IN-DEPTH ANALYSIS

Requested by the JURI Committee

Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime

Policy Department for Justice, Civil Liberties and Institutional Affairs
Directorate-General for Citizens' Rights, Justice and Institutional Affairs
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Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28th Regime

This in-depth analysis, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the Committee on Legal Affairs, assesses the potential drivers and rationale for a possible 28th Regime as proposed in the Letta Report. The 28th Regime seeks to enable firms who wish to do so to operate under a new business law codified at European level. The intent is to enable firms, especially SMEs and innovative firms, to operate without friction across all EU Member States.

This document was requested by the European Parliament's Committee on Legal Affairs.

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LIST OF ABBREVIATIONS

AI	Artificial Intelligence
AML	Anti-Money Laundering
B2B	Business-to-Business
B2C	Business-to-Consumer
B2G	Business-to-Government
GDPR	General Data Protection Regulation
IP	Intellectual Property
IPO	Initial Public Offering
KYC	Know Your Client
SDG	Single Digital Gateway
STEM	Science, Technology, Engineering, and Mathematics
VAT	Value-Added Tax
VC	Venture Capital

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EXECUTIVE SUMMARY

In the context of the active debate among EU institutions about the potential creation of a 28th Regime, the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (at the request of the JURI Committee) asked us to assess the need for such a regime and to explore the legislative options for improving the legal environment for SMEs while reducing fragmentation.

Specifically, the Parliament asked us to: i) provide an economic outlook on EU companies, particularly innovative start-ups and scale-ups; ii) identify market and regulatory failures as well as existing incentives targeting these firms; iii) analyse the main barriers limiting the ability of EU companies – especially innovative ones – to set-up, invest and scale within the EU; iv) formulate policy and legislative objectives focused on competitiveness, productivity and sustainability (or sustainable competitiveness); and v) deliver concrete, actionable policy recommendations relevant to EU decision-making, with a focus on the role and competences of the European Parliament.

Crucially, any proposals for a 28th Regime must balance the ambition for reform with the political realities of feasibility.

Background

The current discussion around a 28th Regime originates with a proposal in (Letta, 2024) to allow firms that wish to do so to operate under a new business law codified at European level. The intent is to enable companies, especially SMEs and innovative firms, to operate without friction across all EU Member States.

The problems that the 28th Regime seeks to address are not new. Tensions between EU-level harmonisation or centralisation and Member State autonomy have persisted for decades. These tensions are not *per se* a defect – it is common for political systems struggle to find the right balance between centralisation and decentralisation. The issue today is that the balance struck in the EU is widely recognised as sub-optimal, yet it has not proven politically feasible to improve.

There is a long history of efforts to strengthen the EU Single Market, of which (Letta, 2024) is only the latest link in a long series. Harmonisation has been both a long-standing objective and a recurring challenge. Despite decades of effort, many barriers to the Single Market remain impervious to change. (Marcus, Petropoulos, & Yeung, 2019) (Dahlberg, et al., 2020) (Marcus J. S., 2024)

This renewed focus on the Single Market must be understood in conjunction with a broader emphasis on enhancing the EU's *productivity* and global *competitiveness*, particularly in light of growing competition from China and the United States. This is reflected not only in (Draghi, 2024), but also in academic analyses such as (Marcus & Rossi, 2024) and increasingly in strategy documents issued by the Commission and other EU institutions.

Innovation as a driver of productivity of small and large EU firms

The EU is economically strong, but its performance faces persistent challenges – many of which stem from limited scale and the continued fragmentation of the Single Market.

Innovation is a key driver of long-term productivity, competitiveness and resilience for both the public and private sectors. However, the EU's innovation performance is highly uneven across Member States, sectors and firm sizes.

Firm creation in the EU has steadily increased over the past decade, especially in knowledge-intensive services and digital sectors. Still, start-up activity and business dynamism remain concentrated in a few hubs: Berlin, Paris, Stockholm, and Amsterdam. While the EU has consistently generated slightly more new firms per year than the US, it struggles to grow them into globally competitive players. The EU's share of global unicorns (start-ups valued at over €1 billion) has declined steadily since the global financial crisis, reflecting structural challenges to scaling.

This lack of scale poses serious concerns. SMEs make up approximately 99.8% of all non-financial business enterprises and provide around two-thirds of employment in the EU. Smaller and younger firms face greater barriers in accessing knowledge networks, R&D infrastructure and late-stage capital – limiting their ability to scale and diffuse innovation. Yet they also offer unique productivity potential, particularly through the adoption of advanced technologies or novel business models.

The lack of scale is not easy to correct. The ability of EU firms to grow is hampered by: (1) fragmented and burdensome regulatory regimes, (2) underdeveloped risk capital markets, (3) limited access to skilled labour, and (4) a still-incomplete Single Market.

Existing EU support for innovation is not delivering enough. While the EU produces world-class science and R&D, fragmented product standards, uneven digital readiness and weak ecosystem connectivity inhibit the commercial scaling of innovation. Major EU innovation programmes – such as Horizon Europe, the European Innovation Council and Digital Europe – are well-funded and politically backed, but suffer from limited uptake, uneven geographic access, and high administrative burden.

Burdens affecting all EU firms

Surveys show that firms identify several key investment impediments. **Shortages of skilled staff** rank high among them, comparable high to energy costs and broader economic uncertainty. Labour mobility and talent deployment are constrained by inconsistent employment law, fragmented social protection systems and weak recognition of skills and qualifications, especially for non-traditional forms of employment. These issues are further exacerbated by the ongoing shift away from traditional employment models, despite the enactment of a *European Pillar of Social Rights*.

Access to finance remains a significant challenge. Successful start-ups increasingly move to the US to scale up. Pre-IPO risk capital in the EU is severely underdeveloped: in 2023, it stood at just 0.5% of GDP, compared to 4.5% in the US, resulting in far lower average investment per firm.

Regulatory complexity and administrative burden continue to weigh heavily. Firms face overlapping requirements, inconsistent national implementation and high compliance costs – especially in labour law, data protection and company law. An EIB survey finds that 28% of EU start-ups dedicate at least 10% of their staff to regulatory tasks – highlighting the scale of the burden on small and innovative firms.

Legal uncertainty, particularly in insolvency, labour and environmental law, undermines long-term planning and investment. Cross-border establishment remains costly and inefficient, as firms often forced to replicate compliance and legal operations in each Member State they enter.

Tax fragmentation, including divergent corporate tax rules, inconsistent VAT systems and lack of harmonised treatment for R&D and transfer pricing, adds further barriers to pan-European operations and deters scale-ups.

Burdens affecting innovative firms and SMEs

Start-ups and scale-ups are key drivers of technological innovation, productivity and economic dynamism in the EU, but in practice face many constraints. These include limited access to late-stage capital, fragmented licensing regimes, difficulty accessing institutional clients, systemic disadvantages in public procurement and public markets, disproportionate regulatory burdens, and barriers to cross-border operations. Entrepreneur and investor surveys consistently cite regulatory fragmentation and late-stage financing gaps as key impediments to European tech competitiveness.

As far as **access to finance**, the average US VC-backed company receives nearly five times more capital than its EU equivalent, while private equity-backed US firms receive 20 times more than those in the EU. Structural barriers in EU capital markets and limited exit options further exacerbate the gap.

Many start-ups in regulated sectors (e.g. fintech, medtech, clean tech) often face **duplicative licensing and reporting obligations across Member States**, alongside wide divergences in enforcement.

Access to public procurement and institutional B2B markets remains limited, despite their strategic importance for validation and scale. Criteria such as minimum turnover, track record, and complex procedures tend to favour incumbents over high-potential new entrants.

Policy objectives and rationale

The rationale for a 28th regime rests on the persistence of structural barriers that prevent innovative firms – especially start-ups and scale-ups – from setting up, expanding and thriving across the EU. These include Single Market fragmentation, limited access to finance and talent, legal and regulatory complexity, and weak uptake and diffusion of innovation across borders.

Despite repeated EU initiatives – such as the SME Strategy, Scale-Up Europe, the Capital Markets Union and the Startup Nations Standard – core problems remain unresolved. This is due to reliance on soft coordination, voluntary standards and partial harmonisation. Political sensitivities in company law, tax, labour and insolvency have long stymied deeper integration, leaving legal frameworks fragmented and businesses without a coherent operational environment.

Repeated identification of the same barriers over successive policy cycles highlights the limits of incremental reform and underscores the need for structural change. Work-around mechanisms like the Single Digital Gateway and the SOLVIT network have delivered only marginal improvements. Even well-funded programmes like Horizon Europe remain hampered by legal fragmentation.

Where binding EU legislation has been adopted, such as the GDPR or parts of the Unitary Patent System, more consistent outcomes have been achieved. But these are exceptions, not the rule.

There is thus a strong argument that a serious game-changer is needed – a fundamentally new direction. In the absence of a more fundamental change, the gap between EU policy ambition and dismal regulatory reality will persist – and with it, the EU's underperformance in innovation, productivity and strategic competitiveness. The 28th Regime has the potential to be the needed game changer if intelligently implemented.

Recommendations

Most of our recommendations pertain to the content of the Parliament's planned own-initiative report.

- In the Parliament's own-initiative report articulating its view of what a 28th Regime should entail and how it should be structured, the Parliament should call on the Commission to faithfully adhere to Better Regulation principles. The Commission should issue a factual summary of its just-concluded Call for Evidence, and the eventual legislative proposal should be accompanied by an Impact Assessment.
- The 28th Regime should be open to all companies regardless of size or sector. However, its design should focus on tools and legal modules that are especially beneficial to innovative and cross-border firms. This ensures both broad accessibility and high value-added where regulatory friction is most acute.
- Key goals, thematic areas, and aspects needing special attention in the Parliament's own-initiative report:
    - **Key goals:** (1) promoting legal certainty, (2) reducing administrative and compliance burdens, and (3) enhancing the scalability of firms, including in particular small or innovative firms.
    - **Priority thematic areas:** High payback areas should be prioritised – specifically areas where the obligation to manage 27 distinct national frameworks creates structural disadvantages for businesses, especially businesses that are small or innovative. Priority should be given to domains where legal divergence is not justified by proportionality or subsidiarity. At a minimum the four areas on which the Commission has announced its intention to focus should be addressed: corporate law, insolvency, labour law and tax law, since these areas seem to meet the criteria for priority attention.
    - **Special attention:** The utmost attention should be paid to (1) the legal basis for the 28th Regime, which might be different for different topics where harmonisation is sought; (2) whether eligibility is open to all firms, or only to some; (3) whether the new regime would pre-empt existing Member State law, and if so, only for specific topics; (4) how conflicts would be resolved, especially conflicts between EU law and the new regime versus Member State law; and (5) the supervisory and governance structure to be employed.
    - **Pragmatism:** A pragmatic approach should be adapted. The 28th regime should be developed incrementally, focusing first on components with strong stakeholder

demand, demonstrable business impact, and manageable legal complexity. Consensus-building must be an ongoing priority.

Recommendations as regards supporting instruments:

- The Single Digital Gateway (SDG) seems to have very substantial promise, and good progress has been made with implementation, with further enhancements planned. Unfortunately, it is not possible to judge today whether it is fully effective in addressing the underlying problems. Real surveys and tools need to be put in place.
- In its present form, SOLVIT does not appear to be fully effective in addressing the needs of merchants for cross-border physical and vertical commerce among the Member States. An *ex post* evaluation is urgently needed, followed by actions at EU and Member State level.

1. INTRODUCTION

CEPS has prepared this study in response to a request from the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (at the request of the Parliament's JURI Committee) to provide an assessment of the creation of a possible *28th Regime* at European level.

In its Competitiveness Compass, the Commission has spoken of "a 28th legal regime that would allow innovative companies to benefit from a single, harmonised set of EU-wide rules wherever they invest and operate in the single market, including any relevant aspects of corporate law, insolvency, labour and tax law". For our purposes in this study, we can use this as a working definition (see also Section 1.2).

1.1. Objectives and scope of the study

In the context of the active discussion among the European institutions of a possible 28th Regime, the Parliament has asked us to analyse the need and legislative options available for facilitating legislative environment for SMEs and avoiding fragmentation. They asked us to provide an economic outlook on EU companies (in particular innovative start-ups and scale-ups), to identify market and regulatory failures affecting them as well as existing incentives aimed at helping them, and to identify the hurdles that limit the ability of EU companies and in particular innovative start-ups to set-up, invest and grow in the EU.

They called on us moreover to articulate policy and legislative goals based on competitiveness, productivity and sustainability (or sustainable competitiveness), and to provide concrete policy recommendations relevant to EU decision-making, with a particular focus on the role and competences of the EP.

1.2. What do we mean by a 28th regime?

The current discussion of a 28th Regime begins with a suggestion in (Letta, 2024) to enable firms who wish to do so to operate under a new business law codified at European level. The Letta Report provides few details, however, as to what a 28th Regime would entail, what it would or would not cover, and which firms would be eligible to benefit from it.

The Commission has provided their initial answer as to what should be covered. As already noted, the *Competitiveness Compass* speaks of "corporate law, insolvency, labour and tax law". These are all areas that have been exceedingly difficult to harmonise to date, owing partly to limited EU competence in the Treaties, partly and relatedly to reluctance on the part of the Member States to surrendering any competence in these sensitive areas, and partly to the intertwining of these rules with many other aspects of Member State law.

Over the course of this study, we attempt to provide a few initial thoughts as to the broad contours of what the Parliament might want to promote in the way of a 28th Regime.

1.3. Background

The problems that the 28th Regime seeks to address are not new. They go back decades, to the earliest days of the creation of an EU single market because it was possible then to achieve consensus among the Member States on a degree of economic integration, but not on substantial political integration or institutional reform. (Delors, 2012) Ever since, there has been a tension between harmonisation or centralisation at EU level versus Member State empowerment and autonomy.

