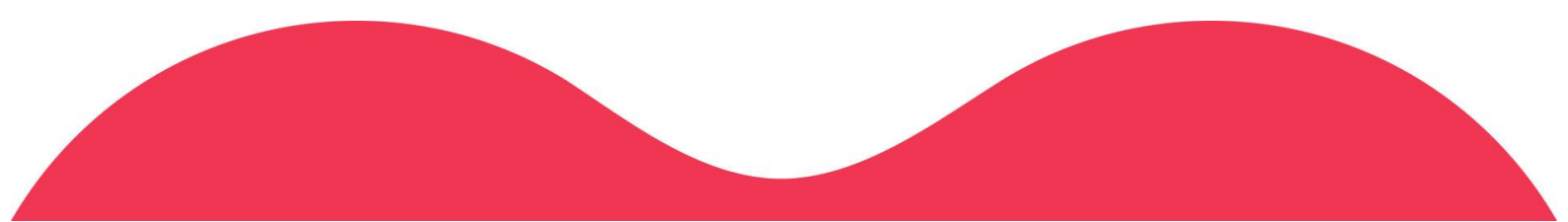


30/09/2025

Philea Legal Affairs Committee contribution to 28th Regime consultation

Philea - Philanthropy Europe Association



Philea Legal Affairs Committee contribution to EU Call for evidence for an impact assessment on the 28th Regime – EU corporate legal framework

Philea fully recognises the strategic importance of technological innovation and R&D for Europe's competitiveness and resilience and the important role that the 28th Regime will play by enabling different types of innovative entities to grow and operate easily in the Single Market. This approach is aligned with the **Transition Pathway for Proximity and Social Economy (2022)**,¹ which highlights social economy organisations as pioneers of the green and digital transitions – from renewable energy communities to circular economy solutions and digital social innovation, just to name a few. In line with the **Social Economy Action Plan (2021)**, the Commission has launched measures to strengthen these actors through access to EU research and innovation programmes, digital hubs, innovation clusters and tailored financing instruments. Furthermore, the **Council Recommendation on developing social economy framework conditions (2023)** calls on Member States to ensure enabling frameworks for these actors, which include associations, foundations, co-operative societies and mutuals. As Philea, we are pleased to comment on the call for evidence for an impact assessment on the 28th Regime – EU corporate legal framework as follows:

1. We welcome the 28th Regime: However, we call on it to cover all innovative entities

- To strengthen Europe's competitiveness and foster sustainable economic growth, we must pursue a bold and forward-looking vision.
- Europe stands for democracy, rule of law, stability, clarity, and confidence, offering a unique opportunity to attract talent, investment, and capital.
- The upcoming Commission proposal for a 28th Regime is a positive step in strengthening the internal market and enabling start-ups, scale-ups, SMEs and other innovative entities to thrive across the EU.
- We believe that the 28th Regime has to go beyond innovative companies in order to offer a new momentum for different innovative entities (be they companies or foundations or other social economy organisations)
- A 28th Regime that provides an enabling legal environment and level playing field for innovative entities would be able to remove red tape and barriers and

¹ <https://ec.europa.eu/docsroom/documents/52015/attachments/1/translations/en/renditions/native>

would be able to mobilise more investment, which is necessary to strengthen Europe's competitiveness, economic resilience and strategic autonomy.

- The economic contribution of philanthropy and foundations is significant. Europe is home to more than 175,000 philanthropic organisations, with annual giving of €76 billion and combined assets of over €516 billion ([Philea, 2025](#)). Foundations engage in areas that benefit society broadly, such as education, health, science, environment, culture, democracy and international development and often via partners. Its added value lies in its flexibility: responding rapidly to urgent needs while also taking a longer-term view.

2. Added value of the 28th Regime: Overcoming existing barriers, mobilising more investment and unleashing untapped potential

- Enterprises, SMEs, start-ups and scale-ups, as well as non-profit organisations and foundations across the EU face widely varying rules from one Member State to another. Importantly, this regulatory diversity and the costs of navigating unfamiliar environments hinder the pan-European financing of innovation and reaping the full benefit of the internal market.
- Foundations and associations face barriers when acting across borders. We therefore welcome the legislative proposal to set up a European Cross-border Association (ECBA) to ease cross-border action of individuals and legal entities via setting up a cross-border association. At the same time, we also call for a similar legal instrument for foundations and the consideration to expand the 28th Regime to also cover foundations and other innovative entity forms.
- We see the potential entry for foundations into the 28th Regime via 3 roles:
 1. Foundations as innovative companies/innovative actors themselves; Foundations sometimes run hospitals/homes for the elderly, cultural or other social or green set ups or research hubs and are hence own innovative companies in the narrower sense; other foundations are innovative entities as think tanks/grantmakers/running their own programmes and operations.
 2. Foundations are also investors into other innovative entities. Foundations may provide access to patient capital, venture philanthropy, and blended finance and therefore should be able to benefit from the 28th Regime to unlock their full potential as actors in European innovation and social investments.

