



**Submission prepared by Maples Group on behalf of Scale Ireland to the European Commission's Public Consultation on the 28<sup>th</sup> Regime – a Single Harmonized Set of Rules for Innovative Companies throughout the EU**

## **1 Introduction**

Scale Ireland, the independent representative body for Ireland's innovation-driven start-up and scale-up community, welcomes the opportunity to respond to the European Commission's consultation on the creation of an optional "28th Regime" — a single, harmonised set of corporate rules for innovative companies operating across the European Union ("EU").

Ireland is home to more than 4,500 indigenous start-ups which can attract over €1 billion in venture capital annually. Our ecosystem is highly internationalised: many Irish start-ups expand operations into other Member States, and they also attract significant international funding with 9 of the top 10 European Funds having invested in Ireland. Yet those same companies consistently report that fragmented company-law requirements, duplicative administrative procedures, and divergent approaches to taxation and employee participation add considerable delay where speed is paramount, impose disproportionate costs where financial resources are constrained, and deter potential investors where capital is scarce.

For Ireland — a small, open, and export-oriented economy on Europe's geographical periphery — the 28th Regime offers a transformative opportunity. By providing an optional, EU-wide corporate form with fully digital, English-language (and multilingual) procedures, uniform core rules, and passporting of compliance across borders, the proposal squarely addresses the operational pain-points that impede Irish founders trying to expand home-grown innovative businesses to become pan-European champions.

Scale Ireland therefore strongly supports the European Commission's ambition and sets out below:

- (a) the barriers encountered by Irish start-ups under divergent national systems;
- (b) the benefits the 28th Regime would deliver to Irish and EU innovators;
- (c) the specific frictions 28th Regime should remove; and
- (d) concrete recommendations for its design and implementation.

## **2 Barriers Encountered by Irish Start-Ups under Divergent National Systems**

Irish start-ups seeking to operate across several EU Member States encounter recurring obstacles:

- (a) **Time to Market Delays:** establishing a subsidiary or a branch in a different EU Member State can take 4 – 8 months on average, with local registration, bank account opening and KYC/AML checks occurring sequentially rather than in parallel. Delays directly erode first-mover advantage in fast-moving markets such as fintech, AI and cybersecurity.

- (b) **Duplicative Due-Diligence Costs:** investors, acquirers and banks routinely commission due diligence on foreign subsidiaries and often require legal opinions on corporate authority and enforceability of security documents in each jurisdiction where a group has entities.
- (c) **Legal Compliance Uncertainty:** differences in minimum capitalisation rules, director-liability regimes, ownership evidence and transfer of title, registry filing requirements, capital maintenance rules and taxation of employee equity incentives generate uncertainty and significant cost to ensure compliance.
- (d) **Administrative Burden:** apostilling, notarising and translating corporate and financial statements into multiple languages are routine headaches. Opening local bank accounts often requires in-person signatories and physical documentation, notwithstanding eIDAS-compliant identities.
- (e) **Fragmented Equity Incentives:** divergent tax crystallisation triggers for employee share option plans (grant vs. exercise vs. sale) complicate the operation of a single group equity plan, undermining a company's ability to recruit and retain talent on equal terms across borders.

### 3 How the 28<sup>th</sup> Regime can resolve these pain points

#### 3.1 A Truly Harmonised, Optional Corporate Form

An optional European Company Regime (the "**EU Company**") would coexist with national forms, affording founders freedom of choice. Crucially, once an entity elects the EU Company status, compliance with its core corporate-law rules in the Member State of registration must be deemed sufficient throughout the European Union. This "country-of-origin" principle has proven its worth in the GDPR and the UCITS framework; it should now be applied to company law.

#### 3.2 An EU Recognised Digital by Default Incorporation Process and Registry

The EU Company would benefit from a digital by default incorporation process and registry including:

- (a) fully online incorporation within 24 hours, available in at least English and the language(s) of the Member State of registration;
- (b) eIDAS-based verification of directors and shareholders;
- (c) automatic, machine-readable notification of the EU central registry and synchronisation with national registers; and
- (d) elimination of paper extracts and wet signatures, thereby removing the need for apostilles and notarisation.

#### 3.3 Single EU Legal Personality and Branch Recognition

Under the 28<sup>th</sup> regime, an EU Company should be able to operate in any Member State through automatic recognition of its legal personality, with establishment of a "branch" requiring no more than a short electronic filing and no duplication of constitutional documents, director registers, or share registers.

#### 3.4 Streamlined Banking and KYC

Banks and relevant service providers across the European Union should accept the EU Company's central electronic certificate of incorporation and real-time registry data as sufficient proof of existence, beneficial ownership, and director authority. Harmonised KYC standards would significantly reduce the time founders currently spend supplying — and repeatedly updating — locally certified documents.

### 3.5 Facilitated Capital Formation and Investor Confidence

A single, predictable set of rules on:

- (a) share classes and convertible instruments;
- (b) protection of minority shareholders;
- (c) distributions and capital maintenance;
- (d) acquisitions of private companies and transfer of title more generally; and
- (e) cross-border mergers and divisions,

would enable cross-border fundraising without re-engineering term sheets to suit each Member State. Investors could deploy capital faster, with lower diligence expenses and replicable processes, benefiting both founders and funders.

### 3.6 Uniform Financial-Reporting Thresholds

The EU Company should align with forthcoming European Sustainability Reporting Standards proposals to harmonise sustainability reporting. Start-ups below defined revenue and employee thresholds should benefit from "micro-entity" exemptions, including temporary relief from mandatory publication of full financial statements during their first five years.

