

# Electronic Filings in EU Company Law and the 28<sup>th</sup> Regime Option for Small and Medium-Sized Enterprises

by

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*The article evaluates the EU's proposal for a "28th regime" of company law, centred on a European Start-Up and Scale-Up Company (ESSU) and improved electronic filing, and assesses its feasibility amid persistent Single Market fragmentation. Despite SMEs dominating the EU economy, national divergences in incorporation rules, authentication, language, and administration continue to obstruct cross-border growth. The First Digitalisation Directive, aimed at modernising formation through online procedures and interoperable registers, produced uneven and often restrictive national transpositions, as shown by case studies in Germany, Belgium, and Estonia. The article then considers Digitalisation Directive 2.0, which introduces enhanced interoperability, an EU Company Certificate, electronic powers of attorney, and the "once-only" principle, but whose impact depends on Member States' implementation and real-world acceptance of digital documents. Finally, it analyses the ESSU proposal, concluding that meaningful success requires administrative capacity, political commitment, and stakeholder education to avoid repeating past under-realised harmonisation efforts.*

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## 1. Introduction

### 1.1. Starting-up and Scaling-up – Not that Easy

Small and medium-sized enterprises (SMEs) make up 99.8% of all enterprises in the European Union (EU). They are the backbone of the Union's economy, contributing 53.6% of added value and employing 65.1% of the workforce.<sup>2</sup>

SMEs are responsible for most start-up and scale-up activities driving innovation, productivity, and employment growth. They act as the vanguard of a broader competitiveness push and contribute a large share of new, high-quality jobs.<sup>3</sup>

However, the EU is struggling to compete with other regions and nations in terms of start-up output. Among the top five countries leading in absolute start-up output in 2025, the United States (US) ranks first, China second, while Germany - the only EU Member State in the top five - ranks fifth.<sup>4</sup> The US generates 46.6% of all startup activities worldwide, followed by China (9.2%), the United Kingdom (5.6%), and India (5%).<sup>5</sup>

The EU itself admits that “there exists a substantial gap as regards scale-up firms that evolve from those startups.”<sup>6</sup>

Why is that? SMEs continue to face persistent EU-specific hurdles, such as fragmented regulations across Member States, complex authorisation and taxation procedures, and difficulties in accessing finance and information for cross-border growth. 2024 Draghi Report once again emphasized regulatory and administrative burdens, fragmented single market and SME-unfriendly rule design.<sup>7</sup> These challenges hinder SMEs' ability to scale compared with peers in the US and elsewhere.<sup>8</sup> The entire situation was brilliantly summarized by the British *Telegraph* calling the EU “economically moribund, a drifting hulk tangled in a sargasso sea of

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<sup>1</sup> Yvonne Segers, “Productveiligheid Versus Innovatieprincipe”, Follow the Money (FTM), 4 December 2018, <<https://www.ftm.nl/artikelen/productveiligheid-vs-innovatieprincipe>> accessed 14 November 2025.

<sup>2</sup> Schulze Brock, P./Katsinis, A. et al., Annual Report on European SMEs 2024/2025, SME performance review, 2025, JRC142263, p. 6, <<https://data.europa.eu/doi/10.2760/7714438>> accessed 14 November 2025.

<sup>3</sup> Ibid. p. 65-66, 73, 76-77.

<sup>4</sup> Sengul Enginsoy, “Top Countries by Total Startup Output 2025”, Startupblink.com, 24 August 2025, <<https://www.startupblink.com/blog/top-countries-by-total-startup-output/#>> accessed 14 November 2025.

<sup>5</sup> Ibid.

<sup>6</sup> Anita Quas/Colin Mason et al., Tackling the Scale-up Gap, EUR 30948 EN; Schulze Brock, P./Katsinis, A. et al (fn. 2), p. 65.

<sup>7</sup> Mario Draghi, The Future of European Competitiveness. Part A – A Competitiveness Strategy for Europe, 2024, p. 30 – 31, 51, 64 – 66.

<sup>8</sup> Schulze Brock, P./Katsinis, A. et al (fn. 2), p. 59-60, 82-84.

regulations, watching enviously as American and Chinese tech companies build the industries of the future.”<sup>9</sup>

### *1.2. Tackling the Sargasso Sea of Regulations*

The “regulatory problem” as well as constant complaints from businesses and the abnormal situation when many European start-ups decide to launch in the US, Singapore etc instead of the EU,<sup>10</sup> made the problem impossible to ignore.

In January 2025, at the World Economic Forum in Davos, European Commission President Ursula von der Leyen articulated the new proposal to tackle the problem and elaborated on the rationale behind:

“Sometimes companies are dealing with 27 national legislations. We will offer instead to innovative companies the ability to operate all across our Union under one single set of rules. We call it the 28th regime. Corporate law, insolvency, labour law, taxation - one single and simple framework across our Union. This will help bring down the most common barriers to scaling up all across Europe. Because continental scale is our greatest asset in a world of giants.”<sup>11</sup>

Von der Leyen’s articulation of the 28th regime reflects a broader strategic effort to harmonize regulatory frameworks across the EU, thereby fostering a more integrated and competitive European innovation ecosystem, as detailed in the so-called Repasi Report.<sup>12</sup>

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<sup>9</sup> “The hypocrisy of the European Union is breathtaking”, The Telegraph, 10 October 2025.

<sup>10</sup> DC Cahalane, “Opinion: Europe’s regulatory discord is killing our start-ups – here is the fix”, Siliconerepublic.com, 17 September 2025, < <https://www.siliconerepublic.com/start-ups/europe-regulatory-fragmentation-killing-startups-fix-eu-inc> > accessed 14 November 2025.