This tension is not *per se* a defect – it is common for political systems struggle to find the right balance between centralisation and decentralisation. The issue here is that the balance struck in the EU today is obviously sub-optimal, this is widely recognised, but it has not been politically feasible to make improvements.

There is a long history of efforts to tighten up the EU single market, of which (Letta, 2024) is only the latest link in a long chain. Harmonisation has been a long-standing goal, and also a long-standing challenge. As regards digital services, for instance, the Commission's *Digital Single Market* strategy put in place nearly 40 new laws, most of which sought to foster greater harmonisation in order to facilitate cross-border e-commerce within the EU; (Marcus, Petropoulos, & Yeung, 2019) the sad reality is, however, that businesses apparently perceive little progress as a result of this barrage of legislation. (Marcus J. S., 2024, p. 20)

This focus on the single market needs to be understood in conjunction with a new focus on increasing not only the *productivity* of the EU, but also relatedly its global *competitiveness* in the face of growing competition from China and the United States. This is visible not only in (Draghi, 2024), but also in many academic studies including (Marcus & Rossi, 2024), and increasingly in strategy documents from the Commission and the other EU institutions. A first focus is regulatory simplification, for which a first attempt (for better or worse) is already visible in the Commission's attempt to simplify three existing laws (CSRD, CSDDD and Taxonomy) with a proposed set of Omnibus Directives. (Marcus & Thomadakis, 2025)

1.4. Structure of this document

We provide an overview of relevant aspects of the economic issues facing EU firms in Chapter 2, followed by a discussion of the horizontal hurdles facing all EU firms in Chapter 3. We dive deeper into market and regulatory failures in Chapter 4. We return to the question of hurdles in Chapter 5, this time with a focus on innovative start-ups and scale-ups, many of which start life as SMEs. We focus on EU objectives in Chapter 6, and formulate a suggested policy direction in Chapter 7. Chapter 8 is a quick recapitulation of the recommendations that we have made in earlier chapters.

2. ECONOMIC OUTLOOK FOR EU COMPANIES AND THE ROLE OF INNOVATION

KEY FINDINGS

- SMEs make up approximately 99.8% of all non-financial business enterprises and provide around two-thirds of employment in the EU.
- Firm creation in the EU has steadily increased over the past decade, especially in knowledge-intensive services and digital sectors; however, start-up activity and business dynamism remain concentrated in a few hubs: Berlin, Paris, Stockholm, and Amsterdam.
- The EU performs relatively well in generating new firms – consistently creating slightly more new firms per year than the US – but struggles to grow them into large, globally competitive players.
- The EU's share of global unicorns (start-ups valued at over €1 billion) has declined steadily since the global financial crisis, reflecting structural challenges in scaling.
- Innovation is a key driver of long-term productivity, competitiveness and resilience, both for the private sector and for the public sector.
- Productivity gains in start-ups often stem from their ability to adopt advanced technologies or novel business models.
- Innovation performance is uneven across Member States, sectors and firm sizes.
- While public R&D investment is stable, business R&D intensity in the EU continues to lag behind major competitors.
- Smaller and younger firms face greater barriers in accessing knowledge networks, R&D infrastructure and late-stage capital – limiting their ability to scale and diffuse innovation.
- The ability of EU firms to scale is constrained by fragmented and burdensome regulatory regimes, underdeveloped risk capital markets, limited access to skilled labour and insufficient opportunities for cross-border procurement and institutional clients.

In this chapter, we provide general background on relevant aspects of the EU business environment. We offer background on overall EU business demography and firm growth (Section 2.1), on the role of innovative start-ups and scale-ups in the EU (Section 2.2). on innovation as a driver of competitiveness (Section 2.3), and on the role that innovation plays within firms (Section 2.4) and governments (Section 2.5).

2.1. Recent and projected trends in EU business demography and firm growth

The European business landscape is predominantly composed of small and medium-sized enterprises (SMEs), which account for approximately 99.8% of all non-financial business enterprises and around two-thirds of employment in the EU. While this structure reflects the diversity and decentralisation of the Single Market, it also implies a reliance on a fragmented base of firms that are often constrained in their capacity to grow, innovate, and internationalise.

Over the past decade, the EU has experienced a steady rise in firm creation, particularly in knowledge-intensive services and digital sectors. However, this dynamism is uneven across Member States, with start-up activity and business dynamism concentrated in a few ecosystems such as Berlin, Paris, Stockholm, and Amsterdam. Despite increased policy attention, the structural rate of firm exit has remained high, and productivity gains have been modest, suggesting difficulties in scaling and innovation diffusion.

Projections for the coming decade indicate that demographic pressures, geopolitical volatility, the green and digital transitions, and artificial intelligence (AI) deployment will fundamentally reshape competitive dynamics. EU companies will increasingly need to navigate global market fragmentation, value chain reconfiguration, and investment asymmetries between the EU and global competitors. In this environment, innovative firms, especially those capable of scaling rapidly, will play a pivotal role in maintaining and enhancing Europe's productivity and strategic autonomy.

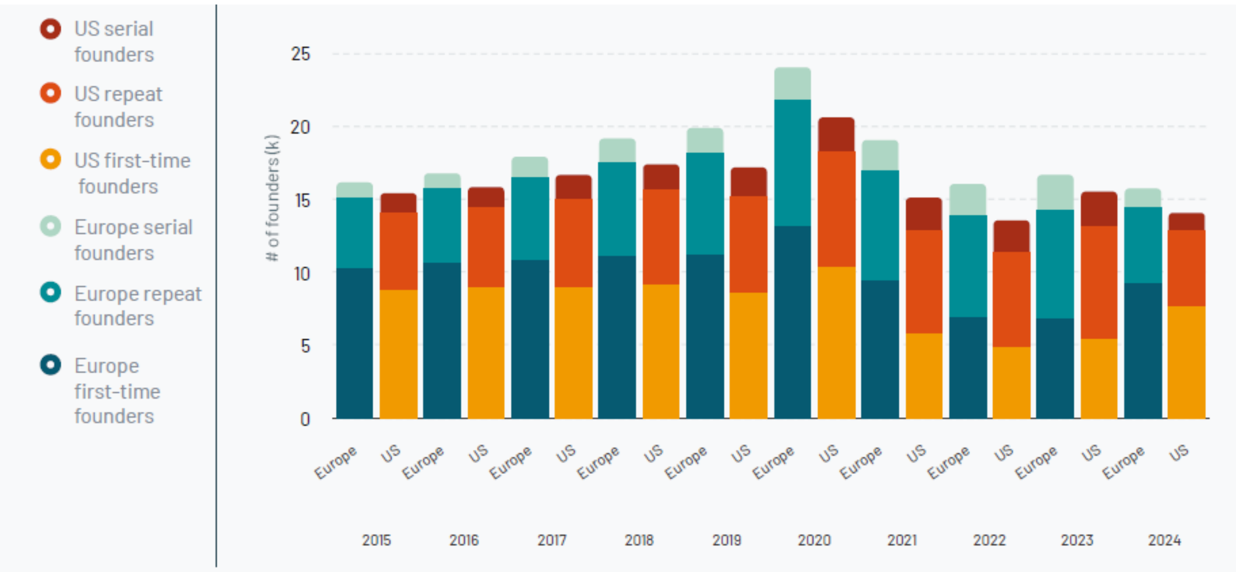
2.2. Start-ups and scale-ups: Entry, survival and productivity trends

Start-ups and scale-ups represent a small but disproportionately impactful segment of the EU economy. They account for roughly 10–15% of firms (Eurostat, 2024), but contribute significantly to job creation and innovation output (OECD, 2020). However, the five-year survival rate of start-ups across the EU remains below 50%, and scale-up performance remains weak in comparative terms (Skale Egenkapital, 2025).

Contrary to what many believe, the EU does quite well compared to its global competitors in **creating** new firms – our problem is rather with **growing** them. Europe consistently generates (slightly) more new firms per year than the United States, as is visible in (Atomico, 2024, p. 174). The mix of first-time founders, repeat founders, and serial founders (who can claim more than two firms) are broadly similar (see Figure 1).[1]

[1] Atomico reports that the data are Data is as of 30 September 2024. Location is based on where company is incorporated. To adjust for lags in reporting, Atomico compares snapshots of data at different points in time, which allows them to estimate future growth of current figures by extrapolating differences between time points. 2024 YTD is based on data adjusted for lag effect and extrapolated based on data as of September 2024.

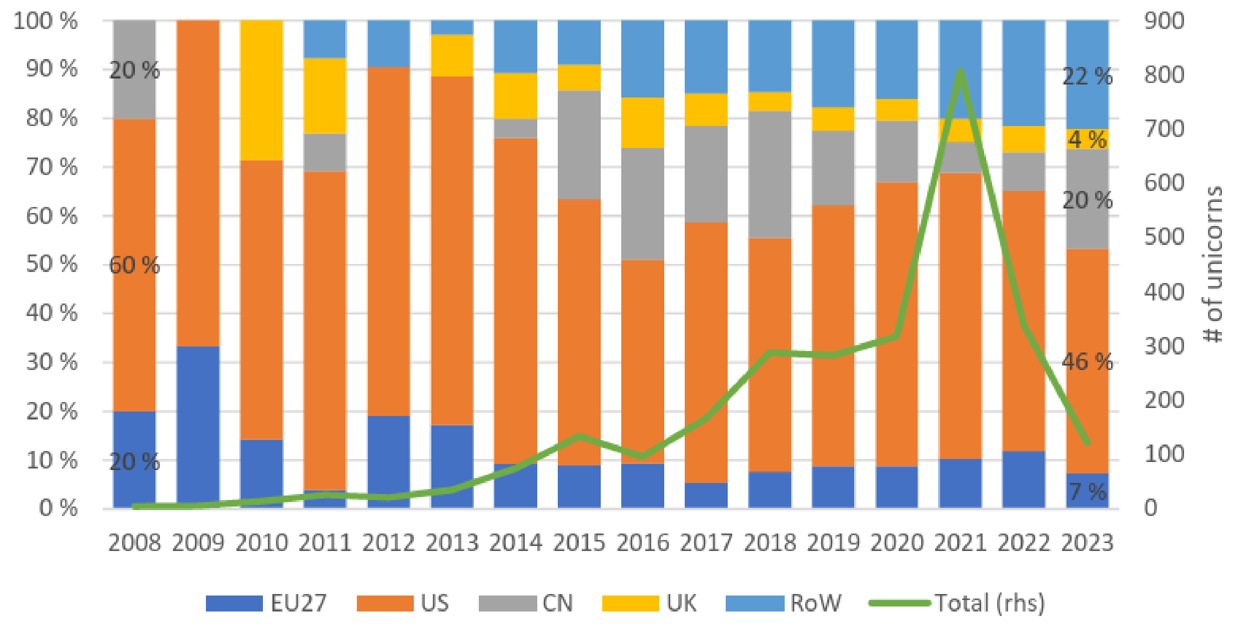
Figure 1: Number of experienced founders starting companies per year (Europe and US, 2015 – 2024)



Source: (Atomico, 2024, p. 174)

As a clear illustration of the problem with scaling up our start-ups, consider the EU's shrinking share of global *unicorns*. A unicorn is a technology or innovation-based company that began as a start-up and eventually reached a valuation exceeding EUR 1 billion. Before the global financial crisis of circa 2008, the EU had a competitive foothold in the global unicorn landscape; however, its share has progressively declined since (see Figure 2).[2]

Figure 2: Share by region of global unicorns (2008 – 2023)



Source: (Thomadakis, Lannoo, & Arnal, 2024) based on data from Dealroom.co.

2 Data are based on the cumulative share of unicorns 2008 – 2023. Location is based on where the firm is headquartered or where it was originally founded.

Scale-up success within the EU is geographically concentrated: nearly 70% of venture capital funding is absorbed by just four countries (Germany, France, Sweden, and the Netherlands) (Thomadakis, Lannoo, & Arnal, 2024).

Productivity gains for start-ups often stem from their ability to adopt and commercialise cutting-edge technologies or new business models. However, the ability of EU firms to scale, and hence to generate substantial productivity spillovers, remains constrained by fragmented and burdensome regulatory regimes, underdeveloped risk capital markets, insufficient access to skilled labour, and limited access to institutional clients and cross-border procurement opportunities. The EU's policy focus has often been on initial support for early-stage firms, while neglecting the conditions necessary for growth and market expansion.

2.3. Innovation as a driver of competitiveness, resilience and sustainable growth

Innovation is widely recognised as the central driver of long-term productivity and competitiveness. In the EU context, it also underpins broader objectives such as climate neutrality, digital transformation, and economic resilience. Innovative firms – particularly those operating in deep-tech, digital, and green sectors – are crucial for enabling structural transitions and positioning the EU globally.

Empirical evidence suggests that firms engaging in innovation are not only more productive but also more likely to survive shocks, to adapt to new market conditions, and to contribute to job creation (Harasztosi & Savšek, 2022) (Nose & Honda, 2023). However, innovation performance remains uneven across Member States, sectors, and firm sizes. Smaller and younger firms often face greater hurdles in accessing knowledge networks, R&D infrastructure, and late-stage finance, resulting in missed opportunities for scale and diffusion.

Furthermore, while public investment in R&D remains stable, business R&D intensity in the EU still lags behind that of its major trading partners. The innovation gap is further compounded by limited translation of scientific excellence into market-ready technologies, a problem often referred to as the "European paradox."

2.4. The strategic role of innovation in company management and EU economic policy

At the firm level, innovation increasingly constitutes a strategic function that goes beyond product development. It includes digital transformation, sustainability integration, new organisational models, and process optimisation. Strategic innovation management enables firms to adapt to regulatory shifts, anticipate consumer demand, and compete in global markets. However, many EU firms (particularly SMEs) lack the capacity or incentive to invest in such strategic innovation, due to risk aversion, resource constraints, or compliance burdens.

