



Consultation on the 28th regime - an EU corporate legal framework

Executive Summary

No evidence of the need for a 28th regime:

The Digitalisation Directives I and II (2019/1151, 2025/25) and the EU-Mobility Directive (2019/2121) already provide (or will provide) considerable simplifications for start-ups. Austria itself has also introduced numerous measures to simplify the process of setting up a business, such as a five-day deadline for company register entries.

Questionnaire is business-friendly and tendentious:

No open assessment is permitted; instead, the questions relate to the optimal design of a 28th regime from a corporate perspective. Whether this reflects a consensus across society as a whole is not up for debate.

'Race to the bottom':

While this would give companies additional options, it could also put significant pressure on social, labour and co-determination standards. This poses the risk of legal loopholes and an increase in letterbox companies.

28th regime cannot be limited to start-ups and

scale-ups: No company – with the exception of listed companies – can be excluded, as shown by relevant experiences in Austria.

No special rights with regard to insolvency law and

tax law: Any preferential treatment of start-ups and scale-ups would be contrary to the principle of equal treatment.

AK's Position

About the questionnaire

The Commission intends to propose a 28th legal framework by the first quarter of 2026, which will comprise a uniform EU-wide set of rules covering all relevant aspects of company law, insolvency law, labour law and tax law. The European Commission has sent out a consultation (questionnaire) in preparation for the legislative proposal. Alongside broad inquiries into barriers to establishing a business and associated expenses, the questionnaire places particular emphasis on examining the potential framework of the 28th regime.

AK would like to make the following statement on the consultation process (questionnaire) and the need for a 28th regime.

No evidence of the need for a 28th regime

AK asserts that there is insufficient evidence supporting the necessity of a 28th regime, and notes the absence of comprehensive debate regarding its advantages and disadvantages. The repeated criticism in this context that the procedures for setting up a business are complex, insufficiently digitalised and costly is simply incorrect and does not reflect the actual situation.

At EU level in particular, the Digitalisation Directives I and II have taken significant steps to expand and optimise the use of digital tools and procedures in company law. The EU-Mobility Directive, which promotes and simplifies cross-border restructuring, is also worth mentioning.

The Digitalisation Directive II was recently published in the Official Journal of the European Union on 10 January 2025 (EU 2025/25) and must be implemented by 31 July 2027. The EU Commission's aim of making it easier to set up start-ups, scale-ups and SMEs in general is achieved by the Digitalisation Directive II. Member States are currently in the process of transposing the directive into national law and are thus taking further steps to simplify the process of setting up companies.

Austria has also implemented numerous measures at national level to facilitate business start-ups and speed up procedures. The introduction of online start-ups via the Business Service Portal (USP), notarial acts via qualified video conferencing, including the direct pay-

ment of the capital contributions to the notary, and the introduction of a five-day statutory period for the initial registration of a legal entity in the commercial register are worth mentioning in this context. Hence, there is no perceived need for a 28th regime.

Questionnaire is business-friendly and tendentious

While the Commission states at the outset that this consultation is merely a working document and does not represent a final political position or a formal proposal by the European Commission, the questionnaire leaves no room for discussion of the pros and cons of a 28th regime.

The questions posed in the consultation are based exclusively on the needs of businesses. The key question is how to design a 28th regime that serves business interests, not whether social consensus exists for its introduction. This approach does not correspond to a fair and transparent consultation process

'Race to the bottom'

Apart from the 27 national legal systems that already exist, the 28th regime is intended to give companies a wider choice and, in addition to aspects of company law, to also cover elements of labour law, tax law and insolvency law. The aim pursued by the idea of a '28th regime', which is to allow companies to choose between national law and the 28th regime, will inevitably lead to a race to the bottom in social and labour standards, the erosion of co-determination rights and the reduction of minimum standards under company law.

A 28th regime would also result in new loopholes that cannot be avoided. An example of this is the experience with the European Company, which is often used specifically to weaken national co-determination standards or to freeze corporate co-determination through the 'before and after principle'. Moreover, there is a risk that a weakly regulated 28th regime will exacerbate the problem of letterbox companies and all the negative consequences that this entails, for example in the area of tax law.

28th regime cannot be limited to start-ups and scale-ups

Even though the Commission always emphasises that a 28th regime should primarily promote start-ups and innovative companies, ultimately no company – except for listed companies – can be excluded from it. This can be clearly demonstrated by Austria's experience with the introduction of the Flexible Capital Company in 2024. Initially, the Austrian initiative was also announced as a new legal form for start-ups and innovative companies, but it was ultimately determined that a new legal form cannot be restricted to specific companies. The Flexible Capital Company is now available to all companies as an alternative to traditional corporations. To convert a company's legal form – from an AG (joint-stock company)/GmbH (limited liability company) to a Flexible Capital Company and vice versa – is also possible at any time.

No special rights with regard to insolvency law and tax law

Special rights for select company groups, like start-ups or scale-ups, are categorically rejected. Any preferential treatment of start-ups or scale-ups would also contradict the principle of equal treatment (e.g. in terms of restructuring periods or liabilities). This also applies in connection with any tax treatment.

Final remark

In summary, a 28th regime is unnecessary. It creates no added value but jeopardises the protection of social rights.



Contact us!

In Vienna:

Helmut Gahleitner

helmut.gahleitner@akwien.at

In Brussels:

Judith Vorbach

judith.vorbach@akeuropa.eu

Austrian Federal Chamber of Labour

Prinz-Eugen-Straße 20-22
1040 Vienna, Austria
T +43 (0) 1 501 65-0

www.arbeiterkammer.at

AK EUROPA

Permanent Representation of Austria to the EU
Avenue de Cortenbergh 30
1040 Brussels, Belgium
T +32 (0) 2 230 62 54

www.akeuropa.eu

About us

The Austrian Federal Chamber of Labour (AK) is the legal body which represents the interests of approximately 4 million employees and consumers in Austria. It represents its members on all social, educational, economic and consumer policy-related issues at national level and at EU level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.