintroduction of national-level complexity.

6.4.2 Ensuring user protection and trust

Where the 28th regime applies to areas with a direct consumer interface (e.g. financial products, digital services, contractual rights), strong user protection mechanisms are indispensable. The regime must meet, and ideally exceed, the baseline standards established in existing EU consumer and investor protection legislation. Rather than relying on complex opt-in arrangements or high information burdens, the design should emphasise clarity, simplicity and user confidence.

One approach is to integrate standardised documentation and model terms into the regime's architecture. These instruments can offer both legal certainty and user accessibility, especially in cross-border retail contexts. Default protections, such as simplified disclosures, accessible complaints mechanisms, or minimum withdrawal rights, can help ensure that consumers and investors understand the rights and obligations associated with products or services offered under the regime. Importantly, these safeguards should not be left to market initiative but embedded in the regulatory framework, supported by implementation guidance from supervisory authorities where necessary.

By doing so, the regime can position itself not only as an efficient legal alternative for firms, but also as a trustworthy and protective framework for end-users. This is particularly important in a political environment where concerns about regulatory arbitrage and consumer detriment can easily derail legislative proposals, even when participation is formally optional.

6.4.3 Preventing market fragmentation and ensuring systemic coherence

In parallel, safeguards must be established to prevent unintended market fragmentation or regulatory arbitrage. While the regime is designed to reduce compliance burdens, it must not do so at the expense of EU-wide policy coherence or public trust. To that end, eligibility for the regime may need to be

limited to firms meeting basic compliance and governance standards, ensuring that the regime does not become a haven for less scrupulous operators.

Transparency will also play a crucial role. A publicly accessible EU-wide register of participating firms could enhance reputational discipline and enable customers, regulators and counterparties to verify legal status and track conduct. This measure would not only improve accountability but also make it easier to identify patterns of abuse or concentration risk during early implementation.

In more sensitive domains, such as personal data use, sustainability claims or pension savings, the regime may need additional safeguards to limit systemic exposure. For example, regulatory authorities could introduce mechanisms to monitor market share or concentration levels, triggering proportionality reviews if the regime expands too rapidly or creates adverse spillovers on domestic systems. This could be complemented by structured peer reviews or Commission-led evaluations, offering a responsive and evidence-based approach to risk control.

Finally, risk mitigation should be designed with flexibility in mind. Certain privileges or exemptions under the regime could be granted on a provisional basis and made subject to ex post review, allowing for recalibration as the regime matures. This would allow policymakers to balance ambition and caution – enabling experimentation without locking in design flaws. By embedding reversibility and continuous feedback into the legal framework, the regime can evolve based on real-world performance and political realities.

6.5 Phasing and flexibility mechanisms

The political, legal and technical complexity of a 28th regime makes an immediate, fully-fledged rollout unrealistic. Instead, gradual implementation is not only pragmatic, but also essential. A phased approach allows for real-world testing, early correction of design flaws and the building of trust among Member States, firms, and users. Flexibility mechanisms, both in legal structure and procedural governance, can help de-risk the process while preserving long-term ambition.

One option is to begin with a geographically or sectorally limited rollout. The regime could initially apply in selected policy areas (e.g. corporate, insolvency, accounting, taxation law) or be piloted in a subset of Member States that express early interest. This would mirror the logic of enhanced cooperation, but without invoking its formal legal procedures. Early adopters could function as ‘policy laboratories’, helping to refine the regime before broader application. To ensure that such pilots remain genuinely transitional, the legislative framework could include ‘sunrise clauses’, specifying that broader application will follow automatically after a defined period unless objections are formally raised and justified.

Similarly, opt-in timelines and sunset clauses offer further flexibility. Member States and firms could be allowed to join the regime in stages, based on readiness or political support. This would enable differentiated uptake without requiring uniform participation from the outset. Sunset clauses could apply to certain derogations, transitional arrangements or privileges, ensuring that early concessions are periodically reviewed and not indefinitely entrenched. These mechanisms also serve as a signalling function: they show that the regime is responsive to political concerns, but not indefinitely frozen by them.