From a policy perspective, innovation is now a central pillar of the EU's competitiveness agenda. The Commission's 2025 Competitiveness Compass, the SME Relief Package, and the Industrial Strategy all emphasise the need to unlock growth through innovation, especially among smaller firms. However, the proliferation of overlapping initiatives, fragmented regulatory frameworks, and complex compliance obligations often undermine the effectiveness of these efforts.

A more coherent, harmonised legal environment, such as the one envisioned through a 28th regime, could serve as a platform for reducing barriers and enabling innovation-driven firms to scale. In this context, innovation is not simply a firm-level activity but a systemic lever for delivering on the EU's long-term competitiveness and sustainability goals.

2.5. The strategic role of innovation in e-government services

In addition to firm-level and regulatory enablers, public sector innovation – particularly in the form of e-government – plays a strategic role in shaping Europe's innovation ecosystem. The EU has long recognised the value of digital public services and shared infrastructures in catalysing private-sector innovation, but for many years this potential boost to EU productivity was largely confined to operations within a single Member State. Cross-border e-government initiatives in areas such as identity and authentication, e-health, e-customs and e-VAT had all languished or mis-fired in one way or another (van Veenstra, et al., 2013). Only in the past few years has substantial progress been made, for instance with the *Electronic Health Data Space (EHDS)* (Regulation (EU) 2025/327).

By embedding digital solutions into public administration (e.g. e-identification, digital procurement, interoperable data platforms), Member States can reduce transaction costs, improve regulatory compliance and stimulate the development of new business models. This institutional orientation sets the EU apart from more market-driven jurisdictions like the US, where innovation is largely driven by the private sector with less systemic public infrastructure support. As (Leceta, Renda, Totti Könnölä, & Simonelli, 2017) argue, a smart and enabling state is essential to lowering barriers for high-growth firms and strengthening Europe's innovation capacity.

3. HORIZONTAL HURDLES AFFECTING ALL EU FIRMS

KEY FINDINGS

- The rationale for a 28th Regime is largely driven by persistent cross-border barriers that hinder EU firms from scaling or operating in more than one Member State.
- Surveys of firms consistently highlight a core list of Single Market obstacles: divergent contractual and legal practices, national service and product rules, VAT and taxation issues, public procurement complexities, and fragmented consumer rights frameworks.
- Concern over lack of skilled staff ranks as one of the top obstacles to investment, on a par with energy costs and broader economic uncertainty.
- Regulatory complexity and administrative burden remain major challenges: firms face overlapping requirements, inconsistent national implementations and high compliance costs – especially in areas such as labour law, data protection and company law.
- An EIB survey finds that 28% of EU start-ups dedicate at least 10% of their staff to regulatory tasks, illustrating the scale of the burden on small and innovative firms.
- Legal uncertainty, particularly in insolvency, labour and environmental law, undermines long-term planning, risk assessment and investment. Uncertainty is due in part to divergent transpositions and weak cross-border enforcement mechanisms.
- Cross-border establishment remains costly and inefficient, with firms often forced to replicate compliance and legal operations in each Member State they enter.
- Tax fragmentation, including divergent corporate tax rules, inconsistent VAT systems and lack of harmonised treatment for R&D and transfer pricing, creates high barriers to pan-European operations and deters scale-ups.

While the European Single Market has significantly reduced internal barriers over the past three decades, numerous horizontal obstacles still affect firms seeking to operate across Member States. These issues are particularly burdensome for companies aiming to scale across borders, and they are especially damaging to fast-growing and innovation-driven firms. The persistence of regulatory complexity, legal uncertainty, and taxation-related fragmentation discourages investment, inhibits scale, and weakens Europe's ability to compete globally for innovative businesses.

In this chapter, we first explain how EU firms view the relevant problems (Section 3.1); then discuss the impact of regulatory complexity and associated burdens (Section 3.2); then the impact of legal uncertainty (Section 3.3; and finally, challenges of cross-border establishment and taxation (Section 3.4).

3.1. Overall assessment by EU-based firms

In order to understand the relative impact of barriers, it is best to begin with how they are perceived by EU firms themselves. The ranking in Figure 3 appears in (Eurochambres, 2024), reflecting a large scale survey in 2024. Some 66% of the more than 1,000 respondents represented firms that "do business in one or more EU countries, other than [their] own", while an additional 18% represent firms that do not "do business in any other EU country, but would like to".

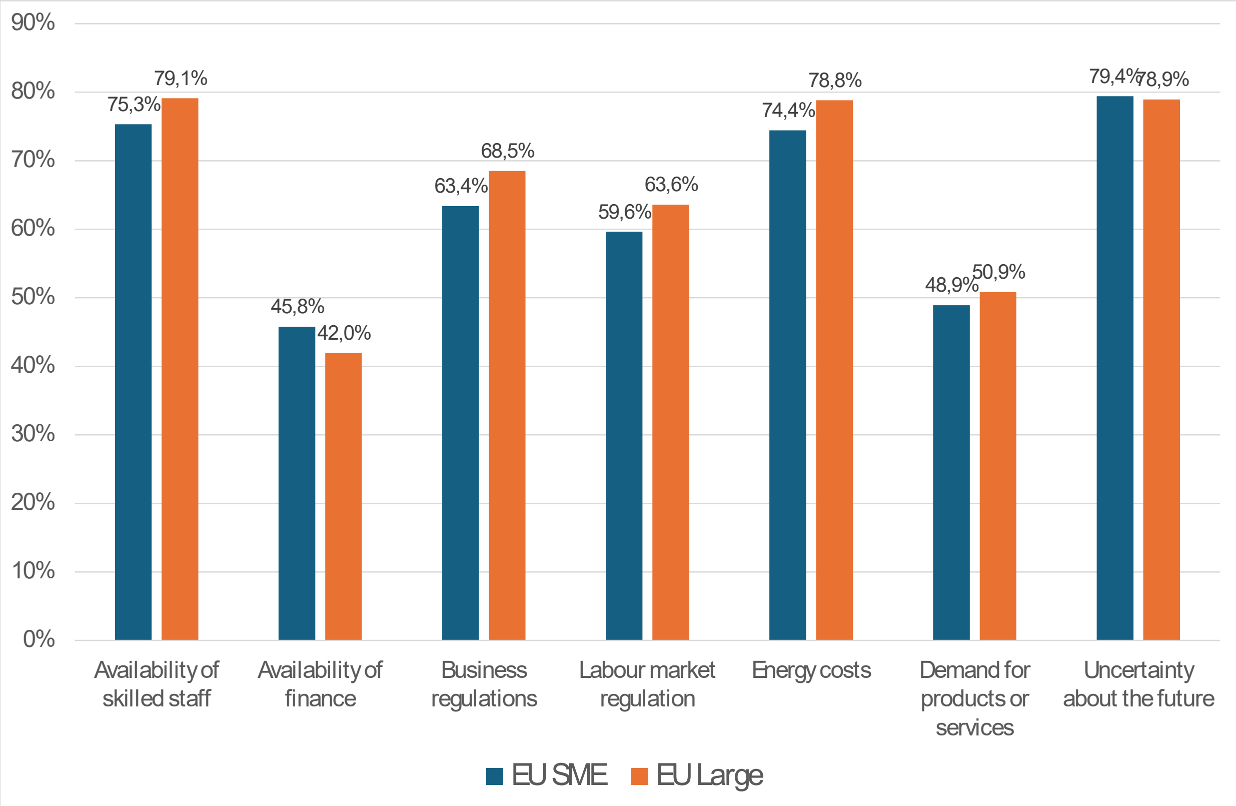
Figure 3: Ranked list of single market obstacles as viewed by EU firms (2024)

Source: (Eurochambres, 2024, p. 4)

These are largely the same barriers that have been identified in the Commission's *Competitiveness Compass* and in (Marcus & Rossi, 2024). At the top of the list are divergent contractual and legal practices, different national service rules, and lack of accessibility to rules and requirements, different national product rules, and the cost of regulation. None of the rest is surprising: VAT, public procurement, consumer rights, and more.

The EIB's annual survey of businesses (European Investment Bank (EIB), 2024) provides a complementary insight on the relative importance of these concerns, and on the evolution of business views of time. What we see in Figure 4 is that both small and large businesses are concerned about lack of sufficient access to skilled workers, lack of access to finance, business regulations, and labour regulations, all of which have a cross-border dimension. The concern with lack of access to skills is similar in magnitude to the concerns over energy costs, and over uncertain future, both of which could be viewed as being mega-concerns that are not primarily cross-border in nature.[3]

Figure 4: Obstacles to investment as perceived by businesses (2024)

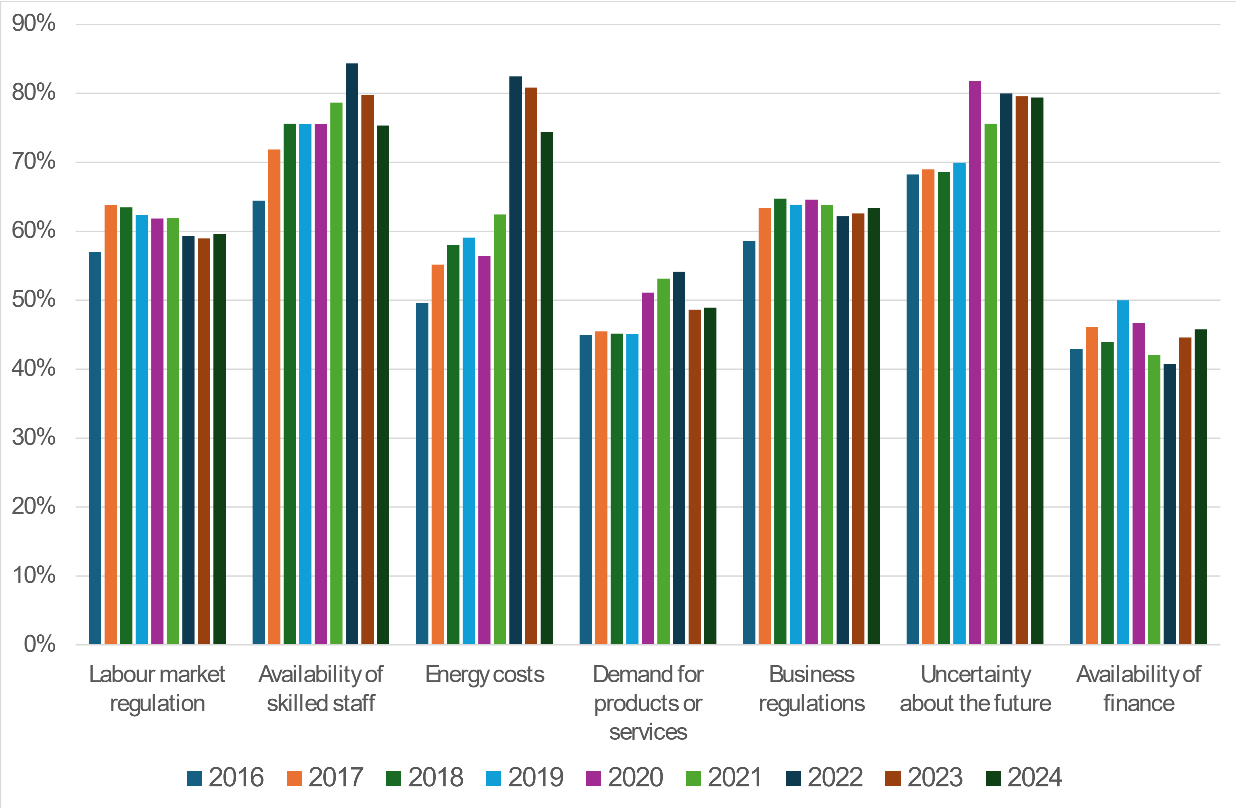


Source: Authors' elaboration based on (European Investment Bank (EIB), 2024)

[3] These are answers to "Q38. Thinking about your investment activities, to what extent is each of the following an obstacle? Is it a major obstacle, a minor obstacle or not an obstacle at all?" What is shown is the fraction who responded that the issue raised was either a minor or a major obstacle. The difference from 100% represents those who "said not an obstacle at all", or who answered "don't know" or declined to answer.

The responses to the same question in the same survey[4] show the evolution of concerns over time. Concerns over availability of skilled staff, over energy costs, and over the future all climbed, and were at high levels in 2022, but subsequently abated slightly (see Figure 5).

Figure 5: The evolution over time of business sentiment on obstacles to investment (2016 – 2024)



Source: Authors' elaboration based on (European Investment Bank (EIB), 2024)

3.2. Regulatory complexity and compliance burden

Despite formal commitments to better regulation and simplification, EU firms continue to face high compliance costs arising from overlapping regulatory requirements, diverging implementation practices, and cumulative administrative obligations. These challenges are particularly evident in areas such as company law, data protection, consumer protection, product safety, and labour regulation.

The lack of consistent digitalisation across Member States exacerbates these issues. Although the 2019 Digitalisation of Company Law Directive aimed to streamline cross-border procedures (e.g. online registration, document filing), implementation remains patchy and inconsistent. Many company-related processes still require manual submission, physical presence, or redundant documentation

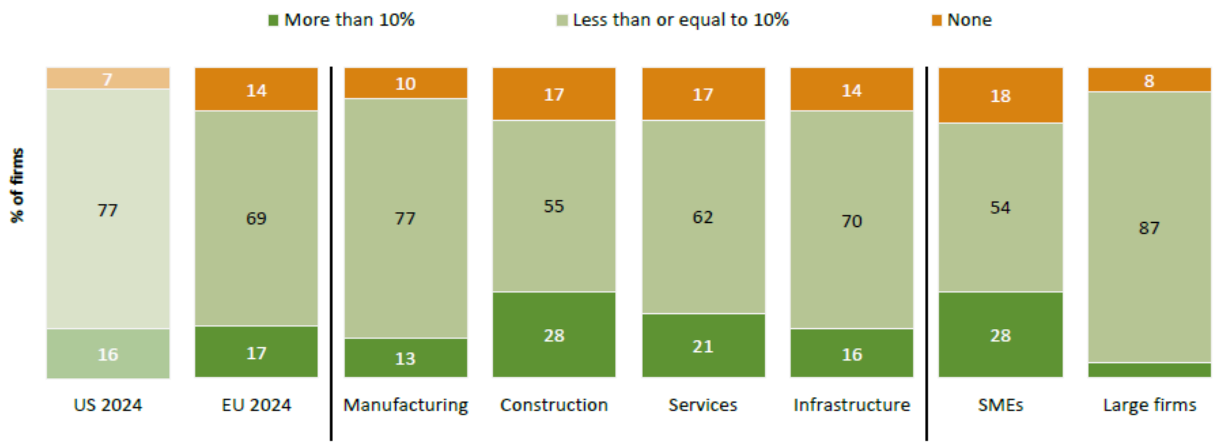
[4] Again, these are answers to "Q38. Thinking about your investment activities, to what extent is each of the following an obstacle? Is it a major obstacle, a minor obstacle or not an obstacle at all?" What is shown is the fraction who responded that the issue raised was either a minor or a major obstacle. The difference from 100% represents those who "said not an obstacle at all", or who answered "don't know" or declined to answer

depending on the Member State. For firms operating in more than one jurisdiction, these frictions multiply.