<sup>11</sup> Special Address by President von der Leyen at the World Economic Forum, Davos, 21 January 2025. Von der Leyen repeated the idea at the Italian Tech Week in Turin, see “EU to propose uniform rules for startups to help them grow, von der Leyen says”, Reuters, 3 October 2025, < <https://www.reuters.com/business/eu-propose-uniform-rules-startups-help-them-grow-von-der-leiden-says-2025-10-03/> > accessed 14 November 2025

<sup>12</sup> Draft report with recommendations to the Commission on the 28<sup>th</sup> Regime: a new legal framework for innovative companies, 30 June 2025, 2025/2079(INL).

Building upon the 2030 Digital Compass,<sup>13</sup> the Letta<sup>14</sup> and Draghi<sup>15</sup> Reports, the EU Competitiveness Compass,<sup>16</sup> and the EU Startup and Scaleup Strategy,<sup>17</sup> Repasi's proposals for the 28th regime aim to develop a universal rulebook for the establishment and operation of SMEs across all 27 EU Member States.

Without seeking to evaluate the proposal in its entirety, which would be both overly ambitious and premature, given that no draft directive or regulation has yet been presented at the time of writing, this article concentrates on selected initiatives outlined within the framework of the 28th regime. In particular, it focuses on (i) the proposed European Start-Up and Scale-Up Company (ESSU) and (ii) electronic filing mechanisms, which appear to constitute the core elements of the overall proposal.

Furthermore, these initiatives must be analysed in light of the recently adopted Digitalisation Directive 2.0,<sup>18</sup> which introduces a broad range of innovations concerning electronic filings, documentation, and Member States' obligations in the digitalisation of company law procedures.

Accordingly, this paper seeks to address the following research questions:

1. To what extent can the digital tools envisaged under the 28th regime and the Digitalisation Directive 2.0 be expected to reduce administrative friction for SMEs in practice?
2. Do SMEs continue to encounter significant barriers notwithstanding ongoing digitalisation efforts?
3. Does the proposed ESSU company form provide genuine added value in the sphere of electronic filings and related procedures?

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<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2030 Digital Compass: the European way for Digital Decade, 9 March 2021, COM(2021) 118 final.

<sup>14</sup> *Enrico Letta*, Much More than a Market – Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, April 2024, p. 10, 15, 108 – 109.

<sup>15</sup> *Mario Draghi* (fn. 7), pp. 51, 68; *Mario Draghi*, The future of European competitiveness. Part B – In-depth analysis and recommendations, 2024, p. 34, 315, 325.

<sup>16</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – A Competitiveness Compass for the EU, 29 January 2025, COM(2025) 30 final, p. 4, 8.

<sup>17</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – The EU Startup and Scaleup Strategy. Choose Europe to start and scale, 28 May 2025, SWD(2025) 138 final.

<sup>18</sup> Directive (EU) 2025/25 of the European Parliament and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law, O.J. L 2025/25.

4. What lessons from previous initiatives, such as the *Societas Europaea*,<sup>19</sup> and the First Digitalisation Directive,<sup>20</sup> and relevant national case law, can inform realistic expectations regarding the ESSU's potential impact?

Section 2 will examine the general situation regarding electronic filings in EU company law, with a particular focus on SMEs and briefly address existing friction points across various Member States, with a focus on case law and registry practices in selected jurisdictions (e.g., Germany, Estonia). Section 3 will discuss the novelties introduced by the Digitalization Directive 2.0, emphasizing both its benefits and limitations. Section 4 will analyse the ESSU proposal under the 28th regime, exploring its design, promises, and risks and seeking to determine whether it represents a true game-changer.

## 2. *Single Market Challenges for SMEs*

Freedom of establishment<sup>21</sup> and freedom to provide services<sup>22</sup> have long been cornerstones of the European Single Market.<sup>23</sup> Simply put, these two freedoms guarantee any business established within one EU Member State the right to set up a presence in another Member State and to sell products and services there without obstacles. Yet businesses often point out that the theory of the Treaties does not always correspond with reality. The almost universal disappointment of SMEs with the existing situation became particularly evident during the public consultation on the Commission's proposal for the 28th regime.<sup>24</sup>

Interestingly, among the barriers mentioned by stakeholders during the public consultation on the 28<sup>th</sup> regime, the fragmentation of company law and the persistent tendency of Member States to add additional requirements beyond those set out in EU directives (known as gold-plating) represent the majority. In various forms and words, the respondents dwelled on recurring problems, namely:

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<sup>19</sup> Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), O.J. L 294/1.

<sup>20</sup> Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, O.J. L 186/80.

<sup>21</sup> Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), O.J. C 326/47, Arts. 49 – 55

<sup>22</sup> Arts. 56 – 62 TFEU.

<sup>23</sup> Art. 26 TFEU.

<sup>24</sup> Consultation took place between 8 July – 30 September 2025, see <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/public-consultation_en)> accessed 14 November 2025.

See also *Apostolos Thomadakis/J. Scott Marcus*, Identification of hurdles that companies, especially innovative start-ups, face in the EU justifying the need for a 28<sup>th</sup> regime, July 2025, PE 775.947.