The legal structure of the regime itself must also be adaptable. A modular design, consisting of a core framework supplemented by annexes or implementing acts, allows for staggered expansion across legal domains. For example, the regime could first establish a uniform corporate vehicle, with future modules addressing tax incentives, insolvency coordination or accounting simplifications. This legal modularity avoids overwhelming legislative drafters, regulators or users with an all-at-once reform package. It also allows different components to be negotiated and adopted on different timelines, reducing political friction.

To ensure that implementation proceeds in a structured and evidence-based manner, the regime should embed feedback loops and evaluation mechanisms. Clear performance indicators, such as user uptake, cost savings or cross-border activity, should be monitored from the outset. A dedicated evaluation mechanism could be entrusted to the European Commission, supported by an independent observatory or academic network. Regular public reporting, perhaps on a biennial basis, would increase transparency and allow for course correction. These evaluation exercises should not merely assess technical performance but also gather user feedback and track unintended consequences, including impacts on national frameworks.

Crucially, flexibility does not mean open-ended ambiguity. The regime must strike a balance between adaptability and legal certainty. Time-bound review clauses, for example, requiring the Commission to present an implementation report every five years, can help maintain this balance. They provide political assurance that the regime will remain under scrutiny, while avoiding paralysis during the early stages of implementation.

In sum, the long-term success of a 28th regime depends not only on its legal merits, but also on the credibility of its implementation roadmap. A phased, flexible and transparent rollout – supported by iterative learning and institutional accountability – can turn an ambitious legislative proposal into a politically sustainable and operationally workable reality.

7. Policy recommendations

The implementation of a 28th regime requires more than legal design; it demands sustained political commitment, careful institutional coordination and continuous stakeholder engagement. As this study demonstrates, a well-designed optional regime can deliver substantial benefits for European competitiveness, business efficiency and market integration. It offers a pragmatic, targeted tool to overcome fragmentation, lower barriers to cross-border activity and support the EU's green, digital and industrial goals. Properly conceived and implemented, a 28th regime can deepen integration while respecting national diversity – delivering tangible results for citizens and businesses across the Union.

The following recommendations provide a roadmap for unlocking this potential.

7.1 Foundational design and scope

Recommendation 1: Apply rigorous definitional criteria before launching new initiatives.

The proliferation of 28th regime-like initiatives that did not conform to the seven core principles defined in Chapter 4 has created conceptual confusion and unrealistic expectations. Before proceeding with any optional framework, EU institutions should systematically apply the seven-principle test: i) optionality for users with mandatory availability by Member States, ii) legal anchoring within territorial reality, iii) applicability in areas of non-exclusive EU competence, iv) avoidance of domains already governed by dense EU legislation, v) reliance on sound Treaty basis, vi) practical operability, and vii) a clearly defined scope. Applying these criteria will prevent dilution of the concept and ensure resources are directed only to initiatives with genuine potential for success.

Recommendation 2: Ensure clear value propositions with quantifiable benefits.

The comparative analysis reveals that successful 28th regime-like initiatives consistently offer tangible, measurable advantages over existing alternatives. Before legislative drafting begins, the proposed 28th regime must demonstrate concrete benefits, whether through cost reductions, procedural simplifications, enhanced legal certainty or improved market access. These benefits should be quantified through impact assessments and validated through stakeholder consultation, avoiding the vague promises that contributed to the failure of initiatives like CESL and SPE.

7.2 Implementation strategy and institutional design

Recommendation 3: Adopt modular, phased implementation leveraging existing institutional infrastructure.

Rather than attempting comprehensive frameworks from launch, the 28th regime should be developed through incremental modules that can be tested, refined and expanded based on real-world experience. Implementation should build upon existing supervisory and administrative systems rather than creating new bureaucratic structures, utilising national competent authorities coordinated through established EU agencies with lightweight coordination mechanisms for interpretative guidance. An alternative would be to launch a comprehensive package from the outset, but this would likely face significant political resistance. There is therefore an inherent trade-off between making the regime appealing enough for business uptake and ensuring its political feasibility, as previously illustrated (see Figure 2). The

modular and phased approach is recommended as it offers the most pragmatic balance, even if it implies a slower build-up of business interest.

