

# Bitkom Position on a 28th Regime

«Today, the European Single Market still has too many national barriers. Sometimes companies are dealing with 27 national legislations. We will offer instead to innovative companies to operate all across our Union under one single set of rules. We call it the 28th regime. Corporate law, insolvency, labor law, taxation – one single and simple framework across our Union.”

Ursula von der Leyen made a promise in front of the World Economic Forum in Davos. Now is the time to deliver. Across the European economy, the Commission’s renewed focus on innovation and competitiveness was welcomed as long overdue recognition of achievements and challenges faced by innovative companies. However, the looming butchering of the 28th regime is deeply worrying many of our member companies.

Fragmentation remains the biggest hurdle to intra-continental expansion. The legal patchwork holds back investors and leads to massive drain of our most promising young ventures as can be seen from the latest example of Swedish Lovable, which has just become the fastest-growing software company of all time by achieving an ARR of \$100 million within 8 months. The company, although European Innovation, is legally a Delaware Inc.

We recognize that the initiative must balance the ambition of a single internal market with the sovereignty of the Member States. Yet, anticipatory obedience to possible complications in the Council must not become an excuse for a half-way solution that does not serve the intended purpose. Below, we roughly outline our preferred setup for a genuine EU legal framework within which companies can operate properly.

- 1. Regulation first, corporate core:** The very purpose of a regulation is to bypass national transposition. Dropping it up front because unanimity is required would hollow out the instrument itself. Starting with the weaker tool guarantees a weaker result. The Commission should therefore draft a lean regulation that focuses solely on corporate law, while labor and tax modules remain optional for the time being. Only if this path truly proves unworkable, a fallback directive can follow in a second step. Its text must be tight, leaving zero room for national gold-plating.
- 2. Open Structure:** The 28th regime should be opt-in for every EU-based business, not just startups. Restricting access would force policymakers to create eligibility criteria which would then have to be assessed by the authorities, adding unnecessary red tape and undermining oversight. The currently discussed title of a «European Start-Up and Scale-Up Company (ESSU)” seems misleading. A neutral name such as *Innovative European Company (IEC)* could better capture a broader scope and the innovation goal.

3. **Online-first, efficient administration:** Founding, filing and corporate governance have to work entirely online, within 24 hours and at a cost below one hundred euro. The once-only principle must apply. Anything slower or more expensive will fail against Delaware.
4. **A Digital Cap Table as the Single Source of Truth:** The IEC framework must mandate an automated and interoperable link between the EU company register and national digital share registers, drawing on principles from Europe's most advanced digital frameworks, such as Germany's Electronic Securities Act. This transforms the cap table from a static spreadsheet into a dynamic, legally binding single source of truth. For founders and investors, this means faster financing rounds, simplified cross-border ESOPs, and the robust legal certainty required to compete globally. This is not a technical detail; it is the fundamental engine of a modern corporate framework.
5. **A Direct Gateway to Digital Capital Markets:** To be more than a bureaucratic option, the IEC must provide a seamless gateway to liquidity. Shares issued by an IEC should therefore, by default, be recorded in a clear and fully digital register, as is already the case in Germany under the eWpG with its electronic securities register and the crypto securities register. At the same time, the EU should create an option to classify IEC shares as DLT financial instruments under the DLT Pilot Regime and MiFID II. This option would enable direct, regulated trading on next-generation DLT platforms and unlock new capital sources for startups and scaleups. Such a dual approach balances innovation incentives with market flexibility. The default would remain classic shares with a reliable digital register, while an additional option would allow tokenized DLT financial instruments to enhance tradability and foster innovation.
6. **No gilded cage:** Finally, although well-intentioned, the protective measures proposed in the report by Rene Repasi could backfire. A restriction that keeps companies in the EU could prompt founders to avoid the new form altogether, which would also undermine the actual goal of the 28th regime.

We have advocated for a genuine EU-wide corporate framework for years, so we welcome the Commission's decision to bring forth the 28th regime. A single, digital and optional «Innovative European Company» form can finally give founders and investors the legal certainty to scale in Europe instead of abroad. We at Bitkom and our members are ready to work closely with the Commission and the Member States to achieve this goal.

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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