- (1) companies face 27 different incorporation rules, governance options and recognition of acts across Member States, adding cost, delay, and legal risk to cross-border scaling;
- (2) outdated formation and governance requirements. Slow hard copy filing and uneven digitalization impede “incorporate once, operate everywhere.”<sup>25</sup> Modern instruments (multiple share classes, venture-style tools etc.) are not uniformly available or not recognized;
- (3) compliance requirements are duplicated, red tape excessive. Businesses must repeat filings and adapt themselves to inconsistent implementation of EU measures, leading to gaps, overlaps and administrative complications (especially painful for start-ups and small companies in general);
- (4) unclear and inconsistent adjudication. Divergent national interpretations (including language versions) create uncertainty;
- (5) inconsistencies of workers’ participation;
- (6) weak co-ordination with tax, labour and IP frameworks.<sup>26</sup>

Just a few days after the conclusion of public consultation, *SMEunited*, a major association representing SMEs and crafts from over 30 European countries,<sup>27</sup> provided perhaps the most eloquent and self-explanatory summary of the existing complaints:

“For many SMEs, the Single Market remains an aspiration rather than a lived reality. Local and regional firms often see little benefit from EU-level integration, since they must comply with separate national requirements in each market they want to operate in”.<sup>28</sup>

Below, the author will briefly analyze how the theory of EU *acquis* clashes with reality, focusing on concrete examples and case law from major EU jurisdictions such as Germany.

## 2.1. Incorporation Hurdles

One of the most significant problems with incorporation is that each Member State has its own company forms and minimum capital requirements. For example, in Germany, it is possible to

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<sup>25</sup> *Anonymous EU citizen*, Feedback Ref. F3605134, 1 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F3605134\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F3605134_en)> accessed 14 November 2025.

<sup>26</sup> Author’s summary of the received feedback, see <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/feedback\\_en?p\\_id=19997](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/feedback_en?p_id=19997)> accessed 14 November 2025.

<sup>27</sup> Members include associations of small businesses from all 27 EU Member States, as well as from Andorra, Norway, Serbia, Türkiye, Ukraine and the UK.

<sup>28</sup> “Making the 28<sup>th</sup> Regime work for SMEs”, 3 October 2025, 2 <<https://www.smeunited.eu/publications/making-the-28th-regime-work-for-smes>> accessed 14 November 2025.

establish an SME in the form of a mini-GmbH (*Unternehmergesellschaft* or *UG*) with just EUR 1,<sup>29</sup> whereas in neighboring Austria, the minimum capital requirement is EUR 10,000.<sup>30</sup>

There are also widely varying requirements regarding the composition of corporate bodies, directors' duties, and similar matters. On top of that, Member States' national laws differ in terms of the paperwork required to incorporate a company, as well as the formalities for authenticating that paperwork, often involving complex and costly notarization and translation requirements, to name just a few discrepancies.

Put simply, an SME incorporated as a UG in Germany and considering expansion into Austria would typically need to establish a local presence there, thereby becoming subject to Austrian legal requirements. This could ultimately require the German UG, with its statutory capital of EUR 1, to incorporate an Austrian subsidiary GmbH with a minimum capital of EUR 10,000. Even setting up a branch in Austria can be an expensive and burdensome challenge for a small German UG.

To register a branch in the Austrian Company Register (*Firmenbuch*), German documents must be certified by the court or notary<sup>31</sup> in a way acceptable to the Austrian registry court, often meaning costly German notarial and apostille procedures. For example, according to the Austrian Supreme Court, using notarization done by a German consular officer in Austria does not satisfy the requirement of the Austrian Notary Act (*Notariatsakt*) and the Law on Limited Liability Companies (GmbHG).<sup>32</sup>

While a German UG would not need to translate its documents into German, SMEs from other Member States will need to arrange certified translation into German.<sup>33</sup> Reversing the example, an Austrian GmbH seeking to do business in Germany will face similar challenges in Germany. In most EU Member States documents in English will not be accepted without translation into the official language of the country in question. In some countries the situation can be very specific. In Belgium, for example, documents from a French company composed in French, might not be accepted if the branch is to be registered in the Dutch-speaking Flanders, even though Belgium's three official languages are French, Dutch and German.<sup>34</sup> Moreover, the ordeal

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<sup>29</sup> Gesetz betreffend die Gesellschaften mit beschränkter Haftung in der im Bundesgesetzblatt Teil III, Gliederungsnummer 4123-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 21 des Gesetzes vom 23. Oktober 2024 (BGBl. 2024 I Nr. 323) (Federal Law Gazette) geändert worden ist (GmbHG), § 5a. However, the Law obliges UG to set aside 25 % of its annual net profits into a reserve until the share capital reaches 25,000 EUR (minimum capital requirement for a standard GmbH), see GmbHG, § 5. In other words, UGs must eventually convert into a standard GmbH.

<sup>30</sup> Gesetz über Gesellschaften mit beschränkter Haftung (GmbH-Gesetz – GmbHG), RGBl. Nr. 58/1906, zuletzt geändert durch BGBl. I Nr. 179/2023, §§ 6, 9a.

<sup>31</sup> Unternehmensgesetzbuch/UGB (Austrian Commercial Code), §§ 11 – 12; Firmenbuchgesetz/FBG (Company Register Law), §3.

<sup>32</sup> Oberster Gerichtshof/OGH (Austrian Supreme Court), 23 April 2020 - 6 Ob 59/20z.

<sup>33</sup> UGB, §12.

<sup>34</sup> Constitution of the Kingdom of Belgium, Art. 4, divides the country into four language zones: the Dutch-language area, the French-language area, the German-language area and the bilingual (Dutch-French) area of Brussels. The



does not end with entry into the commercial register of the respective Member State. In many cases, additional paperwork - complete with new certifications, translations, and apostilles - must be submitted to register with tax authorities, open a bank account, and fulfill other administrative requirements. This is the red tape undermining the entire idea of the EU's Single Market.