Recommendation 4: Develop structured piloting mechanisms before full legislative adoption.

The analysis of past failures demonstrates the importance of testing regime components in real-world conditions before committing to comprehensive frameworks. The Commission should establish formal piloting procedures that allow willing Member States to experiment with specific 28th regime elements in controlled, time-bound settings. The emerging Competitiveness Lab provides one promising platform for such experimentation, though other mechanisms may prove equally valuable. These pilots should generate empirical evidence on uptake patterns, compliance costs and operational challenges whilst building institutional knowledge and political confidence.

7.3 Political economy and stakeholder management

Recommendation 5: Secure broad stakeholder coalitions before formal legislative proposals.

The analysis in this study demonstrates that a successful 28th regime would require sustained support from business associations, trade unions, legal practitioners and a critical mass of Member States. Early engagement should focus on co-designing solutions rather than defending predetermined positions, ensuring that the 28th regime reflects genuine user needs.

Recommendation 6: Frame initiatives as business facilitation rather than integration projects.

Political resistance often stems from the perception that optionality constitutes ‘harmonisation by stealth’ or threatens national sovereignty. Communication strategies should emphasise tangible, user-facing benefits – such as reduced compliance costs, simplified procedures and enhanced legal predictability – rather than abstract integration objectives. To build broad public and political support, the 28th regime should be presented not only as a tool that facilitates cross-border business operations, but also as a driver of competitiveness, innovation, quality jobs and consumer choice. In this way, the narrative moves beyond technical simplification to show how optional EU regimes can contribute to growth, resilience and fairness in the single market.

7.4 Legal architecture and safeguards

Recommendation 7: Design robust coexistence mechanisms with clear conflict-of-law provisions.

The two-tier model requires unambiguous rules governing the interface between EU and national frameworks. Entities opting into the 28th regime must benefit from exclusive application of EU rules within the regime’s scope, with legal certainty that national requirements will not reassert themselves. While automatic mutual recognition across Member States should be the goal, experience shows that mutual recognition is often weak in practice. Therefore, the regime must be underpinned by enforceable provisions that guarantee legal effect and prevent duplicative or conflicting obligations. This includes clear conflict-of-law rules, fast-track interpretation procedures at EU-level and streamlined dispute resolution mechanisms to ensure consistent application and trust in the system.

Recommendation 8: Embed proportionality mechanisms and anti-circumvention safeguards.

Learning from past failures, the 28th regime must include explicit provisions ensuring accessibility for SMEs through simplified procedures, tiered compliance requirements and digital-first design. Simultaneously, robust anti-circumvention measures, including substance-over-form requirements and enhanced transparency obligations, should prevent misuse whilst preserving legitimate business mobility and operational flexibility.

7.5 Accountability and continuous improvement

Recommendation 9: Establish comprehensive evaluation frameworks with sunset clauses.

The 28th regime should incorporate mandatory review provisions every five years, with automatic expiry of transitional arrangements unless actively renewed. To ensure accountability and enable course correction, robust *ex ante* design of performance indicators should accompany the initial legislative proposal – covering uptake rates, compliance cost reductions, cross-border activity facilitation and stakeholder satisfaction. These indicators should be grounded in data collection requirements identified during the impact assessment phase. Independent evaluation bodies should be tasked with independent periodic assessments with published recommendations, strengthening transparency and credibility while addressing past concerns about weak feedback loops in EU regulatory experiments.

Recommendation 10: Maintain realistic timelines whilst preserving integration pathways.