For innovative firms – especially in fast-moving sectors such as digital health, fintech, or AI – compliance timelines and uncertainty about regulatory scope can delay product rollouts or discourage market entry. The absence of a single, clear and uniform regulatory path across the EU limits the scalability and competitiveness of small, innovative businesses (see Chapter 5).

The burden is real, and it is substantial, especially on SMEs. The EIB annual investment survey (European Investment Bank (EIB), 2024, p. 27) found that 28% of start-up firms in the EU are tasking 10% or more of their staff with regulatory tasks (see Figure 6).

Figure 6: Firms by share of staff employed to meet regulatory requirements (2024)



Source: (European Investment Bank (EIB), 2024, p. 27)

Technology-oriented start-ups are sceptical of many of the laws that have been introduced in recent years, as is visible in recent survey results

3.3. Legal uncertainty and divergent implementation of EU law

Legal uncertainty is another systemic barrier that undermines the business environment in the EU. Although many areas of economic activity are governed by EU directives, their transposition and enforcement at national level vary significantly. This creates unpredictability for firms seeking to expand scale, or operate across borders, as the same EU rule may be interpreted differently – or applied with different scope, sanctions, or procedures – in different Member States.

Examples abound in areas such as labour law, consumer law, data governance, and environmental regulation. Even where EU regulations apply directly, as in the case of the *General Data Protection Regulation (GDPR)*, national supervisory authorities exercise discretion in enforcement, leading to uneven application and legal risk. This discourages businesses from adopting EU-level standardised models or centralised functions, which could otherwise generate economies of scale.

In insolvency law, for instance, the 2019 Directive on preventive restructuring frameworks was intended to introduce minimum standards across Member States, yet substantial differences remain in how restructuring procedures are accessed, how creditor rights are balanced, and how outcomes are determined. For companies with cross-border operations or creditors, these divergences complicate risk assessment and financial planning. They impede cross-border investment within the EU, since investors cannot be certain of recovering a fair share of their investment in the event that an innovative firm fails. The Commission has repeatedly attempted reforms to non-bank insolvency, but Member States have aggressively opposed them because insolvency is intertwined with many other aspects of Member States law, including labour law, property law, and more. (Marcus & Rossi, 2024, pp. 66 – 72)

Legal uncertainty also stems from the slow pace and low predictability of regulatory updates. The delay between Commission proposals and national transposition and implementation, together with frequent changes in interpretation by courts and authorities, impedes long-term planning. The lack of centralised or uniform dispute resolution mechanisms further entrenches fragmentation and contributes to a perceived lack of legal clarity across borders.

3.4. Cross-border establishment and taxation

Establishing and operating a business across multiple Member States remains administratively and fiscally complex. Despite the freedom of establishment guaranteed by the Treaties, companies must often navigate different incorporation procedures, capital requirements, and registration rules, each administered by distinct national authorities with differing documentation requirements, languages, and timelines.

While some efforts have been made to simplify cross-border mobility, such as the Cross-Border Conversion and Merger Directive (2019/2121), practical implementation is uneven, and few firms make use of these procedures due to legal complexity and cost. Furthermore, the lack of a true ‘passport’ for corporate operations means that firms expanding into another Member State must often recreate their legal presence from scratch, including setting up local bank accounts, hiring local legal counsel, and replicating compliance processes.

Taxation remains a major source of friction. The absence of a Common Consolidated Corporate Tax Base (CCCTB) or a harmonised EU tax framework means that companies face 27 distinct tax systems, each with its own rules on corporate income taxation, loss carry-forward, R&D deductions, withholding taxes, and reporting obligations. Transfer pricing disputes and double taxation risks further complicate cross-border operations, particularly for SMEs and scale-ups with limited fiscal resources.

Administrative burdens linked to VAT registration in multiple countries, coupled with differences in digital invoicing, e-reporting, and tax compliance mechanisms, create further distortions. While initiatives such as the VAT One-Stop Shop (OSS) and ongoing work on BEFIT (Business in Europe: Framework for Income Taxation) represent important steps, they remain partial, complex to apply, or still in development.

In the past, payment of VAT depended in practice on the *country of origin*, i.e. the country where the merchant was located. This was changed in 2015 in order to reduce tax arbitrage to a *country of use* system, which means that e-merchants who business cross-border within the EU/EEA are now obliged to deal with VAT rules in all of the countries where they do business.[5] (Marcus J. S., 2024, pp. 20 – 22)

The overall result is a fragmented, burdensome environment in which the legal and tax costs of expanding across borders or doing business across borders remain high, disproportionately affecting firms without extensive in-house legal or tax teams. For start-ups and innovation-intensive firms whose business models often require pan-European scale from the outset, these barriers can become insurmountable.

[5] A complicated variant of the same problem exists for consumer protection. Although consumer law is in theory harmonised under EU law, in practice nearly every Member State has enacted pro-consumer additions. Under Rome I, the consumer can choose the consumer protection laws of his or her country of residence provided that the merchant has actively marketed to the country of residence. In practice, this means that e-merchants must deal with variations in consumer protection law wherever they actively market their services.

4. SPECIFIC MARKET AND REGULATORY FAILURES

KEY FINDINGS

- Despite being one of the world's most integrated economic areas, the EU Single Market continues to face persistent regulatory and market fragmentation, especially in areas critical to innovation-driven firms.
- These structural barriers undermine the ability of start-ups and scale-ups to operate seamlessly across borders, impeding innovation diffusion, investment attraction and pan-European scaling.
- Legal, administrative and tax divergences raise compliance costs and introduce legal uncertainty, particularly for smaller firms without dedicated cross-border legal capacity.
- Pre-IPO risk capital in the EU is severely underdeveloped: in 2023, it amounted to just 0.5% of GDP, compared to 4.5% in the US, leading to significantly lower average investment per firm.
- Labour mobility and talent deployment are constrained by inconsistent employment law, fragmented social protection systems, and weak recognition of skills and qualifications, especially under non-traditional forms of employment. The shift away from traditional employment exacerbates these problems, despite the enactment of a *European Pillar of Social Rights*.
- While the EU produces world-class science and R&D, fragmented product standards, uneven digital readiness and weak ecosystem connectivity inhibit the commercial scaling of innovation.
- Existing EU innovation programmes – including Horizon Europe, EIC and Digital Europe – are well-funded and politically supported, but suffer from limited uptake, uneven geographic access and high administrative burden.
- Financial instruments alone cannot offset the structural barriers imposed by legal and regulatory fragmentation. A simplified, optional 28th regime could significantly improve framework conditions for innovative firms and unlock the full potential of EU support mechanisms.

While the EU Single Market is one of the most integrated economic zones in the world, persistent regulatory and market barriers continue to undermine the ability of companies, particularly innovative start-ups and scale-ups, to operate seamlessly across borders. These barriers are not only a source of inefficiency; they directly affect the capacity of firms to innovate, attract investment, scale operations, and contribute to the EU's strategic objectives.

The need for a 28th regime arises precisely from the accumulation of these systemic failures and the limited effectiveness of existing instruments to address them.

Despite harmonisation efforts in several policy areas, regulatory fragmentation across the EU remains significant. For firms with cross-border ambitions, this fragmentation translates into higher costs, uncertainty and slower time to market.

In the following sections, we discuss in turn legal, administrative, and tax burdens (Section 4.1); access to capital, and its implications for scale (Section 4.2); skill gaps and labour mobility (Section 4.3); gaps in digital infrastructure and in innovation diffusion (Section 4.4); and the limitations of existing EU actions (Section 4.5).

4.1. Fragmentation of the internal market: Legal, administrative and tax barriers

Legal fragmentation affects foundational aspects of doing business. For instance, setting up subsidiaries in multiple Member States entails navigating different rules on company formation, shareholder rights, corporate governance, insolvency procedures, and contract law. While directives such as the Company Law Directive (EU) 2019/2121 introduced some harmonisation, enforcement and implementation diverge widely.

Administrative fragmentation imposes day-to-day burdens. Companies must deal with multiple business registries, reporting standards, digital signature systems, and licensing authorities. For example, mutual recognition of licenses or certificates is often poorly operationalised, leading firms to repeat costly administrative processes. The *once-only principle*, intended to reduce repetitive data submissions, remains largely confined to national silos.

Tax fragmentation is a major obstacle for cross-border operations. Differences in corporate income tax regimes, R&D tax credits, VAT treatment, transfer pricing and withholding tax procedures generate high compliance costs and legal uncertainty. The lack of a harmonised corporate tax base and the limited scope of initiatives like the One-Stop Shop for VAT are emblematic of deeper institutional constraints. For innovative companies that rely on structuring of intellectual property (IP), complex tax treatment of intangible assets across borders further inhibits scaling.

These issues disproportionately affect smaller firms that lack the legal, fiscal, or administrative capacity to navigate 27 national frameworks, resulting in a *de facto* barrier to operating at scale within the Single Market.

4.2. Access to capital, scale and public procurement markets

Finance and market access are fundamental enablers of business growth, yet remain constrained in the EU by structural market and policy shortcomings.

Venture capital (VC) fragmentation remains one of the most cited barriers to innovation-led growth. Over 70% of *venture capital (VC)* funding in the EU is concentrated in just four Member States (Germany, France, Sweden, Netherlands) (Thomadakis, Lannoo, & Arnal, 2024). Legal heterogeneity in fund structures, shareholder rights, exit environments (including *initial public offering (IPO)* pathways), and employee stock options deters cross-border capital flows. Investors often prefer familiar legal environments where contractual enforcement and IP protection are more predictable.

The problem is not only with the distribution of venture capital, but even more so with the total volume of all kinds of pre-IPO risk capital. In 2023 for instance, pre-IPO risk capital investment in the EU represented some 0.5% of GDP (EUR 59 billion), while in the United States it represented 4.5% of GDP (EUR 789 trillion), or about 13 times greater. (Thomadakis, Lannoo, & Arnal, 2024) This drives an even greater difference in investment per firm: "In Europe, the average amount received by a VC-backed company is about EUR 2 million, while a US company will get almost five times this amount. … On average, US-backed [private equity (PE)] companies receive 20 times more funding compared to their European peers." (Thomadakis, Lanoo, & Moloney, 2022)

Causal drivers include:

- Excessive reliance of EU firms on bank loans rather than other means of finance;
- Weakness of both equity and debt capital markets in the EU-27;
- Weakness in particular of pre-IPO (Initial Public Offering) finance, defined for our purposes as being comprised of venture capital (VC), private equity, angel investors, and crowd-sourcing;
- Weakness in the ability to issue Initial Public Offerings (IPOs), which are a key means of monetising promising start-up firms;
- Inability in practice of pension funds and insurance to participate in any but the most risk-free investments.

Limited access to public procurement is another structural constraint. While SMEs account for over 60% of public procurement contracts awarded, start-ups and scale-ups often find themselves excluded from higher-value, innovation-oriented contracts. National procurement procedures are frequently opaque, risk-averse, and fragmented, with limited use of cross-border joint procurement or dynamic purchasing systems. The 2021 revision of the EU procurement framework introduced innovation partnerships, but uptake remains marginal.

Barriers to market scale further exacerbate fragmentation. Companies with digital products or platform-based models must adapt their operations, consumer contracts, and compliance structures to varying national rules, particularly in *business-to-consumer (B2C)* markets. Even where mutual recognition of non-standardised products exists, *de facto* legal uncertainty around enforcement limits its use. (Dahlberg, et al., 2020) This inhibits the emergence of pan-European scale-ups capable of competing globally.

A coherent legal environment, such as one offered under a 28th Regime, could significantly reduce these frictions by providing a uniform regulatory framework, especially in areas such as equity financing instruments, insolvency rules, and company formation.

4.3. Labour mobility, skills gaps and talent attraction

Human capital is at the heart of innovative firms' competitiveness. Yet, both internal labour mobility within the EU and external talent attraction remain constrained by policy fragmentation.

Cross-border employment is complex due to varying employment laws, social security systems, tax treatment of stock options, and differences in collective bargaining regimes. For start-ups operating remote or hybrid teams, managing compliance across multiple jurisdictions imposes legal and administrative costs. Cross-border recognition of qualifications continues to be problematic, despite many measures put in place (including the SOLVIT network) to try to address it. The 2023 revision of the Posting of Workers Directive did not fully address remote work-related frictions or mobile talent challenges.

Skills shortages persist across key innovation sectors – particularly in *artificial intelligence (AI)*, quantum technologies, clean tech and cybersecurity. While initiatives like the *Deep Tech Talent Initiative* aim to fill the gap, they are still in early stages, and most innovation hubs report persistent shortages of *Science, Technology, Engineering and Math (STEM)* graduates, technical staff, and innovation managers.