## *2.2. Digitalisation – A Real Gamechanger?*

To deal with the problem of internal red tape as well as to facilitate cross-border incorporations and company governance, the EU embarked on the idea to digitalize proceedings, allowing remote filings of documents and digitalization of the required procedures to the maximum extent possible. The First Digitalisation Directive<sup>35</sup> was adopted back in 2019 to modernise EU company law by enabling online formation, filing and branch registration so that starting and running a company would become faster and less costly, thereby improving the functioning of the internal market.<sup>36</sup> By means of introducing various amendments to the Company Law Directive,<sup>37</sup> the First Digitalization Directive responded to globalisation and digitalisation by pairing wider use of digital tools with safeguards against abuse and fraud, and by requiring secure electronic identification and trust services consistent with the eIDAS framework.<sup>38</sup> The Directive specifically focused on the need for limited liability companies<sup>39</sup> to be able to be formed fully online as well as an ability for them to register branches online,<sup>40</sup> in person visits to a notary or other authority no longer to be needed.<sup>41</sup> The Directive emphasized using templates,<sup>42</sup> possibility for all the necessary documents, disclosures, and paperwork to be filed online,<sup>43</sup> and integrity of all the submissions to be verified online.<sup>44</sup>

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use of languages in various administrative procedures is governed by the Language Act on Administrative Affairs - Arrêté royal du 18 juillet 1966 portant coordination des lois sur l'emploi des langues en matière administrative. The Belgian government normally refers to the official language of the judicial district where a branch or subsidiary is to be registered. For the Dutch-language Flanders, see the so-called Flemish Language Decree - Decreet tot regeling van het gebruik van de talen voor de sociale betrekkingen tussen de werkgevers en de werknemers, alsmede van de door de wet en de verordeningen voorgeschreven akten en bescheiden van de ondernemingen 19/07/1973 (as amended).

<sup>35</sup> Directive (EU) 2019/1151.

<sup>36</sup> Ibid., recital 2.

<sup>37</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, O.J. L 169/46.

<sup>38</sup> Recitals 3 – 4 Directive (EU) 2019/1151. See also Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (consolidated text),

ELI: <http://data.europa.eu/eli/reg/2014/910/2024-10-18> accessed 14 November 2025.

<sup>39</sup> Company forms subject to the Directive's requirements were listed in its Annex.

<sup>40</sup> Recital 8 Directive (EU) 2019/1151.

<sup>41</sup> Ibid, recitals 19, 20, sections 5, 15; *Tom Salemink/Pieter Wolters/Hans De Wulf*, “Cybersecurity and Online Formation of Companies in the Netherlands, Belgium, and Germany”, *European Company and Financial Law Review*, 2024, 67, 68.

<sup>42</sup> Recitals 9, 18 Directive (EU) 2019/1151; Art. 13h (as amended) Directive 2017/1132.

<sup>43</sup> Art. 13j(1) (as amended) Directive (EU) 2017/1132.

<sup>44</sup> Ibid., Art. 13j(2) (as amended).

In addition to that, the Directive aimed at improving access to company information via Business Register Interconnection System (BRIS)<sup>45</sup> to get rid of the need to supply various governmental agencies with the same information about the company already available in the respective registers.<sup>46</sup>

Paved with good intentions, the Directive's transposition among 27 Member States demonstrated that achieving some uniformity and tangible minimization of red tape remained mostly a target rather than reality. In Belgium, for example, where company formation has always been done with the heavy involvement of notaries, drafting the law implementing the First Digitalization Directive<sup>47</sup> was done with the involvement of the Belgian Federation of Notaries.<sup>48</sup> Of course, one can always argue that no vested interests of the profession were involved and it was done only to guarantee the quality of the new legislation and so on, yet the Belgian transposition resulted in amendments of the national Company Code<sup>49</sup> and the Notaries Law,<sup>50</sup> according to which local notaries are still essential for the formation of a limited liability company, yet their functions have been “digitalized” so to speak, they can file all the paperwork electronically, perform all the necessary verifications online and founders or their representatives are no longer obliged to show up in person. Unless the founders opt for physical presence at the notarial office, all meetings with the notary can be conducted online, but exceptionally via *ManageMyBusiness*<sup>51</sup> - a dedicated digital platform, no commercial platforms like *MS Teams*, *Zoom* or *Google Meet* can be used.<sup>52</sup> Using the official language of the place of incorporation remains a must, so the previous example of the French company required to submit Dutch translation when incorporating a subsidiary or branch in Flanders would still be the case. Despite the existing business demand to allow the use of English, especially in trans-border context, Belgium did not bother to adjust the legislation accordingly.<sup>53</sup> Needless to say that in the end, except perhaps the travel costs for foreign founders to go to Belgium, the Belgian transposition did not cut costs for notarial services.

By the same token, the implementation of the First Digitalisation Directive in Germany<sup>54</sup> did not result in “easier notarization” for the incorporation of a GmbH. As in Belgium, physical presence

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<sup>45</sup> Introduced by Directive (EU) 2017/1132.

<sup>46</sup> Recitals 23, 24, 28, 29, 31, 33 Directive 2019/1151; Arts. 16(1), 18(1), 19, 28a, 28c, 30a (as amended) Directive (EU) 2017/1132.

<sup>47</sup> Transposition was done by the Law of 12 July 2021, and the Law of 22 November 2022. See *Tom Salemink/Pieter Wolters/Hans De Wulf* (fn. 41), 77, footnote 65.

<sup>48</sup> *Tom Salemink/Pieter Wolters/Hans De Wulf* (fn. 41), 78, footnote 66.

