

ETAF statement on a possible 28th regime for innovative companies

Introduction

The European Tax Adviser Federation (ETAF) welcomes the opportunity to contribute to the European Commission's reflections on a potential "28th regime for innovative companies," particularly in the context of the Draghi and Letta reports and the broader competitiveness agenda of the Single Market.

As a European Federation of business service providers – representing the interests of more than 220 000 regulated tax advisers across Europe – ETAF understands the spirit behind the idea of a "28th regime": to provide a coherent and attractive EU corporate legal framework that reduces compliance burdens and facilitates cross-border activity.

Furthermore, and in line with the Draghi and Letta reports, ETAF shares the underlying concerns about the EU's competitiveness, the fragmentation of legal, administrative and tax frameworks, and the barriers that companies – especially SMEs, start-ups and scale-ups – continue to face when operating across borders. Simplification, legal certainty and digitalisation are indispensable tools to support business growth, foster innovation and enable the European Union to remain competitive on the global stage.

ETAF therefore recognises that modernisation, centralisation and harmonisation can be effective instruments to simplify rules and reduce fragmentation.

However, as currently conceived, ETAF must express serious concerns about the lack of clarity surrounding the design of such a regime, the numerous unknowns and the limitations of the consultation process.

Without a comprehensive assessment of its legal, fiscal and practical implications, this initiative risks generating parallel complexities and legal uncertainty, particularly given its wide-ranging impact on other areas of law, including tax, insolvency and labour law. Such outcomes would undermine, rather than strengthen, the objectives of the Single Market.

In this context, ETAF believes that EU legislators must carefully examine whether the proposal to introduce a 28th Regime is the right approach, or whether alternative instruments – such as the conventional harmonisation and modernisation of company law in Europe – could equally achieve the intended objectives.

I. Concerns about the consultation process

As a preliminary remark, ETAF regrets that the current public consultation, structured primarily around a standardised questionnaire, does not provide sufficient scope for stakeholders to express critical or nuanced input on the proposal. A matter of such potential impact on the Single Market deserves a more open, inclusive and balanced consultation process.

In particular, we note with concern that the questionnaire:

- Fails to address potential disadvantages and extra burden for practitioners, administrations and courts in knowing and applying – additionally to existing national rules – the provisions of a possible 28th regime.

- Omits any discussion about the risks of distortions of competition that could arise between companies opting into the 28th regime and those remaining subject to national frameworks.
- Does not present or allow for reflection on alternative solutions, such as targeted harmonisation of existing frameworks, which could achieve similar objectives in a more proportionate way.

In our view, such a limited and one-dimensional approach cannot provide an accurate or representative picture of stakeholders' positions. It risks creating the impression of consensus where, in fact, there may be legitimate divergence of views and important reservations.

We therefore strongly urge the Commission to complement the questionnaire with broader consultation tools – including expert hearings, targeted impact assessments and structured dialogues with companies and professional organisations – and to duly consider all accompanying statements submitted.

II. Innovation: an unworkable eligibility criterion

A central question raised in the questionnaire is whether the new company form should be broadly available to all companies or whether it should be narrowly restricted to a sub-set of companies, in particular those considered “innovative”.

ETAF considers that “innovative” is not a sufficiently precise, objective or workable eligibility criterion. Virtually all companies — regardless of sector, size or maturity — claim to be innovative in some respect, whether through products, services, processes or digitalisation. Basing eligibility on such a vague and self-declaratory notion would inevitably create legal uncertainty, administrative burden and disputes over interpretation.

Similarly, defining “Start-Ups” and “Scale-Ups” will also prove challenging, as they differ widely in structure, business models and target markets. Moreover, their inherently temporary status – as they usually grow out of the start- or scale-up level – must also be taken into account.

Here, the ETAF position is clear: to ensure equal treatment, legal certainty and competitive fairness, the 28th regime should be open to all limited liability companies.