Visa and work permit barriers for third-country nationals vary considerably across Member States, with differing timelines, quotas, and recognition criteria. Only a few countries (e.g. France's French Tech Visa) have developed dedicated fast-track routes for start-up talent. A pan-European talent entry framework remains absent.

The lack of full harmonisation of employee rights and benefits compounds the problems with worker mobility, and the shift from traditional employment to self-employment and non-traditional makes it even worse. Two EU Regulations attempt to harmonise pension rights, for example, but they apply only to traditional employees. A European Pillar of Social Rights has attempted to rectify this, but Member State implementation appears to be quite limited. (Petropoulos, Marcus, Moës, & and Bergamini, 2019)

Innovative companies must be able to hire and deploy talent flexibly across borders. The complexity and variability of national rules impede this, strengthening the case for optional harmonisation under a 28th regime, at least for a defined class of high-growth firms.

4.4. Gaps in innovation diffusion, digital infrastructure and IP protection

While the EU produces excellent science and R&D, it struggles to convert this into commercially scalable innovation. This is because innovation diffusion is hindered by fragmented product standards, uneven digital readiness, and low connectivity between ecosystems. Many SMEs and traditional firms remain slow to adopt new technologies, limiting spillover effects from leading innovators.

Digital infrastructure fragmentation also hampers service deployment and data integration. Differences in cybersecurity certification schemes, incompatibilities between national digital identity systems, and divergent approaches to cloud infrastructure (despite the coordination efforts under GAIA-X) create frictions in delivering digital services across borders.

Emerging technology areas such as AI illustrate this fragmentation. Although the adopted EU AI Act aims to create a unified horizontal framework for trustworthy AI, Member States continue to develop their own national AI strategies, funding schemes, regulatory sandboxes, and standards. This results in regulatory and operational divergence across the EU, creating uncertainty for developers and investors, and making it difficult for AI-based solutions to scale across borders (Georgieva, Timan, & Hoekstra, 2022) (Lebrun & Lachguer, 2025). Such inconsistencies risk undermining the EU's ability to foster a competitive AI ecosystem and to close the innovation gap with global leaders.

At the same time, IP protection remains patchy. The recent introduction of the Unitary Patent system and the Unified Patent Court represents an important step toward streamlining patent protection in the EU. However, opt-outs by some Member States (e.g. Spain and Poland) mean that patent holders must still navigate a fragmented legal landscape when seeking protection across the entire Single Market. Trade secret protection, copyright enforcement, and judicial remedies also vary widely, creating uncertainty for innovative firms and deterring investment in IP-heavy business models.

These shortcomings discourage innovative firms from building and enforcing EU-wide IP portfolios, limiting their ability to compete globally and to secure funding.

4.5. Existing EU incentives: uptake and limitations

Over the past decade, the EU has established a wide array of instruments to support innovation, entrepreneurship and technological advancement. Flagship programmes such as Horizon Europe, the European Innovation Council (EIC), InvestEU, the Digital Europe Programme, and the Deep Tech Talent Initiative form the core of this policy landscape, each addressing a distinct part of the innovation ecosystem. Horizon Europe, with a budget of €93.5 billion for the 2021–2027 period, is the EU's principal research and innovation framework, supporting cross-border collaborative R&D and funding technological breakthroughs. The EIC complements this by targeting high-risk, high-potential start-ups and SMEs, particularly through its Accelerator programme, which offers a blend of grants and equity. InvestEU, meanwhile, leverages public guarantees to mobilise private capital for innovation, green, and digital projects, with a particular focus on SME financing. The Digital Europe Programme, launched in 2021 with a €7.5 billion budget, seeks to build EU-wide capacities in strategic digital areas such as cybersecurity, artificial intelligence and high-performance computing. Finally, the Deep Tech Talent Initiative aims to train one million individuals in advanced technology areas by 2025 to address critical skills shortages.

These programmes reflect the EU's strong political commitment to fostering innovation and technological leadership. However, their real-world impact is frequently constrained by structural limitations in design, accessibility, and alignment with firms' operational needs. As highlighted in the recent Startup and Scale-up Strategy Staff Working Document, start-ups and scale-ups continue to face fragmented and burdensome administrative and regulatory landscapes, which impede scaling and leveraging Single Market opportunities (European Commission, The EU Startup and Scaleup Strategy – Choose Europe to start and scale, Commission Staff Working Document, 2025). Specifically, many young firms struggle with the complex application procedures for flagship programmes such as Horizon Europe and the EIC. These barriers contribute to long lead times, heavy compliance requirements, and mismatches with firms' financial cycles, which limit uptake and the practical benefits of funding (European Commission, 2024).

Furthermore, the uptake of EU innovation funding is uneven across the Union (Francica, 2025). A disproportionate share of financial support flows to companies and institutions located in a small number of Member States with well-established innovation ecosystems and strong administrative capacities. In contrast, companies in many Southern, Central, and Eastern European countries face higher entry barriers, including limited technical assistance, weaker local networks, and less familiarity with EU procedures. This reinforces the geographic concentration of innovation and undermines the objective of pan-European convergence in competitiveness and technological capacity.

Importantly, financial incentives alone are not sufficient to overcome the deeper structural problems that hinder company growth in the EU. There is a fundamental mismatch between the ambition of EU financial programmes and the fragmented legal environment in which firms must operate. Even firms that succeed in obtaining EU funding are often confronted with divergent rules across Member States in key areas such as company formation, taxation, employment law, insolvency procedures, and intellectual property enforcement. This legal fragmentation creates persistent costs, uncertainties, and operational inefficiencies that financial support alone cannot neutralise.

Moreover, the alignment between EU-level instruments and national systems is often weak. Although many programmes are implemented through national intermediaries or in partnership with national development banks and agencies, the coordination between EU and domestic innovation policies remains inconsistent. This leads to gaps, duplication, or administrative overlaps, and can disrupt the continuity of support from early-stage innovation to commercial scale-up.

These structural limitations, most of which have been well known for many years, point to the need for a new and transformational solution. A well-designed 28th regime – offering a simplified, harmonised, and optional legal framework for innovative firms – would not replace existing funding instruments. Instead, it would enhance their effectiveness by reducing legal frictions, improving predictability, and enabling companies to operate under a single set of rules wherever they choose to invest and grow within the EU. By providing a stable legal foundation for cross-border operations, such a regime would help innovative firms realise the full potential of EU financial support mechanisms and advance the Union's objectives of sustainable competitiveness and strategic autonomy.

5. HURDLES AFFECTING INNOVATIVE START-UPS AND SCALE-UPS

KEY FINDINGS

- Start-ups and scale-ups are key drivers of technological innovation, productivity and economic dynamism in the EU, but face disproportionate barriers to cross-border scaling.
- Beyond the horizontal challenges outlined in Chapter 3, these firms face sector-specific constraints, including limited access to late-stage capital, fragmented licensing regimes, difficulty accessing institutional clients and systemic disadvantages in public procurement and public markets.
- Entrepreneur and investor surveys consistently highlight regulatory fragmentation and growth-stage funding gaps as top impediments to European tech competitiveness.
- The average US VC-backed company receives nearly 5 times more funding than its EU equivalent, while private equity-backed US firms receive 20 times more than those in the EU. Structural barriers to pan-EU capital markets and exits exacerbate this funding gap.
- Many start-ups in regulated sectors (e.g. fintech, medtech, clean tech) face duplicative licensing and reporting obligations across Member States, as well as a wide variance in national enforcement.
- Access to public procurement and institutional B2B markets remains limited, despite their strategic importance for validation and scale. Criteria such as minimum turnover, track record, and complex procedures tend to favour incumbents over high-potential new entrants.
- Although the GDPR, AI Act, and other flagship EU rules are viewed by policymakers as essential to fairness and trust, start-up ecosystems often see them as burdensome. Striking a better balance between regulatory integrity and operational agility remains a policy priority.

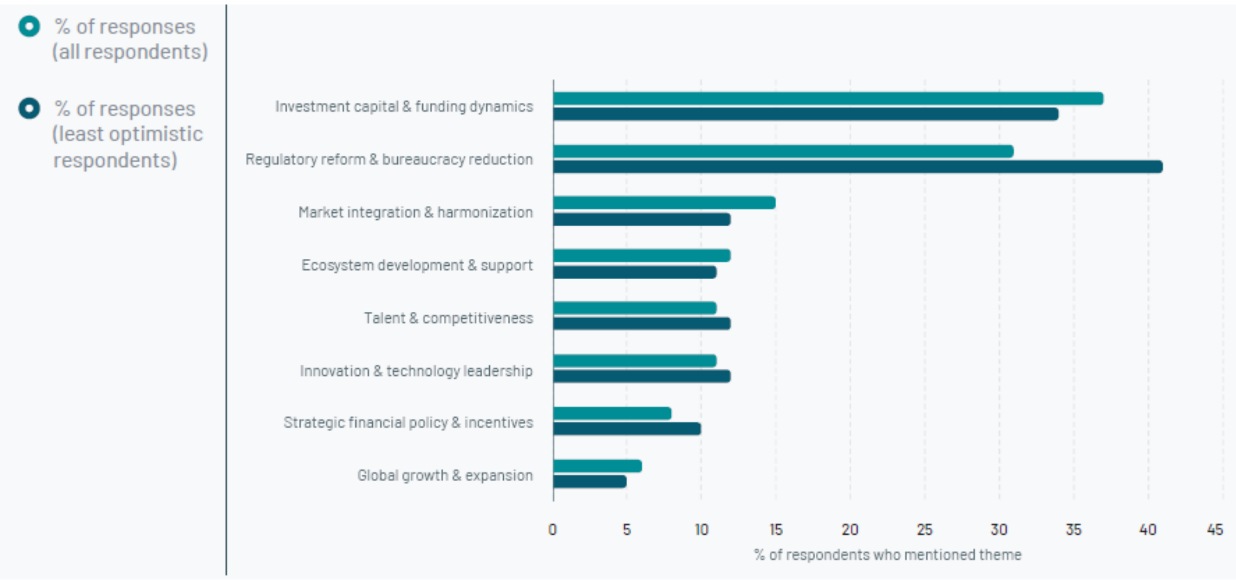
Start-ups and scale-ups play a crucial role in driving technological innovation, productivity growth, and economic renewal. Yet, within the EU Single Market, these companies face a distinct set of challenges that inhibit their growth and ability to scale across borders. While they are also affected by the horizontal barriers discussed in Chapter 3, several structural and regulatory issues disproportionately constrain their development. These include limited access to late-stage capital, fragmented licensing regimes, difficulties engaging with institutional clients, and systemic disadvantages in public markets and procurement.

In this chapter, we discuss the gaps that start-ups and scale-ups (and the investors who support them) perceive in EU policy, which are distinct from those of other firms (Section 5.1). We continue with limitations in the funding of innovative start-ups so as to enable them to scale up (Section 5.2), followed by the fragmented licensing schemes to which they are subject (Section 5.3). We continue with their limited access to clients, and to procurement for business-to-government (B2G) services (Section 5.4)5.3. We then close with illustrative examples (Section 5.5).

5.1. The special needs of start-ups and scale-ups in the EU

A recent survey of entrepreneurs and venture capitalists undertaken by Atomico (Atomico, 2024, p. 41) suggests that while they perceive largely the same needs as leaders of other EU businesses, the relative weight can be substantially different.[6] Access to finance takes on far more weight than with more mature firms. Reduction of regulatory burden likewise ranks higher, probably because these are often smaller firms where regulatory burden requires a higher fraction of the firm's total resources. Market integration and harmonisation also rank fairly high, suggesting that single market issues play a large role for these firms as well. Similar concerns are echoed in the Global Startup Ecosystem Report (Startup Genome, 2024), which identifies regulatory fragmentation and limited access to growth capital as persistent barriers in European innovation hubs.

Figure 7: Changes needed to enable European tech to reach its full potential in the next decade as perceived by the entrepreneurial community (2024)



Source: (Atomico, 2024)

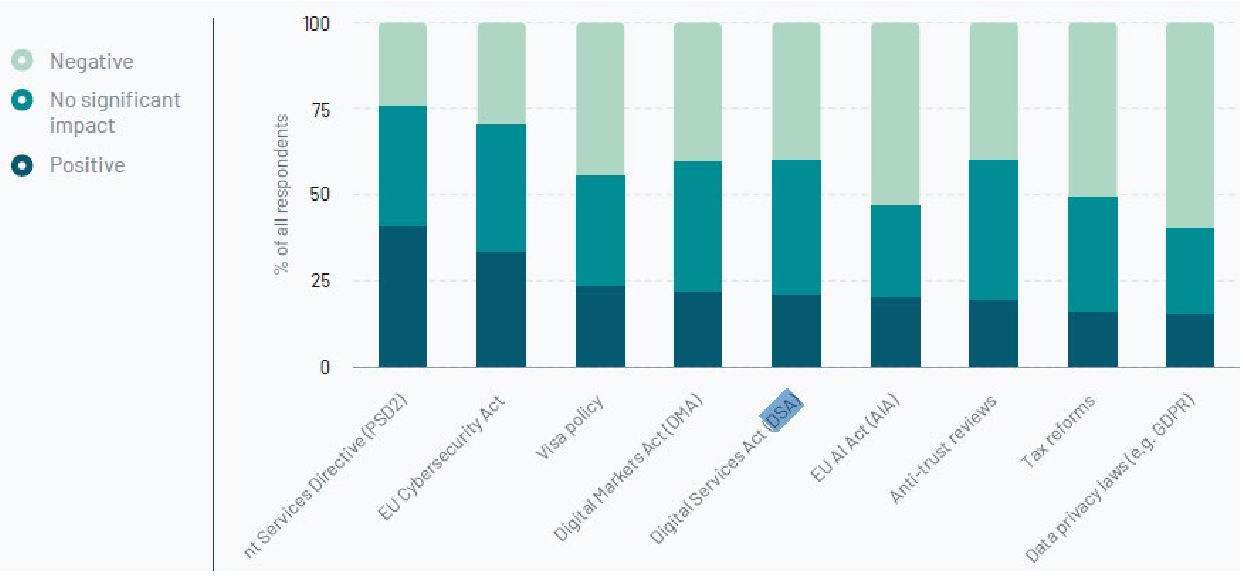
European entrepreneurs tend to be sceptical of the EU level legislation put in place in recent years. The same survey of entrepreneurs and venture capitalists (Atomico, 2024, p. 96) shows that a majority think that the effects of EU visa policies, the DMA, the DSA, the AI Act (Roberts, 2025), GDPR (Markeviciute, 2024), and from tax reforms and competition law actions have been overall negative. Only PSD2 and the Cybersecurity Act got a net positive reception.