<sup>49</sup> Code des sociétés et des associations, 23 mars 2019.

<sup>50</sup> Loi du 25 ventôse an XI contenant organisation du notariat, 16 mars 1803.

<sup>51</sup> Formerly known as *StartMyBusiness*.

<sup>52</sup> *Tom Salemink/Pieter Wolters/Hans De Wulf* (fn. 41), 82.

<sup>53</sup> *Ibid.*, 83.

<sup>54</sup> Transposition was done by the Law of 5 July 2021 and Law of 15 July 2022. Those two amended the GmbHG (fn. 29), and the Notarization Act – Beurkundungsgesetz (BeurkG) vom 28. August 1969 (BGBl. I S. 1513), das zuletzt durch Artikel 5 des Gesetzes vom 8. Oktober 2023 (BGBl. 2023 I Nr. 271) geändert worden ist.

before a German notary is no longer mandatory - everything can now be done online - but notarial involvement remains compulsory. German notaries are authorized to carry out all necessary verification procedures via a dedicated video communication system operated exclusively by the Federal Chamber of Notaries;<sup>55</sup> no other systems may be used.<sup>56</sup>

This requirement has already led to an interesting and controversial court decision, albeit in a slightly different context. In October 2023, a German GmbH applied to a local commercial registry court (*Amtsgericht (AG) Berlin-Charlottenburg*) to record a change of its business address. The required documentation had been notarized by an Austrian notary.<sup>57</sup> The registry court refused to accept the application, citing the non-conformity of the Austrian procedure with German legal requirements.

The core issue was that the Austrian notary had notarized the handwritten signature of the German GmbH's managing director, which required identity verification via a video communication system. The registry court declined to recognize the Austrian notarization and verification, even though they complied with Austrian law.<sup>58</sup>

The GmbH appealed, arguing that the Austrian online notarization procedure was functionally equivalent to the German one. The appellant contended that the purposes of the requirements in the German Notarial Act (*BeurkG*) were also fulfilled under the Austrian Notarial Act (NO),<sup>59</sup> and that Germany's transposition of the Company Law Directive (on online registration procedures) had been implemented in an overly restrictive manner that should not disadvantage other Member States, such as Austria.

The case was eventually referred to the Berlin Court of Appeal (*Kammergericht (KG) Berlin*), which upheld the registry court's decision. The Court of Appeal found that equivalence between German and Austrian notarization procedures did not exist.<sup>60</sup> It emphasized that German law

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<sup>55</sup> GmbHG, §2(3); BeurkG, §16a(1).

<sup>56</sup> *Jessica Schmidt*, "DiRUG-RefE: Ein Digitalisierungs-Ruck für das deutsche Gesellschafts- und Registerrecht", *Zeitschrift für Wirtschaftsrecht* 3 (2021), 112, 113 cited from *Tom Salemink/Pieter Wolters/Hans De Wulf* (fn. 41), 86.

<sup>57</sup> Compared to Germany, notarization costs are significantly lower in Austria. Moreover, the calculation of notarial fees in Germany is considerably more complex, as it depends on the *value of the matter* (*Geschäftswert*). A change of a company's address may be regarded either as having no economic significance or as a change affecting the company's assets, obligations, and related factors. In the latter case, notarial fees are determined based on the company's share capital. See *Gerichts- und Notarkostengesetz* (Court and Notary Costs Act) vom 23. Juli 1913 (BGBl. I S. 2586), das zuletzt durch Artikel 7 des Gesetzes vom 7. April 2025 (BGBl. 2025 I Nr. 109) geändert worden ist, §105. As a result, notarial costs for filing an application to register a change of address may range between EUR 70 and EUR 250 or more, depending on the federal state.

In Austria, by contrast, the notarial fee including all taxes and surcharges can be as low as EUR 45. See *Notariatsstarifgesetz/NTG* (Federal Act on Notarial Tariffs), BGBl. Nr. 576/1973 idF BGBl.Nr. 381/1975 (as amended), §25; *Gebührengesetz 1957/GebG* (Federal Act on Fees 1957), BGBl. Nr. 267/1957 (as amended), §14 TP 13.

<sup>58</sup> AG Berlin-Charlottenburg, 15 March 2023 – 83 HRB 189507.

<sup>59</sup> *Notariatsordnung* (NO), RGBl. Nr. 75/1871.

<sup>60</sup> KG Berlin, 17 July 2024 – 22 W 25/24.

requires two-factor authentication. First, the notary must read the signer's personal data from a specific electronic identification means (the so-called eID, included in newer German ID cards) and compare these with the data obtained during the video call. This process is typically carried out on the client's side using a smartphone with NFC capability and the official app or web application of the Federal Chamber of Notaries. Second, the notary must read the client's photo from the eID and compare it with the live video image displayed on their screen.<sup>61</sup>

In Austria, by contrast, authentication is much simpler: during the video identification process, the notary visually inspects the signer's identity document as the signer holds it in front of the camera.<sup>62</sup>

The Court of Appeal held that the registry court:

- had no duty to recognize the Austrian notarization;
- was correct in refusing recognition, as this did not violate the freedom to provide services under Article 56 TFEU; and
- had no obligation to recognize the Austrian notarization under conflict-of-law rules, as equivalence was lacking.

In summary, the Court of Appeal ruled that Austrian notarization could be recognized in Germany only if it met all the requirements of German law. The absence of a two-factor electronic identification procedure in Austria was the primary obstacle.<sup>63</sup> Moreover, Austrian notaries may use video communication systems operated by external (commercial) providers, whereas in Germany the system is operated by the Federal Chamber of Notaries (a public institution).