## 4 Expected Impact on Ireland's Innovation Ecosystem

### 4.1 Accelerated Time to-Scale

By compressing the timeline for establishing operations in additional Member States from months to days, the 28th Regime will enable Irish start-ups to test new markets faster and at lower cost, materially improving their probability of success. This would effectively expand the market for Irish Start-Ups beyond Ireland.

### 4.2 Enhanced Fundraising Capacity

An EU-Company structure may allow investors to invest on identical terms across their portfolio, avoiding excessive investor fees usually paid for by the target company as a result of unfamiliarity with Irish corporate rules and entities.

### 4.3 Job Creation Innovation and Regional Development

By easing access to cross-border capital, the 28th Regime could unlock additional foreign direct investment into Ireland supporting new employment and innovation.

### 4.4 Retention of Corporate Structures and Strategic IP

Irish businesses often relocate group holding structures abroad to satisfy investors seeking a "neutral" "easily understood" or "familiar" jurisdiction like the US or the UK. An EU-Company

that is clearly and consistently recognised at scale across the EU would equip founders with a better argument to retain their corporate structure and intellectual property ownership in Ireland, safeguarding domestic value creation, tax revenues and local service providers.

#### 4.5 Increased Diversity

Administrative complexity disproportionately burdens founders without pre-existing networks of professional advisers. Simplification will lower that barrier, widening participation in entrepreneurship by groups who traditionally do not enjoy strong networks thus advancing the EU's SME Strategy objectives on diversity and inclusion.

### 5 Design Recommendations

Scale Ireland has the following recommendations regarding the structure of the 28<sup>th</sup> Regime:

- (a) **Legal Basis and Instrument:** the 28th Regime should be established by Regulation to guarantee direct applicability and avoid divergent transposition.
- (b) **Optionality:** adoption must remain voluntary; national regimes should continue to exist for companies whose activities are wholly domestic or who prefer pre-existing rules. Where an EU Company is utilised that should effectively comprise an election by founders, their investors and third parties dealing with such EU Company to forego certain local legal protections which conflict with certain core elements of the unified regime. These should include minimum capitalisation rules, certain director liabilities regimes, ownership evidence and transfer of title, registry filing requirements, capital maintenance rules and taxation of employee equity incentives etc.
- (c) **Statutory Templates:** the European Commission should publish model constitutional documents, shareholders' agreements and employee-equity plan rules, reducing legal drafting time, negotiation time and cost.
- (d) **One-Stop Information Portal:** mirroring the "Your Europe" portal, a dedicated site should host unified guidance on the EU Company's formation, operation, and interaction with sector-specific rules (e.g. the Payment Services Directive 3, the AI Act (Regulation (EU) 2024/1689) etc.).
- (e) **Interoperability with EU Tax Proposals:** the EU Company should dovetail with the "Business in Europe: Framework for Income Taxation" and "Head Office Taxation" proposals, to ensure that a single, consolidated return filed with a "head office" tax authority satisfies corporate-tax obligations across all establishments.
- (f) **Employee-Equity Harmonisation:** the taxable event for share options issued by EU-Companies should be deferred until sale of the shares, with a common methodology for calculating gains, leaving actual tax rates to Member States.
- (g) **RegTech Compliance Layer:** data fields in the EU central register should be machine-readable via Application Programme Interface, enabling automated due diligence and KYC solutions to flourish.

### 6 Interaction with other EU Initiatives

Scale Ireland recognises that the 28<sup>th</sup> Regime would interact with other EU initiatives:

- (a) **Capital Markets Union ("CMU"):** the EU Company would advance CMU objectives by reducing legal fragmentation that discourages cross-border investment.

- (b) **Digital Single Market:** digital-by-default processes will showcase the EU's commitment to e-government and the EU's "once only principle" initiative, complementing eIDAS 2.0 and the European Digital Identity Wallet.
- (c) **SME Relief Package:** administrative simplifications for EU-Companies should be integrated into the EU's SME test whereby such test would analyse the effects of upcoming EU legislative proposals on the EU Company, ensuring cumulative burdens do not re-emerge.

## 7 Safeguarding Member-State Interests

Scale Ireland recognises Member States' legitimate interests in local labour and social-security law, local corporation tax rates and prevention of fraud and money-laundering. The 28th Regime can respect these interests by:

- (a) conferring legal personality and corporate-law status at Union level while leaving labour laws and corporation tax rates to the host Member State;
- (b) ensuring the EU central register shares real-time beneficial-ownership data with national authorities; and
- (c) allowing Member States to impose proportionate, sector-specific authorisations (e.g., for regulated financial services) on EU-Companies just as they do today.

## 8 Conclusion and Call to Action

The EU faces an urgent competitiveness challenge. While the United States and China field technology companies that scale seamlessly across vast domestic markets, European founders must navigate many partially harmonised systems, diluting focus and capital. The 28th Regime offers a pragmatic, high-impact solution: an optional, digital, and fully harmonised corporate framework that moves innovators towards viewing the EU as one market from day one.

For Ireland, the benefits are clear and compelling: shorter time-to-scale, frictionless access, deeper pools of capital, lower transaction costs, and the prospect of retaining group holding company structures and strategic IP within Ireland. But the upside extends far beyond our shores. By unlocking entrepreneurship across all Member States — including smaller, peripheral economies — the 28th Regime will foster a more balanced, resilient, and globally competitive European innovation ecosystem.

Scale Ireland therefore urges the European Commission to:

1. progress swiftly to a legislative proposal based on a directly applicable Regulation;
2. embed the digital-by-default and passporting principles at its core; and
3. engage closely with start-up representative bodies to ensure the final regime is tailored to the real-world needs of Europe's innovators.

We stand ready to contribute further expertise and to participate in any stakeholder workshops or technical working groups that the Commission may convene. Together, we can build a truly borderless Single Market for innovation and secure Europe's place at the forefront of global technological progress.