While these perceptions reflect the views of the entrepreneurial and investment community, other stakeholders – including consumers and civil society – may view these regulatory efforts more

6 Atomico notes that the data is as of September 2024, and is based on all survey respondents who answered an optional free text question. The "least optimistic respondents" include only those who responded "Somewhat less optimistic" or "Significantly less optimistic" to the survey question "Compared to 12 months ago, are you more or less optimistic today about the future of European technology?". Respondents' responses were mapped to all applicable themes. Numbers do not add up to 100% as respondents' responses can be mapped to multiple themes.

favourably. For example, the AI Act and GDPR have been widely regarded as setting global benchmarks for ethical tech governance and data protection. Moreover, some of the recent EU policy frameworks, such as the Digital Services Act and competition enforcement, are seen by policymakers as crucial tools for maintaining fairness and public trust in digital markets. In his competitiveness report, Draghi (2024) acknowledges the need for regulatory simplification but also emphasises the strategic value of European standards and safeguards in global competition. These diverging views underscore the importance of striking the right balance between innovation, market integrity and fundamental rights.

Figure 8: Impact of selected EU initiatives on the conditions for starting and/or scaling a European technology company as perceived by the entrepreneurial community (2024)



Source: (Atomico, 2024)

5.2. Access to late-stage and cross-border funding

The lack of sufficient access to growth-stage and pan-European capital is one of the most critical barriers faced by EU start-ups and scale-ups. While early-stage venture capital has expanded over the last decade, late-stage (Series B and beyond) investment remains underdeveloped and geographically concentrated. As of 2024, approximately 70% of venture funding is absorbed by firms in only four Member States (Germany, France, Sweden, and the Netherlands). This creates a de facto funding divide, where innovative firms in many parts of the Union struggle to attract the capital needed to expand beyond their local markets.

Moreover, as noted in Section 4.2, pre-IPO risk capital investment in the US was about 20 times greater than in the EU in 2021. (Marcus & Rossi, 2024, pp. 30 - 50) The average investment in a US VC-backed company is almost five times the investment in a corresponding EU VC-backed company. For firms backed by private equity, a US company can expect about twenty times as much funding as a comparable EU company (Thomadakis, Lanoo, & Moloney, 2022)

Even more striking is the scarcity of pan-European investment vehicles. Differences in legal frameworks for venture capital, shareholder rights, fund structures, and exit mechanisms act as deterrents to cross-border investment. Investors often remain confined to national jurisdictions where they understand the legal and tax environment. The fragmentation of listing rules and SME access to public markets further constrains exit options, pushing many promising companies to seek acquisition or relocation outside the EU, particularly in the US. The EU's Capital Markets Union initiative has made progress, but efforts to remove key frictions, such as harmonising prospectus requirements or simplifying SME listings, remain incomplete.

Start-ups operating in capital-intensive sectors, such as deep tech, clean tech, or life sciences, are particularly exposed. These firms require long-term patient capital and regulatory clarity. Without sufficient late-stage funding options, they are often forced to either slow their growth or else to relocate, undermining the EU's strategic goal of building homegrown technology leaders.

5.3. Fragmented licensing, reporting and governance requirements

Start-ups and scale-ups operating in regulated sectors – such as fintech, medtech, edtech, or mobility – face substantial difficulties when expanding cross-border due to inconsistent licensing regimes and duplicative reporting requirements. Even where EU-level regulation exists, such as the Markets in Crypto-Assets (MiCA) Regulation, national supervisory authorities retain discretion in enforcement, interpretation, and application. This creates regulatory patchworks that are particularly difficult for small, fast-moving firms to navigate.

For example, fintech firms licensed under national e-money or payment institution rules in one Member State may still face extensive re-licensing or notification procedures when seeking to enter another Member State[7]. Licensing procedures often require local language submissions, multiple layers of documentation, and interactions with separate supervisory bodies, creating delays and legal uncertainty. The situation is even more pronounced in healthcare, where medtech and digital health firms face varying standards for clinical validation, data use, and reimbursement eligibility across national health systems.

Furthermore, governance and reporting requirements – such as for beneficial ownership[8], audit[9], and employee share options – are not standardised across jurisdictions. This limits the ability of start-ups

[7] There are several examples of regulatory fragmentation despite passporting rights. N26 (licensed in Germany) faced regulatory friction when expanding into France and Italy due to national anti-money laundering (AML) concerns and divergent supervisory interpretations. Ultimately exited the UK market citing excessive regulatory complexity. Revolut (licensed in Lithuania) encountered delays and supplementary requirements in Germany and France, including demands for enhanced AML controls and adaptation to national compliance regimes. Wise (licensed in Belgium) had to navigate duplicative agent registration and diverging national rules on AML and operational risk when offering services across the EU. Klarna (licensed in Sweden) experienced barriers in deploying Buy Now, Pay Later services in Germany and Austria due to inconsistent consumer protection rules and regulatory expectations.

[8] Although the 5th Anti-Money Laundering Directive (AMLD5) required all Member States to establish central beneficial ownership registers, implementation diverged significantly. A 2022 assessment by Transparency International found that formats, access conditions, and update mechanisms varied widely, creating administrative burden for companies with cross-border entities that had to comply with multiple national registers.

[9] Thresholds for mandatory audit vary between Member States (e.g. France requires statutory audits for companies exceeding EUR 3.65 million in total assets, while in Germany the threshold is EUR 6 million). A 2023 European Commission

to operate lean, uniform structures across markets. For companies that grow through subsidiaries or branches, the cost of compliance scales linearly with market entry, creating strong disincentives to expand.

These challenges are not just administrative. They influence strategic decisions on where to incorporate, which markets to prioritise, and whether to internationalise at all. A fragmented regulatory environment structurally disadvantages European start-ups relative to their peers in more unified legal environments.

5.4. Limited access to institutional clients and B2G markets

Public procurement and institutional purchasing represent important potential growth channels for start-ups, particularly in areas like digital government, healthcare innovation, and sustainable infrastructure. Yet access to public markets remains highly restricted for smaller and younger firms. In practice, most public buyers apply procurement criteria that favour incumbents – such as requirements for prior experience, minimum turnover thresholds, or long track records. Even where innovation partnerships or pre-commercial procurement instruments exist under the EU Public Procurement Directives, their use remains marginal and largely confined to innovation-forward Member States.

Start-ups often lack the resources or expertise to navigate complex procurement portals, respond to tenders, or build long-term relationships with contracting authorities. At the same time, many public buyers perceive start-ups as risky, or they lack the flexibility to engage with agile providers under rigid budget and accountability rules.

The situation is similar in institutional *business-to-business (B2B)* markets, such as large banks, hospitals, or utilities, where regulatory scrutiny and lock-in of legacy systems discourage buyers from working with early-stage companies. This lack of market access impedes validation, scaling, and revenue diversification, particularly in sectors where the first buyer is critical to credibility. In comparison, the US and some Asian economies have actively fostered start-up access to public demand through procurement quotas, innovation mandates, and specialised agencies – approaches not widely adopted across the EU.

5.5. Illustrative examples of market barriers

Case studies from across the EU help illustrate how these barriers manifest in practice:

- A digital identity verification start-up based in Portugal received EU funding but encountered difficulties expanding to Germany due to duplicative *Know Your Client (KYC)* licensing requirements, differing interpretations of data retention obligations, and the need to maintain separate legal entities for each national compliance framework.

report on the Accounting Directive confirmed that these differences complicate financial planning and increase compliance costs for scaling SMEs that operate subsidiaries across borders.

- A French clean tech scale-up in the energy storage sector faced long delays securing recognition for its technology across multiple national energy authorities, despite meeting EU-level standards. Lack of regulatory alignment resulted in missed procurement opportunities and slowed commercial deployment in target markets.
- A Baltic fintech company, having obtained an e-money license in its home country, found it could not effectively "passport" its operations due to legal uncertainty and inconsistent treatment by host Member State supervisors. After multiple delays, it decided to consolidate operations in the UK where a more predictable licensing and supervisory environment was available.

These examples reflect not isolated cases, but rather structural frictions that undermine the ability of innovation-led firms to scale within the EU. They make clear that the 28th regime has the potential to not only be a valuable simplification tool, but also an essential enabler of scale, predictability, and investment attractiveness for firms that operate in more than one EU Member State.

6. STRATEGIC POLICY AND LEGISLATIVE OBJECTIVES

KEY FINDINGS

- The rationale for a 28th regime rests on the persistence of structural barriers that prevent innovative firms – especially start-ups and scale-ups – from setting up, expanding and thriving across the EU.
- These barriers include Single Market fragmentation, limited access to scale-up finance, legal and regulatory complexity, and weak uptake and diffusion of innovation across borders.
- Despite repeated EU initiatives – such as the SME Strategy, Scale-Up Europe, the Capital Markets Union and the Startup Nations Standard – core problems remain unresolved due to reliance on soft coordination, voluntary standards and partial harmonisation.
- Political sensitivity in areas such as company law, tax law, labour law and insolvency has impeded deeper integration, leaving legal frameworks fragmented and businesses without a coherent operational environment.
- Past measures have yielded only marginal improvements. Tools like the Single Digital Gateway and SOLVIT network have yet to deliver systemic impact, and well-funded instruments such as Horizon Europe remain constrained by legal fragmentation.
- Where binding EU legislation has been adopted, such as the GDPR or parts of the Unitary Patent System, more consistent outcomes have been achieved. But such cases remain the exception.
- The repeated identification of the same barriers over successive policy cycles highlights the limits of incremental reform and underscores the need for structural change.
- Without a legally coherent and optional framework that firms can choose to operate under across the EU, the gap between policy ambition and regulatory reality will persist – and with it, the EU's underperformance in innovation, productivity and strategic competitiveness.

The European Union has long identified competitiveness, productivity and sustainability as central to its economic vision. These goals are reiterated in a range of high-level documents: from the Treaty on the Functioning of the European Union (Article 3) to the European Commission's 2025 Competitiveness Compass, the European Green Deal, and the Digital Decade Policy Programme. More recently, the March 2025 European Council conclusions reaffirmed these goals in the context of strengthening the EU's attractiveness for innovative companies.

However, while the policy rhetoric is clear and ambitious, the reality faced by companies on the ground remains fragmented and burdensome. The effectiveness of EU action is constrained not only by legislative gaps but also by the absence of structurally coherent legal frameworks that enable businesses to scale under predictable, innovation-friendly conditions.

This chapter reflects on the legacy and duration of barriers in the EU and how this relates to policy goals (Section 6.1); examines how the EU's core policy objectives relate to the barriers identified earlier and why existing legal instruments are insufficient to bridge the gap between ambition and outcome (Section 6.2); and closes with a call to action (Section 6.3).

6.1. Legacy and duration of barriers

The rationale for a 28th regime ultimately hinges on the nature, persistence, and scope of the barriers that prevent innovative companies, especially start-ups and scale-ups, from setting up, expanding, and thriving across the EU. While the Single Market offers formal freedoms of movement and establishment, in practice, firms face a series of legal, regulatory, and operational hurdles that limit their ability to scale efficiently across Member States.

The structural barriers that impede innovative firms from scaling in the EU are neither new nor unrecognised. Over the past two decades, the European Union has launched a series of initiatives, strategies, and expert reports that have consistently identified the same core problems: fragmentation of the Single Market, limited access to scale-up finance, legal complexity, and weak uptake of innovation across borders. While these efforts have led to meaningful improvements in specific areas, most have failed to resolve the deeper, systemic issues. The stubborn persistence of these hurdles over multiple policy cycles underscores the need for a more ambitious and legally coherent solution, rather than additional rounds of soft coordination or incremental adjustment.

6.1.1. Review of past EU-level recommendations

A number of high-profile EU-level initiatives have identified, and attempted to address, the barriers now under renewed scrutiny.

The SME Strategy for a Sustainable and Digital Europe (2020) presented by the European Commission sought to simplify business operations across borders, enhance access to finance, and reduce regulatory burden through measures such as the SME Envoy network, the Single Digital Gateway, and improved access to public procurement. Despite these efforts, the 2023 implementation report noted that SMEs continue to report disproportionately high compliance burdens and limited uptake of cross-border opportunities.

The Scale-up Europe initiative (2021), a multi-stakeholder campaign supported by the French EU Presidency, set out a roadmap for creating EU-based tech champions. It identified key reforms needed to boost equity investment, attract talent, and reduce legal frictions across Member States. These included the creation of pan-European equity funds, simplification of stock option regimes, and common digital ID frameworks. However, implementation has been partial and fragmented, with most proposals not translated into binding legislative action at EU level.

Additional strategic initiatives – such as the Capital Markets Union (CMU), the Startup Nations Standard, and the Digital Decade Policy Programme – have echoed similar diagnoses, proposing overlapping policy instruments and voluntary coordination frameworks, but without fundamentally reshaping the legal and operational conditions under which firms scale in the EU.

Two seemingly promising programmes have been put in place at EU level to attempt to address cross-border issues of various types. The *Single Digital Gateway (SDG)* seeks to make information about Member State laws and regulations widely available in the most commonly used EU languages in order to reduce frictions for firms engaged in cross-border trade, or seeking to do so. The *SOLVIT* network relies on cooperation among the Member States to address cross-border problems.

Unfortunately, both are under-performing, and in neither case is it obvious why.