Notably, the Berlin Court of Appeal's decision contradicts an earlier ruling (August 2022) by the Higher Regional Court of Celle (*Oberlandesgericht (OLG) Celle*), which recognized the equivalence between German and Austrian notarization procedures.<sup>64</sup> The outcome of the Berlin case remains to be seen, as the GmbH has appealed to the German Federal Court of Justice (*Bundesgerichtshof (BGH)*), and the case is still pending at the time of writing.<sup>65</sup> Should the Federal Court of Justice affirm the Court of Appeal's decision, it would set a precedent with EU-

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<sup>61</sup> This is required by BeurG, §40a(1), in fact, the procedure is nothing else but a notarization of a qualified electronic signature.

<sup>62</sup> NO, § 69b(2); Notar-E-Identifikations-Verordnung/NEIV (Regulation on Electronic Identification by Notaries), BGBl. II Nr. 1/2019, § 3.

<sup>63</sup> KG Berlin, 17 July 2024 – 22 W 25/24.

<sup>64</sup> OLG Celle, 1 August 2022 – 9 W 62/22. The German Notarial Institute (*DNotI*) already noted that the controversy between the decisions will require a clarification of law from the Federal Court of Justice. See "Beglaubigung im österreichischen Online-Verfahren nicht gleichwertig" <[https://www.dnoti.de/download/?tx\\_dnotionlineplusapi\\_download%5Bnodeid%5D=74a8b82f-d9ed-4250-a6bb-980188294e68&tx\\_dnotionlineplusapi\\_download%5Bpreview%5D=1&cHash=32ae1f3412f110683d865d54b790109b](https://www.dnoti.de/download/?tx_dnotionlineplusapi_download%5Bnodeid%5D=74a8b82f-d9ed-4250-a6bb-980188294e68&tx_dnotionlineplusapi_download%5Bpreview%5D=1&cHash=32ae1f3412f110683d865d54b790109b)> accessed 14 November 2025.

<sup>65</sup> BGH – II ZB 13/24.

wide implications: Germany, the EU's largest jurisdiction, would explicitly refuse to recognize electronic notarization performed in other Member States. It remains to be seen how the case will evolve and whether the question will be referred to the Court of Justice of the EU. In the meantime, the Federal Chamber of Notaries issued a circular where it warned German notaries and registers that foreign online authentications generally do not satisfy German register formalities unless they meet the same standards.<sup>66</sup> Commentators have already observed that attempts to save costs by avoiding the use of a German notary may ultimately prove far more expensive.<sup>67</sup> Needless to say, this could influence the decisions of SMEs from other Member States considering business operations in Germany.

The German case illustrates two points:

(1) The GmbH's argument that Germany implemented the Company Law Directive (as amended by the Digitalisation Directive) in an overly restrictive manner is essentially a reference to gold-plating. The Digitalisation Directive never required the application of two-factor authentication<sup>68</sup> or the exclusive use of software developed and controlled by state authorities. (2) The fact that one Member State employs high-security authentication procedures does not imply that others will adopt similar measures. Taking care of security considerations might in turn result in discrepancies and frustrate the EU harmonisation efforts<sup>69</sup> as can be seen in the German case.

The above case is already complex; however, it should be noted that both countries share German as a common language, and the submission of documents does not require certified (and usually also notarized) translations. Otherwise, a company from another, non-German-speaking Member State seeking to register a branch or subsidiary, or any changes in the commercial registry in Germany would need to invest in translations, apostilles,<sup>70</sup> and most likely the services of an interpreter or translator to facilitate communication with the German notary and other local authorities.<sup>71</sup> The availability of company documents and other paperwork in English, for

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<sup>66</sup> „Beglaubigungen und Beurkundungen in ausländischen Online Verfahren“, Rundschreiben Nr. 4/2024 vom 19.08.2024.

<sup>67</sup> See, for example *Maximilian Hamestuk*, “Kammergericht: Österreichische Online-Beglaubigungen nicht gleichwertig”, FGS Blog, 21.01.2025, <<https://www.fgs.de/news-and-insights/blog/detail/kammergericht-oesterreichische-online-beglaubigungen-nicht-gleichwertig>> accessed 14 November 2025.

<sup>68</sup> This point was also emphasized in *Tom Salemink/Pieter Wolters/Hans De Wulf* (fn. 41), 88 – 90.

<sup>69</sup> Pursuant to Art. 6(2) Regulation (EU) No 910/2014, Member States may recognize “an electronic identification means ... which corresponds to the assurance level low.” In other words, recognition is not mandatory.

<sup>70</sup> Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, O.J. L 200/1 repealed the requirements for legalization (consular certification or apostilization) of public documents submitted by private citizens. Legalization is still required for corporate documents.

<sup>71</sup> *Ajmal Manzil*, EU citizen, Feedback Ref. F3593458, 26 August 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F3593458\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F3593458_en)> accessed 14 November 2025.

instance, would be of little practical assistance. Like in Belgium, Germany did not introduce registration templates in English, German still rules the company formation procedure.<sup>72</sup>

### *2.3. Cross-Border Activities? – Not That Easy*

The German case discussed in the previous section represents a rather frustrating example from the EU's largest market - the market most attractive to businesses from other Member States seeking to scale up cross-border. At the same time, this case represents only the tip of the iceberg. It highlights discrepancies in notarization and electronic authentication. Unfortunately, there are also other factors related to different areas of law. It would be impossible to list all relevant examples in this article; moreover, an attempt to do so was already made in the report commissioned by the Committee on Legal Affairs (JURI) of the European Parliament.<sup>73</sup> Nevertheless, it is useful to mention a few examples that illustrate the depth of the problem - it is not only about the availability of digital tools or company law requirements. The examples provided here go beyond those included in the JURI Committee's report and focus on specific feedback provided by businesses.