3. Some foundations are also owners/majority shareholders in companies (Enterprise Foundations), many of which undertake substantial R&D and venture capital investments.
- The 28th Regime could therefore serve as an important step towards further deepening the internal market, greater European integration for innovative entities, and recognising and enabling the different roles foundations can play.

3. The 28th Regime and its legal basis

We welcome the Commission's commitment to submit a legislative proposal on a 28th Regime for innovative companies (the "28th Regime"), which we believe should consist of a **legislative proposal for a directive under Articles 50 and 114(1)** of the Treaty on the Functioning of the European Union (TFEU) as the legal basis.

Using the catch all **Article 352(1) TFEU as a legal basis is not recommended** because it would delay the adoption of the legislative proposal due to the requirement for unanimity; and the use of enhanced cooperation as referred to in Article 20 TFEU and Article 329 TFEU or intergovernmental agreements for the purpose of establishing the 28th Regime could also be challenging.

Articles 50 and 114(1) TFEU require harmonisation measures in company law that necessitate implementation in the national law of Member States. We consider that maximum harmonisation is to be preferred in this case in order to ensure uniform rules in all Member States.

4. EU innovative entities as destinations for European and global capital, and pan-European instruments/global and European foundations as co-investors

- Positioning the EU as a premier destination for global and European capital would potentially also reinforce capital markets through pan-European instruments – unlocking European and global public and private finance to close the scale-up gap and keep Europe at the forefront of global innovation (Foundations as investors).
- A 28th Regime should be simple and attractive for all investors, domestic and international, to thrive in Europe and to encourage the relocation to Europe of important players, thus contributing to a competitive pan-European innovation ecosystem.
- Philanthropy and foundations need an enabling environment to thrive and play a more prominent role in co-granting and co-investing in the European market,

also across-borders. In this respect, we have formulated our asks to policymakers in [Philea's 2024 European Philanthropy Manifesto](#).

- Also considering their role as potential co-investors into other European innovative entities, more flexibility in national operating frameworks may be needed for foundations:
 - More and more European foundations are interested in impact investing using programme funds and/or endowments. Some now allocate up to 10% of their endowments in impact tools. **Legal constraints continue to exist in some countries** while other countries, like the Netherlands, have recently introduced reforms to allow impact investing on the programme side, and discussions are ongoing in Belgium and Germany to also look at the endowment side.
 - **Co-Investment Facility:** Discussions with the European Commission are underway to create a joint facility for foundations as also announced in the Social Economy Action Plan.

[See Philea's call to action to policymakers.](#)

- Global philanthropies active in the areas of development, climate and gender could potentially consider moving their headquarters across the Atlantic should the regulatory regime in the EU be more favourable.

5. Key elements of the 28th Regime for innovative entities

The Commission's Single Market Communication notes that the "28th Regime will provide a single set of rules, potentially in a progressive and modular way."

The following key elements are foreseen:

- Entities should voluntarily opt into the 28th Regime. If an entity opts in to the 28th Regime it must be automatically recognised in national legal systems of all 27 Member States.
- The 28th Regime should mainly concern company law rules/foundation law rules but consider that non-profit legal entities (be they associations or foundations) are established for charitable, educational, or other public-benefit purposes.
- The 28th Regime should be a set of rules that must be incorporated into existing or new national legal forms and that entities established as European Innovative Entities should benefit from mutual recognition of its status in each Member State.
- Rules on entity formation and registration should be simple.

- The proposal is a first step in a phased approach. Additional initiatives in other areas, including taxation laws, will be critical in attracting and retaining talent, mobilising capital, and positioning Europe as a recognised global hub for innovation.

6. Our key recommendations for the 28th Regime for innovative entities

We propose the following key features to ensure that the 28th Regime is both inclusive and globally competitive:

- **The 28th Regime should refer to entities rather than companies only**, to include all types of organisations that have legal personality, from commercial businesses to mission-driven institutions such as foundations and other social economy entities and enterprises.
- **Non-profit legal entities such as foundations that are established for public-benefit purposes should be eligible** to adopt the regime to operate more easily across borders and promote the inflow of patient capital to the EU. Their inclusion expands the pool of mission-aligned investors, enhancing the impact of public and private investment across the Union.
- **Non-EU entities willing to establish/set up a branch in the EU should be able to opt in to the regime.** Recent geopolitical developments open important opportunities for Europe to attract talent and capital and reinforce the EU's role in global financial markets. Opening the regime to natural or legal persons that reside outside the EU is crucial to attract talent and encourage the relocation to Europe of important players.
- **The regime should not be limited to unlisted companies.** Excluding listed companies may inadvertently incentivise successful scale-ups to relocate outside the EU. Fast-growing companies should not need to change regime as they hit scale-up stage, as this gives a further push to move and incorporate elsewhere.

Philea is ready to work with the European Commission to contribute to the development of the 28th Regime and ensure that it serves as a catalyst for growth, innovation, and competitiveness in the EU.

About Philea

Philea nurtures a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, it unites almost 9,000 public-benefit foundations that seek to improve life for people and communities



in Europe and around the world. Philea galvanises collective action and amplifies the voice of European philanthropy, and is committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

www.philea.eu

European Transparency Register: 78855711571-12