The SDG has successfully amassed tens of thousands of Member State and legal documents, and its website gets millions of hits per year. Nonetheless, business complaints about lack of availability of information about Member State rules are widespread, and unabated (see Figure 3 in Section 3.1). Aside from that, SDG makes documents available, but does not yet help with solving the associated problems.

Recommendation 1. The Single Digital Gateway (SDG) seems to have very substantial promise, and good progress has been made with implementation, with further enhancements planned. Unfortunately, it is not possible to judge today whether it is fully effective in addressing the underlying problems. Real surveys and tools need to be put in place.

The SOLVIT network seems to somewhat effective at addressing complaints by individuals, typically about recognition of qualifications. When it comes to cross-border problems experienced by merchants – for example, a Member State that fails to observe mutual recognition in a case where it is clearly obliged to do so – SOLVIT appears to be rarely invoked. As we explained in (Marcus J. S., 2024, pp. 30 - 34), "The 2,455 SOLVIT cases reported in 2021 (European Commission, 2022, p. 12) presumably represent not more than 500 business cases, which is surely a tiny fraction of the latent demand. In a 2019 survey by Eurochambres, only about a fifth were likely or very likely to make use of the SOLVIT portal to try to resolve the problem. A substantially greater proportion were likely instead to simply give up – they presumably judged the effort as being too great, or the prospects of success as being too small, or both." (Dahlberg, et al., 2020, pp. 45 - 46)

Recommendation 2. In its present form, SOLVIT does not appear to be fully effective in addressing the needs of merchants for cross-border physical and vertical commerce among the Member States. An ex post evaluation is urgently needed, followed by actions at EU and Member State level.

6.1.2. Persistent challenges despite targeted initiatives

Despite the volume of strategic attention, the most critical obstacles—legal fragmentation, regulatory divergence, limited access to scale-up capital, and talent mobility barriers—remain largely unresolved. Many flagship tools have suffered from slow implementation, inadequate enforcement, or limited uptake.

Similarly, efforts to improve SME access to public procurement have been hampered by persistent administrative complexity and risk aversion among contracting authorities. (Dahlberg, et al., 2020)

Moreover, the voluntary nature of many past reforms has limited their impact. Initiatives relying on national goodwill, soft-law coordination, or non-binding standards (e.g. the Startup Nations Standard) have not succeeded in changing entrenched administrative practices or legal divergences. In critical areas such as tax coordination, insolvency frameworks, or licensing of digital services, substantial divergence persists despite repeated calls for alignment.

There is also a temporal dimension to these challenges. Several barriers (e.g. VAT fragmentation, cross-border incorporation hurdles, inconsistent IP enforcement) have been highlighted in reports dating back to the early 2000s, including a number of our own studies. (Leceta, Renda, Totti Könnölä, & Simonelli, 2017) (Marcus, Petropoulos, & Yeung, 2019) (Dahlberg, et al., 2020) (Marcus J. S., 2024) (Marcus & Rossi, Strengthening EU digital competitiveness Stoking the engine, 2024) The repetition of the same recommendations over successive policy cycles without structural resolution suggests that the current legal and institutional toolkit is insufficient to overcome entrenched barriers.

6.1.3. Identification of what has and hasn't worked

Several patterns emerge from this legacy of policy experimentation:

- **What has worked**: In areas where the EU has adopted binding legal instruments with direct effect, such as the GDPR or elements of the Unitary Patent System, fragmentation has been reduced, albeit not eliminated. Strong mandates, clear legal bases, and EU-level oversight tend to produce more consistent outcomes. Some progress has also been made in financing tools (e.g. InvestEU), though primarily in Member States with developed absorption capacity.

- **What has not worked**: Voluntary coordination mechanisms, soft law, and national pledges have largely failed to address structural barriers. Political sensitivity around sovereignty in company law, taxation, and labour law has slowed or blocked harmonisation. The absence of optional legal regimes that could offer firms a choice of EU-wide rules without displacing national law, has limited the Commission's ability to act decisively in politically sensitive areas.

- **Where impact is limited**: Even well-funded initiatives such as Horizon Europe and the EIC struggle to scale their impact due to the underlying fragmentation of the legal environment. Financial support has proven necessary but insufficient to offset legal frictions and regulatory complexity.

This record points to a clear conclusion: incremental or non-binding policy interventions cannot hope to resolve systemic barriers that are deeply embedded in national legal divergence. Only a structural change, such as a targeted 28th regime, can offer a credible pathway to overcome these persistent challenges, particularly for firms that depend on legal simplicity and operational certainty to scale rapidly across the EU.

6.2. EU goals on competitiveness, productivity and sustainability

Competitiveness has re-emerged as a strategic priority in the face of slowing productivity growth, geopolitical fragmentation and global technological rivalry. The 2025 Competitiveness Compass defines it not merely as the capacity to grow but as the ability to foster sustainable, inclusive, and innovation-driven economic development. Similarly, the Green Deal Industrial Plan and Net-Zero

Industry Act aim to position the EU as a global leader in the clean technologies of the future. These initiatives explicitly recognise the central role of dynamic firms in achieving the twin transitions.

Productivity, meanwhile, has become a growing concern for EU policymakers. As outlined in recent Eurostat and ECB analyses, productivity growth in the EU has been weaker and more uneven than in the US or East Asia, partly due to limited diffusion of innovation across firms and regions. The European Innovation Scoreboard repeatedly shows that high R&D investment alone does not translate into broad-based productivity gains unless legal and market frameworks facilitate rapid commercialisation and scaling of innovations.

Sustainability is no longer treated as a trade-off with competitiveness but rather as a condition for long-term economic resilience. The EU's shift toward 'sustainable competitiveness' emphasised in the 2023 SME Relief Package and various Council conclusions, demands legal certainty and regulatory conditions that reward innovation, especially in green and digital domains.

However, the ability to deliver on these objectives depends not only on financial support and high-level strategies, but also on the institutional and legal architecture in which firms operate. Without structural reform, the full potential of EU competitiveness instruments remains unrealised.

6.3. The gap between policy ambition and regulatory reality

Despite the EU's stated ambitions, most legal reforms aimed at improving the business environment have relied on soft coordination, voluntary standards, or limited harmonisation directives. This approach often reflects the sensitivity of certain areas (e.g. company law, tax law, labour law), which remain primarily within Member State competence. These measures have not been effective. As a result, while policy declarations call for more innovation and competitiveness, the tools available to companies remain fragmented and often contradictory.

The Startup Nations Standard encouraged best practices for start-up friendly policies, but its voluntary nature limited impact. The *Capital Markets Union (CMU)* aimed to reduce cross-border investment barriers, yet still lacks enforceable legal mechanisms. Even mutual recognition, intended to facilitate cross-border provision of goods and services, has proven difficult to implement consistently due to diverging interpretations and legal uncertainty. (Dahlberg, et al., 2020)

This disconnect is not merely technical. It has tangible consequences for companies: lost investment opportunities, delayed product roll-outs, higher compliance costs, and increased risk aversion. It also weakens the EU's geopolitical positioning, as firms increasingly look to the US, UK, or Asia for more legally predictable and commercially scalable environments.

7. JUSTIFYING A 28TH REGIME: VALUE-ADDED AND DESIGN CONSIDERATIONS

KEY FINDINGS

- The introduction of an optional 28th regime can offer a structural solution that respects Member State autonomy while providing an integrated legal framework for firms that require pan-European scalability from the outset.
- The case for a 28th regime is rooted in both timing and urgency. First, the EU's competitiveness agenda is entering a new phase, marked by heightened geopolitical tensions, global technological rivalry, and the accelerating pace of the green and digital transitions. Second, the political context is uniquely aligned. Third, previous attempts at soft convergence have reached their limits.
- We recommend that the Parliament's own-initiative report should encourage the Commission to prioritise high payback areas, especially those where the obligation to manage 27 different legal frameworks imposes costs on businesses that are disproportionate to the size of their business operations or to the level of risk.
- We also recommend paying close attention to political feasibility, which may call for gradual or modular introduction of 28th Regime measures.
- In line with the Prof. Dr Anne Sanders presentation at the 5 June 2025 workshop in the JURI Committee, we recommend that the 28th Regime be open to all businesses, but that it include measures that are specifically targeted at being useful to innovative firms.
- The June 5 workshop also provides much useful insight on:
    - Possible legal bases for the 28th Regime in the TFEU.
    - How to implement an EU-wide company register.
    - Success and failure factors in past EU-wide measures with parallels to the 28th Regime.

The persistent legal fragmentation and regulatory complexity outlined in previous chapters reveal a structural misalignment between the EU's economic ambitions and the institutional tools currently available to support innovative firms. While policy declarations increasingly recognise the need to foster scale, investment, and innovation across borders, the legal architecture of the Single Market remains fragmented, inflexible, and misaligned with the needs of start-ups and scale-ups.

The introduction of an optional 28th regime can offer a structural solution, one that respects Member State autonomy while providing an integrated legal framework for firms that require pan-European scalability from the outset.

7.1. What makes the 28th regime necessary now?

The case for a 28th regime is rooted in both timing and urgency.

First, the EU's competitiveness agenda is entering a new phase, marked by heightened geopolitical tensions, global technological rivalry, and the accelerating pace of the green and digital transitions. These developments demand agile, capital-efficient, and legally mobile firms. Yet Europe's most innovative companies continue to encounter high friction when attempting to scale across the Single Market. Legal divergence, duplicative compliance requirements, and fragmented tax and labour systems erode the very benefits the Single Market is supposed to deliver.

Second, the political context is uniquely aligned. The 2025 Competitiveness Compass and European Council conclusions explicitly endorse exploring a 28th legal regime. Commissioner McGrath has placed the proposal on the agenda of the High-Level Forum on Justice for Growth. There is momentum, both within the institutions and among stakeholders, for bold, structural reform.

Third, previous attempts at soft convergence have reached their limits. As shown in Chapter 4, the repetition of similar recommendations across decades without resolution suggests that more ambitious legal instruments are needed. A 28th regime, conceived as a voluntary but coherent framework, offers a feasible and politically viable step forward.

At the same time that we call for prompt measures, we note that the first EU attempts to simplify and enhance the EU legislative framework in an effort to enhance EU productivity were rushed and ill-considered. No broad-based public consultation was conducted, and the required *factual summary* of a 2023 *Call for Evidence* was never published. No Impact Assessment was submitted. (Marcus & Thomadakis, 2025) The Commission is off to a better start this time, having already concluded a *Call for Evidence* for its *Startup and Scaleup Strategy* that includes the 28th Regime. (European Commission, 2025) Given that a legislative proposal is not due until 2025, the Parliament has the opportunity to get ahead of the process, not only by offering a coherent vision for how a 28th Regime should function and what is should entail, but also by pushing for good legislative process including adherence to the principles of the Better Regulation process to which Commission, Parliament and Council have all committed through the *Interinstitutional Agreement on Better Law-Making*. The focus should be not on the detailed provisions of the documents that define Better Regulation, but rather on the essentials: widespread consultation with proper reporting of results, fair and objective analysis, neutral consideration of all realistic alternatives, all preceded by fair and objective *ex post* evaluation of the measures already in place.

Recommendation 3. In the Parliament's own-initiative report articulating its view of what a 28th Regime should entail and how it should be structured, the Parliament should call on the Commission to faithfully adhere to Better Regulation principles. The Commission should issue a factual summary of its just-concluded Call for Evidence, and the eventual legislative proposal should be accompanied by an Impact Assessment.

7.2. Typology of barriers that warrant a new optional regime

While many business barriers in the EU can be mitigated through better enforcement, administrative simplification or selective harmonisation, a core subset of challenges remains structural, persistent and systemic. These challenges are particularly acute for innovation-driven firms with cross-border ambitions, and they are precisely the type of frictions that a 28th regime is designed to address.

The following typology outlines key barrier categories that justify the creation of a targeted, optional EU-level legal framework:

- *Divergent incorporation, governance, and reporting requirements*: Start-ups and scale-ups operating in multiple Member States must often establish and maintain distinct legal entities, comply with duplicative reporting obligations and adapt to varying governance codes. These frictions impose not only financial costs, but also legal risk and complexity that disproportionately affect young or fast-growing companies.
- *Redundant licensing and authorisation regimes*: Even in sectors covered by EU-level frameworks (e.g. payments, crypto-assets, or medical devices), firms are frequently required to undergo separate licensing or approval processes in each jurisdiction. National authorities retain broad discretion, leading to delays, conflicting interpretations and procedural duplication.
- *Fragmented labour law regimes*: Differences in national rules on employment contracts, remote work, non-compete clauses and employee incentives (e.g. stock options or phantom shares) make it difficult to manage cross-border teams. These inconsistencies create friction for companies that are digital-first or that operate distributed workforces across several Member States.
- *Incompatible tax compliance systems*: Tax administration remains among the most fragmented domains in the Single Market. Companies must comply with 27 distinct national regimes for corporate taxation, VAT reporting and digital recordkeeping – with little mutual recognition of digital tools or simplification mechanisms. The absence of a coherent reporting baseline or cross-border filing interface severely hampers operational efficiency.
- *Legal uncertainty in insolvency and restructuring*: Although the 2019 Restructuring and Insolvency Directive introduced minimum standards, national implementation remains highly divergent. This creates uncertainty around creditor treatment, debtor protections and recovery timelines. Innovative firms, especially those in high-risk and high-capital sectors, require predictable and efficient second-chance frameworks that facilitate restructuring rather than punitive dissolution.

Taken together, these barriers do more than raise operational costs; they undermine the very logic of the Single Market for companies that seek to scale across borders. They distort investment decisions, discourage cross-border expansion and penalise early-stage or capital-light business models.

A targeted 28th regime would not seek to replace national frameworks, but rather to provide a coherent, optional alternative. Its core function would be to lift the burden of managing parallel legal frameworks where this imposes costs that are disproportionate to a firm's size, risk profile or resources. Such an approach is especially pertinent for SMEs, start-ups and scale-ups, which are least equipped to absorb legal complexity but most reliant on legal certainty to grow.