When commenting on the European Commission's initiative concerning the 28th regime, the Electronic Money Association (EMA), representing the interests of payment service providers and electronic money issuers, reiterated that "national 'gold-plating' is a recurring concern for companies operating cross-border, even in areas where full harmonization exists."<sup>74</sup>

As an illustration, the EMA referred to the revised Payment Services Directive (PSD2),<sup>75</sup> which permits payment service providers established in one Member State to offer certain limited payment services in another Member State without obtaining new authorization in the host jurisdiction. According to PSD2, a mere notification to the competent authority of the host state should suffice.<sup>76</sup>

According to the French transposition of the relevant PSD2 provisions,<sup>77</sup> providers engaged in certain limited services rendered either within their own premises or within a restricted network

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<sup>72</sup> Tom Salemink/Pieter Wolters/Hans De Wulf (fn. 41), 86.

<sup>73</sup> Apostolos Thomadakis/J. Scott Marcus (fn. 24).

<sup>74</sup> EMA response to the consultation on the European Commission 28th Regime, Feedback Ref. F33071895, 30 September 2025, 3 <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071895\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071895_en)> accessed 14 November 2025.

<sup>75</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (as amended)  
ELI: <http://data.europa.eu/eli/dir/2015/2366/2025-01-17> accessed 14 November 2025.

<sup>76</sup> The so-called "limited network exclusion", see Art. 3(k) PSD2.

<sup>77</sup> Code monétaire et financier (Monetary and Financial Code), Art. L.521-3.

of service acceptors may notify the French Prudential Supervision and Resolution Authority (*ACPR – Banque de France*) of their intention to begin providing services in France based on the exclusion provision. In practice, however, the situation differs. The EMA has emphasized that France is a Member State where the competent authorities tend to “obtain an overly broad amount of information, sometimes comparable to an authorization application for a regulated service.”<sup>78</sup>

The EMA also raised concerns regarding Italy, where providers of investment services are required to maintain a local presence, a requirement which, in the Association’s view, “undermines the freedom to provide services across the EU.”<sup>79</sup>

In its comments, the EMA also mentions the burdensome reporting requirements duplicating among different Member States, “discrimination” of bank accounts located in other Member States, different forms of localization requirements.<sup>80</sup>

It will also be useful to mention AML and KYC regulations, which often frustrate efforts to simplify the remote electronic formation of businesses. Estonia provides a good example. The small Baltic country is frequently praised for its highly efficient system of online company registration and its e-Residency program,<sup>81</sup> which is available to both EU and non-EU residents.

The general requirement to translate foreign documents into Estonian<sup>82</sup> is waived when using the e-Residency route to set up an Estonian limited liability company (*Osajuhing – OÜ*).<sup>83</sup> However, once foreign founders establish an Estonian OÜ, they often face difficulties obtaining an Estonian VAT number or opening a local bank account for the newly established company.<sup>84</sup> In such cases, the company must prove its ties to Estonia (for example, by demonstrating local customers). Needless to say, this can be challenging for many foreign SMEs seeking to enter the Estonian market.

Opening an Estonian bank account remotely using only an e-Residency ID<sup>85</sup> will not work, the personal presence of the company’s authorized representatives at an Estonian bank branch is

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<sup>78</sup> EMA response (fn. 74), 3; see also Position de l’ACPR relative aux notions de « réseau limité d’accepteurs » et d’« éventail limité de biens et services » (Position 2022-P-01), <<https://acpr.banque-france.fr/fr/publications-et-statistiques/publications/position-2022-p-01-de-lacpr-relative-aux-notions-de-reseau-limite-daccepteurs-et-d-evenail-limite>> accessed 14 November 2025.

<sup>79</sup> EMA response (fn. 74), 3.

<sup>80</sup> Ibid., 4 – 10.

<sup>81</sup> See <<https://www.e-resident.gov.ee/>> accessed 14 November 2025.

<sup>82</sup> Äriseadustik (Commercial Code), RT I, 09.05.2017, 2, §27; Äriregistri seadus (Commercial Register Act), RT I, 23.12.2022, 24, §8.

<sup>83</sup> “5 steps to register a company online,” Republic of Estonia E-Residency, 29 October 2025, <[https://learn.e-resident.gov.ee/hc/en-gb/articles/360000624838-5-steps-to-register-a-company-online?utm\\_source=chatgpt.com](https://learn.e-resident.gov.ee/hc/en-gb/articles/360000624838-5-steps-to-register-a-company-online?utm_source=chatgpt.com)> accessed 14 November 2025.

<sup>84</sup> Hannah Brown, “Business banking options for e-residents”, Republic of Estonia E-Residency, 9 June 2022, <<https://www.e-resident.gov.ee/blog/posts/business-banking-options-for-e-residents/>> accessed 14 November 2025.

<sup>85</sup> A special ID card can be obtained via Estonian diplomatic and consular missions abroad.



often required.<sup>86</sup> Whether the foreign founder wants it or not, it is usually essential to have an Estonian “contact person” if the company’s registered address is in another Member State.<sup>87</sup> This, in turn, requires additional effort and expense to arrange with Estonian businesses that provide such “representation services.”

