

## **Invest Europe's Position on the Scope of the 28th Regime Corporate Legal Framework (EU Inc.)**

The first leaked draft of the 28th regime corporate legal framework marks an important milestone in a long-standing policy discussion on how to better support innovative companies as they grow and scale in Europe. The ambition of EU Inc. – to reduce fragmentation, enable cross-border scaling, and make Europe a more attractive place to build and retain companies of all sizes and sectors through a digital-by-default lifecycle and simplified formation, management, filings and liquidation procedures – is an encouraging step toward an investment-friendly environment, and an objective that is widely shared within the private equity and venture capital (PE/VC) industry.

However, while the framework itself appears designed to be open to all companies, the scope and incentives set out in the proposal rely on newly introduced definitions with a narrower focus. As the initiative moves from concept to concrete legislative text, the practical impact of the framework will depend on how its scope and incentives are ultimately framed.

### **Key issues limiting the 28th regime's attractiveness**

- **Narrow funding definitions risk excluding innovative and scaling companies:** Europe's innovation and growth ecosystem is broader, more diverse and more mature than it is portrayed in the draft proposal. Innovation does not stop suddenly, nor does growth follow a single linear path driven only by early-stage VC. Across Europe, innovation is developed, scaled and industrialised by companies operating at different stages, across many sectors, and supported by different forms of long-term capital. As currently phrased, the definitions of "innovative enterprise" and "high-growth scaleup" continue to reflect the idea that innovation and scaling occur only through VC. However, growth and buyout capital, alongside VC, play a critical role in helping innovative SMEs professionalise, expand and reach scale. Framing innovation too narrowly risks excluding a large group of innovative and scaling companies from the regime's benefits – and, as a result, reducing the regime's uptake by both companies and investors. **The 28th regime and its incentives should support the entire innovation and growth ecosystem.**
- **The reference to EuVECA could exclude most VC-backed companies:** the reference to VC funding within the meaning of the EuVECA Regulation raises significant concerns. EuVECA is a voluntary passport used by managers below €500 million of assets who want to market cross-border, it does not provide a definition of what constitutes VC. Referring to EuVECA could therefore exclude, for no relevant reasons, any innovative company backed by an exclusively national VC fund (which has not sought the voluntary label because it had no need to market cross-border) or any large VC fund (which had not sought the label because it is already allowed to market cross-border). **We suggest that AIFMD, and not EuVECA, is the relevant legislation to reference.**
- **Employee thresholds are a weak proxy for innovation and growth:** we also noted that an employee threshold has been introduced within the "startup" definition, despite the fact that headcount is an increasingly weak proxy for innovation or growth. When analysing the impact of headcount-based thresholds, we usually observe that while only a relatively small share of companies may be excluded in terms of numbers, those excluded companies represent a disproportionately large share of total investment activity. A focus on headcount, therefore, risks excluding a substantial portion of the businesses with the strategic, industrial and economic relevance – the companies that anchor value chains, expand industrial capacity and compete globally. The proposed text creates a situation

where a company with 101 employees and €9,9 million of annual turnover would be excluded from both the “startup” and “high-growth scaleup” definitions, for no particular reason. **For this reason, rigid employee thresholds should be avoided.**

- **Inconsistent references to and misalignment with EU legislation create uncertainty:** The draft recognises in the “startup” definition that companies backed by private capital should not lose eligibility where funds maintain separate accounts and follow defined investment strategies – as it references the 2025 Recommendation on Small Mid-Caps (SMCs). This is a laudable leap forward in applying thresholds which is not discriminating against particular ownership structures. However, this principle should also be extended to scaleups. This asymmetry creates unnecessary uncertainty precisely at the stage where companies are transitioning from startup to scaleup. **This principle should therefore apply consistently to both startups and scaleups.** Additionally, the proposed definition of microenterprises diverges from the existing SME definition. **While a revision of existing definitions is warranted, maintaining coherence across frameworks is important to avoid unnecessary complexity and uncertainty for companies and investors.**

### Why this matters for investment and uptake

The choices made in the draft matter because **the success of the regime will depend on whether it:**

- **meaningfully reduces legal fragmentation** across Member States, and
- **provides access to attractive incentives** for the right companies.

At present, the proposal does not go far enough on the first point – as the regime continues to rely primarily on national registries and courts, meaning that companies operating under EU-Inc. will still face divergent interpretations across Member States. And on the second point, the most impactful incentives – notably the preferential EU ESOP tax treatment, where no taxable event arises at grant, vesting or exercise and taxation occurs only upon disposal, as well as simplified winding-up procedures designed to be faster and more affordable – are limited to a relatively narrow group of companies.

These elements are central to talent attraction, retention and investment. Our concern is about uptake. After such a long and thoughtful policy process, it would be unfortunate if the 28th regime ended up being used by a much narrower group of companies and investors than intended – if at all – simply because the definitions and the ambition do not fully reflect market reality and needs.

### Ensuring the success of the regime

**We encourage the Commission to revisit the definitions with a view to:**

- better reflecting innovation and growth beyond VC alone,
- ensuring consistent treatment of PE/VC-backed startups and scaleups,
- avoiding rigid employee thresholds,
- aligning definitions across the European framework, and
- strengthening the regime’s ability to reduce fragmentation and provide legal certainty across Member States.

We share the objective of making the 28th regime a practical success and will continue collaborating with the Commission and co-legislators to ensure that its definitions and incentives effectively unlock private capital in Europe.