Based on analysis of past initiatives, comprehensive 28th regime development requires 7-10 years from proposal to full operation. Implementation schedules should reflect this reality, avoiding unrealistic expectations of rapid transformation. However, to sustain political momentum and stakeholder engagement, early evaluation points (such as the five-year review proposed in Recommendation 9) should focus on measurable process indicators (e.g. uptake rates, administrative burden reduction, national implementation progress), rather than full outcome achievement. This phased approach allows for course correction and reinforces integration pathways over time, without compromising credibility.

7.6 Substantive content and regulatory design

Recommendation 11: Structure the regime through layered business law with corporate law as foundation.

Based on the domain analysis in Chapter 5, EU institutions should prioritise business law as the most promising area for 28th regime development – starting with corporate law, where optionality and legal clarity can be delivered quickly and without interfering with harmonised domains like financial services. The 28th regime should adopt a layered structure, incorporating tax coordination, accounting standards and insolvency rules in different modules. Labour law, given its Treaty limitations, institutional constraints and political sensitivity, should not be part of the initial design. However, adjustments could be considered at a later stage, should evidence emerge that the existing *acquis* is insufficient to address cross-border challenges.

To reconcile strategic ambition with urgency, this approach should not be purely sequential. Several components, such as accounting or tax coordination, can be developed in parallel or fast-tracked through targeted pilots or delegated instruments. Phased implementation should be guided by institutional readiness and stakeholder demand, allowing for rapid deployment where political momentum exists,

while maintaining coherence across the broader legal framework. This modular design enables flexibility without sacrificing long-term integration and allows demonstrable early wins to coexist with the deeper structural reforms required for market transformation.

Recommendation 12: Implement comprehensive administrative simplification with digital-first design.

Drawing on the regulatory burden analysis, the 28th regime should embed the ‘register once’ principle through a Business Single Entry Point (B-SEP) which eliminates duplicative filing requirements across Member States. Key features should include automatic multilingual translation, harmonised activity classifications, streamlined customer due diligence procedures building on the Anti-Money Laundering Regulation and unified accounting frameworks that reduce compliance complexity. These practical innovations should demonstrate immediate value to users whilst supporting the regime’s broader integration objectives.

7.7 The role that the EESC should play

Recommendation 13: The EESC should provide a neutral forum where the businesses and trade unions and their representatives can discuss the 28th regime and try to find common ground.

As previously noted, a successful 28th regime would require sustained support from business associations, trade unions, legal practitioners and a critical mass of Member States. The positions of trade unions appear however to differ substantially from those of businesses large and small (see Section 6.1). If this gap is not bridged, it could either impact the effectiveness of the 28th regime or might make its enactment altogether infeasible. The EESC represents employers, workers and civil society organisations, and is thus ideally suited to facilitate constructive dialogue. This dialogue should ideally start early in the legislative process to provide guidance to the lawmakers, and to build consensus for the law that will eventually emerge.

Recommendation 14: Subsequent to enactment, EESC could provide outreach to firms and trade unions, providing guidance as to how to best use the capabilities in the 28th regime, and how to mitigate any harms.

No matter how it is implemented, the 28th regime is sure to represent a substantial departure from current practice in any of the EU Member States. Businesses are likely to need guidance on how best to make use of the new freedoms, and on any pitfalls that should be avoided. The new, innovative firms that stand to benefit most from the 28th regime are likely in many cases to be inexperienced, and particularly in need of guidance. The 28th Regime is likely to introduce new challenges for trade unions as well. Inasmuch as the EESC represents both firms and trade unions, it is well positioned to provide comprehensive, unbiased tutorial guidance to firms and to trade unions. Subject to availability of resources, this guidance might for instance take the form of workshops, tutorial pamphlets, or classes.