Recommendation 4. The Parliament's own-initiative report could encourage the Commission to prioritise high payback areas – specifically areas where the obligation to manage 27 distinct national frameworks creates structural disadvantages for businesses, especially businesses that are small or innovative. Priority should be given to domains where legal divergence is not justified by proportionality or subsidiarity.

At the same time, political realism is essential. While the 28th regime is designed to respect Member State sovereignty by offering opt-in solutions, its mere existence may still raise political sensitivities. It challenges the status quo by enabling firms to bypass national systems in favour of EU-level coherence.

That said, the regime's value proposition is pragmatic: it enhances the EU's competitiveness not by overriding Member State prerogatives, but by offering a new legal path to those firms for whom fragmentation is most damaging. The goal is not uniformity, but functional interoperability – and strategic flexibility for the firms that need it most.

As Otto von Bismarck famously put it, 'politics is the art of the possible'. Designing a 28th regime requires a stepwise approach, building coalitions and trust at each phase. Legal ambition must be matched by institutional restraint and political tact.

Recommendation 5. The Commission in its legislative proposal, should adopt a pragmatic approach. The 28th regime should be developed incrementally, focusing first on components with strong stakeholder demand, demonstrable business impact, and manageable legal complexity. Consensus-building must be an ongoing priority.

7.3. Scope: potential components of the 28th regime

The 28th regime should focus on those areas of law where regulatory fragmentation imposes the highest burden on firms seeking to scale cross-border, particularly innovative, high-growth companies. While it does not need to be comprehensive from the outset, the regime must cover a critical mass of legal domains to deliver meaningful simplification and operational coherence across Member States.

We identify four foundational components that could anchor the initial scope of the regimen, and they confirm the choices that the Commission has put forward in the *Competitiveness Compass*:

- *Corporate law*: At the heart of the 28th regime should be a streamlined EU-wide company form enabling fast, fully digital incorporation, cross-border mobility and unified reporting obligations. This form should integrate digital-native tools such as electronic signatures, virtual AGMs and interoperable business registers. Harmonised corporate governance standards and simplified capital maintenance rules would also reduce administrative costs and legal risk. This component would directly address the inefficiencies firms face when managing subsidiaries across multiple legal systems.
- *Insolvency and restructuring*: Despite the 2019 Directive on restructuring and insolvency, Member States retain wide discretion, resulting in inconsistent debtor protections, discharge periods and procedural timelines. The 28th regime could offer a coherent insolvency framework with common rules on early restructuring, creditor negotiation and second-chance entrepreneurship – particularly relevant for start-ups and scale-ups. By providing legal certainty in cases of financial

distress, this component would help unlock growth finance and encourage entrepreneurial risk-taking.

- *Labour law*: Fragmented labour rules constrain the mobility and flexibility of cross-border teams, particularly in digital and tech sectors. The 28th regime should propose standardised templates or model rules for employment contracts, stock option schemes, remote work arrangements and cross-border postings. These should be legally certain across Member States, particularly for firms operating fully digital or hybrid business models. By offering consistency without displacing national frameworks, the regime can reduce compliance burdens while enabling more integrated EU labour markets.
- *Tax compliance and reporting*: Divergent tax reporting systems, especially for corporate income tax and VAT, pose a substantial obstacle for cross-border activity. While full tax harmonisation is politically sensitive, the 28th regime could provide a simplified, common reporting baseline for eligible firms. This could build on the BEFIT proposal (Business in Europe: Framework for Income Taxation) or a 'single tax return' model, with common definitions, digital tools and streamlined compliance procedures. The goal is not to harmonise tax rates but to simplify procedures and reduce duplicative administrative burdens.

These components could be designed in a modular and phased manner, allowing gradual rollout and uptake. For instance, the corporate law module could be introduced first, followed by optional extensions in insolvency, labour and tax. This would enable policy experimentation, stakeholder feedback and political consensus-building, while providing firms with immediate added value.

Importantly, the regime should be fully interoperable with national systems, so that opting in does not lead to duplication or legal uncertainty. For example, the EU-wide company form should be recognised across Member States as functionally equivalent to national legal forms; tax reports submitted under the 28th regime should satisfy national filing requirements; and labour contracts based on 28th-regime templates should be enforceable without translation or reinterpretation.

Political feasibility, however, must be acknowledged. Corporate and labour law are often tied to Member State social and legal traditions; insolvency intersects with property and civil law; and tax touches directly on fiscal sovereignty. The 28th regime must therefore be designed as a fully optional and non-preemptive tool – an additional legal path, not a replacement of national systems. Its legitimacy will stem not from compulsion but from its practical value for firms operating across borders.

By focusing on these high-impact areas, the 28th regime could deliver real operational and legal simplification, foster investment and growth, and help build a more unified and innovation-friendly Single Market.

Recommendation 6. In its own-initiative report, the Parliament could address the four areas on which the Commission has announced its intention to focus: corporate law, insolvency, labour law and tax law. They are a reasonable place to start.

7.4. Target group: Innovative companies or all companies?

An important design choice for the 28th regime is whether it should be targeted narrowly at high-growth, innovation-driven firms, or whether it should be open more broadly to all companies operating in the EU. The decision has implications not only for legal drafting and political acceptability, but also for uptake, scalability and fairness.

At the JURICommittee workshop on 5 June 2025, (Sanders, 2025) outlined three potential structural options for determining access to the regime:

- *Narrow*: Restrict eligibility to a clearly defined group of businesses – such as start-ups, scale-ups or those operating in specific high-tech sectors.
- *Horizontal*: Make the regime available to all businesses regardless of size, sector or innovation orientation.
- *Modular*: Design the regime in a way that is open to all firms, but tailor certain components or benefits (e.g. tax simplification, digital governance tools) to firms that meet specified criteria (e.g. cross-border activity, R&D intensity, ESG performance).

Sanders cautioned against a narrow or eligibility-restricted approach, arguing that it would be complex to administer, potentially discriminatory, and likely to deter participation. Instead, she proposed that the regime should be universally accessible but optimised to serve the needs of innovative firms, particularly those that are most affected by regulatory fragmentation and legal complexity.

We support this view for several reasons:

- *Legal and administrative simplicity*: A horizontal approach avoids the need to define and monitor eligibility criteria, which can be administratively burdensome, politically contested and legally vulnerable to challenge.
- *Maximising uptake and impact*: Making the regime broadly accessible increases the chances of adoption across sectors and Member States, thereby maximising its impact on competitiveness and market integration and potentially enhancing economies of scale.
- *Avoiding exclusion effects*: Innovation is not confined to a narrow subset of start-ups or tech companies. Traditional industries, SMEs, and even public-interest entities may benefit from simplified, coherent legal frameworks that support cross-border operation.
- *Minimising political resistance*: A regime that is available to all firms is more likely to gain support from Member States, who may otherwise perceive it as unfairly privileging certain sectors or jurisdictions.

That said, the design should prioritise the pain points of innovative and scaling firms, which are often most burdened by the current fragmented legal environment. For example:

- Digital-first companies would benefit from cross-border rules on remote work, e-signatures and cloud-based compliance.
- Deep tech and life sciences firms would benefit from common insolvency and IP regimes that reduce exit friction and investor risk.
- Companies in regulated sectors (e.g. fintech, healthtech) would benefit from uniform licensing and reporting regimes.

Therefore, while the access should be universal, the functionality should be modular, allowing firms to engage with the regime in a way that matches their operational profile and growth trajectory.

Such a modular design would mirror the EU's own flexibility mechanisms (e.g. enhanced cooperation, opt-outs) and provide a realistic pathway for adoption and iteration. Over time, usage data and firm feedback could help identify which modules are most valuable and whether further sectoral or size-based tailoring is warranted.

Recommendation 7. The 28th Regime should be open to all companies regardless of size or sector. However, its design should focus on tools and legal modules that are especially beneficial to innovative and cross-border firms. This ensures both broad accessibility and high value-added where regulatory friction is most acute.

7.5. How a 28th regime could enhance legal certainty, reduce burden and improve scalability

The core rationale behind a 28th regime is to address three interrelated deficits currently faced by EU companies, particularly start-ups and scale-ups: legal uncertainty, regulatory burden, and limited scalability. A well-designed optional framework covering all aspects of EU law (and thus much broader than what is under discussion today) could offer material improvements across all three dimensions:

- *Enhancing legal certainty*: By offering a pre-defined, directly applicable legal framework, a 28th regime can eliminate ambiguity and inconsistent transposition of EU law across Member States. Firms operating under the regime would no longer face differing interpretations of foundational rules, enforcement discrepancies, or legal grey zones arising from national discretion. Legal certainty is especially valuable for innovation-led firms that depend on rapid decision-making, predictable compliance obligations and secure investor expectations.
- *Reducing administrative and compliance burdens*: A unified framework for incorporation, governance, reporting and taxation would significantly streamline operational procedures for firms choosing to opt in. Digital-native design, interoperable e-government interfaces and standardised procedures would help lower administrative costs and reduce the need for duplicative compliance efforts across jurisdictions. Such features are especially critical for lean and fast-growing firms with limited in-house legal capacity.
- *Improving scalability*: The ability to operate under a single set of rules across the EU would enable companies to scale horizontally across Member States without the legal and organisational friction of replicating structures in each country. This structural predictability would not only accelerate business expansion but also facilitate cross-border capital raising, pan-European hiring, and seamless engagement with public procurement or institutional clients.

To achieve these outcomes, the 28th regime must be designed around digital, interoperable infrastructure and guided by the once-only principle: information submitted to one EU authority should not need to be re-submitted elsewhere. At the 5 June 2025 JURI Committee workshop , (Möslein, 2025) rightly emphasised the importance of a unified EU company register, digital-by-default workflows and even the potential of DLT-based infrastructures for auditability and compliance tracking. These features are not simply technical upgrades, they are structural enablers that reinforce legal certainty and reduce cost.

The success of such a regime will depend not only on the technical quality of its design, but also on its institutional governance. A centralised supervisory or coordination body (possibly under the aegis of the Commission or an existing agency like the European Union Intellectual Property Office (EUIPO) or the European Innovation Council and SMEs Executive Agency (EISMEA)) may be necessary to issue binding interpretative guidance, monitor compliance and serve as a single point of recourse for firms opting in. Without such governance, the regime may risk recreating the very fragmentation it seeks to resolve.

Recommendation 8. The Parliament in its own-initiative report, and the Commission in its legislative proposal, could focus on three key goals: (1) promoting legal certainty, (2) reducing administrative and compliance burdens, and (3) enhancing the scalability of firms, including in particular small or innovative firms.

7.6. Legal basis, optionality and relationship to national regimes

The legal viability of a 28th regime depends on both its legal basis under the Treaties and its structural relationship with existing national frameworks. As (Ziller, 2025) outlined, multiple legal bases under the TFEU could be considered, depending on the policy area concerned:

- *Article 114 TFEU* (internal market) could justify measures aimed at removing regulatory barriers and enhancing legal certainty across borders.
- *Article 352 TFEU* (flexibility clause) might support provisions not otherwise foreseen, particularly if linked to the EU's broader objectives on competitiveness and innovation.
- *Articles 50 and 53 TFEU* could underpin components related to establishment and mutual recognition, particularly in the field of company law.
- *Article 118 TFEU* (for intellectual property) and *Article 173 TFEU* (for industrial policy) may also offer useful supplementary bases depending on the scope of the regime.

Importantly, because the 28th regime is optional, it does not interfere with Member States' prerogative to maintain their own national systems. Rather than imposing harmonisation, it offers firms an alternative, unified track (effectively a 'regulatory fast lane') that they can opt into if their business model, scale ambitions and risk profile merit it.

However, the mechanics of opt-in and transition must be addressed with legal precision. Key design issues include:

- *Eligibility criteria*: Should the regime be open to all firms or only those meeting certain cross-border or innovation-related thresholds (see Section 7.4)?
- *Transition mechanisms*: How would an existing company under national law migrate into the 28th regime? Would this require conversion, dual registration or re-incorporation? What safeguards would be needed for shareholders, creditors, employees and tax authorities?
- *Jurisdictional conflict rules*: If disputes arise, how will they be adjudicated – under national law, EU law, or via a special 28th regime tribunal?

- *Supersession of national law*: For firms that opt in, does the 28th regime pre-empt all relevant areas of national law or only certain modules (e.g. incorporation, insolvency, labour)?
- *Supervisory structure*: What entity or network will oversee implementation, register firms and ensure consistent interpretation across Member States?

The regime must also include fallback provisions to handle withdrawal, default, or non-compliance. Clarity on reversion to national law and dispute settlement mechanisms will be essential to limit legal risk.

In short, the regime must be fully self-contained, modular and legally coherent – not a patchwork of opt-ins or half-harmonised rules. A proper feasibility assessment should include legal simulations, stakeholder consultation, and institutional stress tests.

Recommendation 9. The utmost attention should be paid to (1) the legal basis for the 28th Regime, which might be different for different topics where harmonisation is sought; (2) whether eligibility is open to all firms, or only to some; (3) whether the new regime would pre-empt existing Member State law, and if so, only for specific topics; (4) how conflicts would be resolved, especially conflicts between EU law and the new regime versus Member State law; and (5) the supervisory and governance structure to be employed.

8. POLICY RECOMMENDATIONS

The previous chapters provide general background on the challenges that the EU faces in implementing a Single Market in the digital world, and have identified a wide range of potentially mitigating measures. A recapitulation of the detailed recommendations developed elsewhere in the report, together with the page on which they appear, follows.

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This in-depth analysis, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the Committee on Legal Affairs, assesses the potential drivers and rationale for a possible 28th Regime as proposed in the Letta Report. The 28th Regime seeks to enable firms who wish to do so to operate under a new business law codified at European level. The intent is to enable firms, especially SMEs and innovative firms, to operate without friction across all EU Member States.

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