Limiting access only to so-called “innovative” companies or start-ups would risk creating a two-tier system within the Single Market and generating complex administrative procedures for authorities tasked with defining and verifying “innovation”, rather than reducing burdens as intended.

III. Core elements of a 28th regime

As reflected in our responses to the questionnaire, ETAF considers that some core elements of a potential 28th regime are non-negotiable:

- Openness to all companies: Restricting the regime to Start-Ups and Scale-Ups would be a fundamental mistake and might even encourage abuse, as companies could repeatedly dissolve and re-establish themselves solely to maintain access to the benefits reserved for Start-Ups and Scale-Ups.
- Optionality for companies: Businesses must be free to choose between this new European regime and their existing national legal framework.
- Simplification as the guiding principle: The new framework must be conceived above all as a tool of simplification, reducing complexity rather than creating parallel administrative burdens.

We also recognise that certain design features are essential to ensure trust and credibility. In particular, a minimum capital requirement should be maintained as a guarantee of security, consumer protection and business reliability. However, it should remain proportionate and accessible – for example between €5 000 and €10 000 – so as not to create unnecessary barriers to entry, especially for SMEs.

It should also be assessed whether certain measures within the project could benefit all companies, not just those opting for the 28th regime. For example: reducing bureaucratic barriers in the EU internal market, addressing the shortage of skilled workers or promoting employee retention in line with business interests. In our view, any provisions that remove or ease such obstacles should be accessible to all companies; otherwise, there is a risk of distorting competition.

At the same time, ETAF stresses that many essential questions remain unanswered. In particular, we lack clarity on:

- How national administrations, courts and tax authorities would apply and coordinate the regime in practice.
- How dispute resolution mechanisms would operate, and which jurisdiction would prevail in case of conflict.
- How simplification would be achieved in areas as complex as insolvency, labour and tax law, which are deeply rooted in national legal traditions.

Without this information, it is impossible for stakeholders to form a complete and well-informed position. The Commission must therefore provide a fuller picture of its intentions before the debate can move forward in a meaningful way.

IV. Digitalisation with professional advice

ETAF fully supports the principle of “digital-by-default” setting up of companies. We strongly advocate for making procedures fully digital and harmonised across Europe, with paper-based options retained only as exceptional alternatives. To be effective, digital processes should apply equally to all companies, without artificial distinctions, so as to drive comprehensive and coherent public administration digitalisation across the EU.

A promising tool in this respect is the European Business Wallet, which could become a cornerstone of digital company law if properly designed. To do so, it must be interoperable across all Member States, be accessible to all European companies regardless of size or sector and recognise that companies are often digitally represented by third parties – such as tax advisers, lawyers or notaries – and enable these representatives to carry out corresponding actions securely and lawfully on behalf of their clients.

While ETAF supports faster registration of companies, it is essential to ensure that national professional requirements, approvals and registrations – e.g. the formation of companies in health or legal advisory professions such as lawyers, tax advisers and auditors – are fully respected. This includes provisions related to equity participation that safeguard the independence of certain liberal professions.

ETAF also supports more flexible and digital shareholders’ meetings, provided that the rights of individual parties are not compromised. Hybrid meetings should be possible but may be excluded by the company’s articles of association. Suitable digital tools should also enable timely deletion of companies from commercial registers upon termination, while fully protecting the rights of creditors and employees.

In this context, it is important to stress that professional advice from tax advisers, lawyers or notaries remains essential when setting up a company even digitally. Selecting the appropriate legal form and ensuring compliance with tax, labour, and insolvency law are complex processes, and incorrect decisions at the outset can have long-term consequences for companies, shareholders and stakeholders.

Far from reducing the need for professional support, the introduction of a new 28th regime “digital-by-default” would likely increase demand for expert guidance. Entrepreneurs will need to compare national company forms with the new EU framework, adding complexity. Advisers, legal practitioners and tax authorities will also face additional workload, as they must apply both existing national provisions and the new EU rules.