REFERENCES

- Better Finance. (2023). *Withholding taxes on dividends in the European Union: An uphill battle for individual shareholders*.
- Botsari, A., Kiefer, K., Lang, F., & Pal, K. (2021). *Scale-Up Financing and IPOs: Evidence from Three Surveys*. European Investment Fund.
- Draghi, M. (2024). *The Draghi report: A competitiveness strategy for Europe*. European Commission.
- Eurochambres. (2024). *Overcoming obstacles, developing solutions*.
- European Commission. (2020). *A new Vision for Europe's capital markets: Final Report of the High Level Forum on the Capital Markets Union*. European Commission.
- European Commission. (2022). *Impact Assessment Report accompanying the document Proposal for a Directive ... harmonising certain aspects of insolvency law*.
- European Commission. (2025). Retrieved from Financial Reporting: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/financial-reporting_en?utm_source=chatgpt.com
- European Commission. (2025). *A competitiveness compass for the EU*. European Commission.
- European Economic and Social Committee. (2025). *Assessing tax reporting obligations in the EU*.
- European Parliament. (2008). Retrieved from International Financial Reporting Standards and the governance of the IASB: https://www.europarl.europa.eu/doceo/document/TA-6-2008-0183_EN.pdf
- IMF. (2024). *Regional Economic Outlook - Europe: A recovery short of Europe's full potential*. International Monetary Fund.
- International Financial Reporting Standards. (2024). Retrieved from Who uses IFRS Accounting Standards?: <https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/view-jurisdiction/european-union/>
- Kammer, A. (2024). *Scaling Up the Single Market to Boost Productivity*. International Monetary Fund.
- Letta, E. (2024). *Much More than a Market: Speed, Security, Solidarity*. European Commission. Retrieved from <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>
- Marcus, J., & Rossi, M.-A. (2024). *Strengthening EU digital competitiveness Stoking the engine*. EUI/RSC Centre for a Digital Society. Retrieved from <https://cadmus.eui.eu/handle/1814/76877>
- PwC. (2025). *IASB issues third edition of the IFRS for SMEs*. Retrieved from https://viewpoint.pwc.com/dt/gx/en/pwc/in_briefs/in_briefs_INT/in_briefs_INT/iasb-issues.html
- Smith, D. (2025, May 4). *Mastering IFRS: A Comprehensive Guide to Global Financial Reporting Standards*. Retrieved from <https://accountingforeveryone.com/mastering-ifrs-comprehensive-guide-global-financial-reporting-standards/>
- Taylor, L. (2011). Retrieved from EU moves on with plans to cut patent costs by up to 80%: https://pharmatimes.com/news/eu_moves_on_with_plans_to_cut_patent_costs_by_up_to_80_979250/#:~:text=The%20European%20Commission%20has%20now,Europe%20by%20up%20to%2080%25
- Thomadakis, A. (2025). *One market, many rules: The 28th regime's challenge in unifying Europe*. Centre for European Policy Studies.
- Thomadakis, A., & Marcus, J. (2025). *Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime*. European Parliament.

World Bank. (2021, September 16). *World Bank Group to Discontinue Doing Business Report* . Retrieved from <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report>



European Economic and Social Committee

Rue Belliard/Belliardstraat 99
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

www.eesc.europa.eu/gr1



@employers_EESC EmployersEESC EmployersEESC EESC Employers' GroupC @employers-eesc.bsky.social

Printed by the EESC-CoR Printing and Distribution Unit, Belgium

EESC-2025-59-EN

© European Union, 2025

Reproduction is authorised provided the source is acknowledged.

For any use or reproduction of the cover page photo permission must be sought directly from the copyright holder.

Except otherwise noted, the reuse of this document is authorised under the Creative Commons Attribution 4.0 International (CCBY 4.0) licence (<https://creativecommons.org/licenses/by/4.0>). This means that reuse is allowed provided appropriate credit is given and any changes are indicated. For any use or reproduction of photos or other material that is not owned by the EU, permission must be sought directly from the copyright holders.
All content © European Union, 2025, except cover image: © Shutterstock.com/Miha Creative



Publications Office
of the European Union



Print
QE-01-25-038-EN-C
ISBN 978-92-830-6945-4
doi:10.2864/4138382
PDF
QE-01-25-038-EN-N
ISBN 978-92-830-6944-7
doi:10.2864/4607879

EN