V. Taxation issues

Since the announcement of this project, the European Commission has been particularly evasive regarding its possible tax dimensions. At the same time, we observe that several political groups in the European Parliament demand the introduction of corporate taxation and VAT elements into the regime.

ETAF acknowledges that start-ups and scale-ups operating across multiple EU jurisdictions do indeed face significant tax compliance challenges. These include:

- Multiple and overlapping tax filing requirements,
- Different tax bases in corporate taxation in the Member States,
- Fragmented and inconsistent tax incentives across Member States,
- Risks of double taxation and increased exposure to anti-abuse rules,
- Heavy bureaucratic and reporting burdens arising from divergent national systems,
- The absence of meaningful cross-border loss recognition mechanisms.

However, it is crucial to emphasise that several corporate taxation harmonisation proposals are already on the table, most notably the Business in Europe: Framework for Income Taxation (BEFIT) and the Head Office Tax system (HOT). If well designed, these initiatives would already address many of the challenges identified above. Launching parallel tax measures under a new 28th regime would risk duplication, inconsistency and unnecessary complexity.

Finally, ETAF warns that when it comes to taxation, the appropriate Treaty legal basis must be ensured. Any attempt to circumvent the unanimity rule under the special legislative procedure could lead to competence disputes, undermining both the legal certainty and the legitimacy of the initiative. For this reason, in matters of tax law, only non-binding recommendations to Member States should be considered.

This principle should also apply to the potential harmonisation of the tax treatment of Employee Stock Options (ESOs), which is the only concrete tax measure referred to in the consultation questionnaire. ETAF supports this orientation in principle. However, to avoid horizontal fragmentation of the Single Market and to safeguard a level playing field, we stress that preferential treatment of ESOs should be available to all companies, not only those classified as innovative or operating under the 28th regime. No income tax or social security contributions should be levied at the moment of option acquisition. Successful international models – such as those in the United States and the United Kingdom – should be considered as benchmarks, given their proven attractiveness for both companies and employees.

VI. Towards a European Business Code

ETAF supports the idea of developing a European Business Code to overcome fragmentation in the Single Market. We consider this approach to be a far more desirable and realistic step than the creation of a fully-fledged parallel 28th regime. Instead of introducing an entirely new legal form, the priority should be to first consolidate, codify and harmonise existing provisions of company law across Member States.

In our view, a European Business Code – developed gradually and in close consultation with stakeholders – could:

- Codify and harmonise existing company law provisions, reducing fragmentation while respecting national legal traditions.
- Provide greater legal certainty for businesses, practitioners and administrations operating across borders.
- Avoid duplication and distortion, which a parallel 28th regime risks creating by overlapping with existing national systems.
- Support businesses of all sizes, not just a narrowly defined group such as start-ups or innovative companies.

This could be built based on successful models such as the Uniform Commercial Code (UCC) in the United States, a comprehensive set of laws governing all commercial transactions in the US, or the African uniform laws (“Actes uniformes”) of OHADA (Organisation pour l’harmonisation en Afrique du Droit des Affaires).

Conclusion

As our analysis demonstrates, the current concept of a 28th regime for “innovative companies” raises more questions than it answers. In its present form, it risks creating legal uncertainty, competitive distortions and unnecessary duplication, rather than delivering the simplification and growth it promises.

We firmly believe that any new framework must be:

- Optional and open to all companies to ensure fairness and avoid a two-tier Single Market.
- Focused on simplification, not the creation of parallel complexities.
- Digital by default but coupled with professional advice to combine efficiency with legal safeguards.
- Coherent with ongoing tax initiatives to prevent overlaps, conflicts of competence and further fragmentation.

ETAF encourages the Commission to give priority to more realistic and inclusive solutions to strengthen the Single Market – to start with, for instance, the gradual development of a European Business Code.

Notes

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About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 220 000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.