### 3. Digitalization Directive 2.0

The First Digitalisation Directive was described as “the first step towards digitalisation in the area of company law.”<sup>88</sup> It was expected that its transposition would bring “significant cost savings” and “make cross-border business easier for SMEs.”<sup>89</sup> However, as can be seen from the examples above, these expectations did not fully materialize. In 2023, the Commission already announced its intention to further expand and upgrade the use of digital tools and processes, and to simplify administrative and judicial procedures to facilitate the cross-border expansion of businesses by submitting a proposal to amend respective *acquis*.<sup>90</sup>

#### 3.1. More Connected, More Digital

In December 2024, the Digitalisation Directive 2.0<sup>91</sup> was adopted. It introduced new amendments to the Company Directive and requires Member States, *inter alia*, to:

- (1) enable the formation of limited liability companies and partnerships (and their branches) fully online, without the need to be physically present before the competent authority of the Member State;<sup>92</sup>
- (2) reduce duplication of formalities and reiterate the “once-only” principle, ensuring that information already submitted to a national company register does not need to be resubmitted in another Member State;<sup>93</sup>

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<sup>86</sup> Adam Rang, “Opening a Bank Account in Estonia”, Unicount.eu, 14 July 2025, <<https://unicount.eu/en/opening-a-bank-account-in-estonia/>> accessed 14 November 2025.

<sup>87</sup> Äriregistri seadus, § 24(2); Merli Kesküla, “When does an Estonian company have to appoint a contact person?”, Grant Thornton, 5 July 2024, <<https://www.grantthornton.ee/en/insights1/when-does-an-estonian-company-have-to-appoint-a-contact-person/>> accessed 14 November 2025.

<sup>88</sup> Marie-Astrid Huemer, “Revision of Directive 2019/1151/EU on digital tools and processes in company law”, April 2023, PE 740.247, 1.

<sup>89</sup> Ibid., 8.

<sup>90</sup> Proposal for a Directive of the European parliament and of the Council amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law, 29 March 2023, COM(2023) 177 final.

<sup>91</sup> Directive 2025/25.

<sup>92</sup> Recitals 2, 6, 12 Directive 2025/25.

<sup>93</sup> Recitals 10, 12 Directive 2025/25.



- (3) introduce a standardized electronic EU Company Certificate, valid across all Member States,<sup>94</sup> using a common template in all official EU languages<sup>95</sup> and minimizing the need for legalization and certified translation;<sup>96</sup>
- (4) establish a digital EU Power of Attorney (PoA), allowing companies to authorize persons to act on their behalf in corporate procedures without the need to engage local notaries or to apostille/legalize and/or translate such PoA into the local language.<sup>97</sup> Authentication of such PoA must be done by using eIDAS 2.0.-compliant trust services.<sup>98</sup>
- (5) assign a newly registered company/partnership a pan-EU identification number (EUID) to facilitate electronic communication between Member States' commercial registers;<sup>99</sup>
- (6) further improve interoperability and connectivity of national business registers within the BRIS network.<sup>100</sup>

The central aim of the new Digitalisation Directive 2.0 is to eliminate the practice whereby authorities, banks, and other institutions in Member States repeatedly request the same documents, often requiring authentication and certified translations, when those documents were issued in another Member State.

According to the Directive's provisions, such information should instead be retrievable directly from the commercial register. If the information originates from another Member State, it must be accessible via the BRIS, ensuring that the burden of providing the information does not fall on the company.<sup>101</sup> As far as the EU Company Certificate and the electronic PoA are concerned, the Directive explicitly states that both must be compatible for use with the European Digital Identity Wallet.<sup>102</sup>

To address the continued practice of requiring local authentications and certified translations, the Directive stipulates that when copies or extracts of documents and information are provided and certified as true copies by the register of an issuing Member State, including certified translations, host Member States must ensure that these documents are exempt from all forms of

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<sup>94</sup> Recitals 10, 22, 24, 28 Directive 2025/25; Arts. 13a(13), 13g(2a), 16b, 16d(2), 16e, 16g, 24(2)(d), 28a(c) (as amended) Directive (EU) 2017/1132.

<sup>95</sup> Recital 28 Directive 2025/25.

<sup>96</sup> Recital 32 Directive 2025/25.

<sup>97</sup> Recitals 27, 28, 42 Directive 2025/25; Arts. 16c, 16d(2), 24(2)(e) (as amended) Directive (EU) 2017/1132.

<sup>98</sup> Regulation (EU) No 910/2014.

<sup>99</sup> Recitals 16, 19, 33 Directive 2025/25; Arts. 16(1), 16b, 18(4)(5), 19a, 19b (as amended) Directive (EU) 2017/1132.

<sup>100</sup> Recitals 10, 33 Directive 2025/25. See also *Catherine Cathiard/Rémi Dalmau et al.*, "Droit international et européen des sociétés (juill. 2024 – oct. 2025)", *Bulletin Joly Sociétés* Novembre 2025, 32 – 34.

<sup>101</sup> Recitals 11, 12, 13, 34 Directive 2025/25.

<sup>102</sup> Arts. 16b(6), 16c(1) (as amended) Directive (EU) 2017/1132. For more information on the European Digital Identity Wallet, see Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework, O.J. L 2024/1183; <<https://ec.europa.eu/digital-building-blocks/sites/spaces/EUDIGITALIDENTITYWALLET/pages/694487738/EU+Digital+Identity+Wallet+Home>> accessed 14 November 2025.

legalisation and similar formalities.<sup>103</sup> By the same token, Member States must get rid of the practice to require legalisation and/or similar formalities for notarial documents issued in another Member State.<sup>104</sup>

### *3.2. Will the Promise Hold?*

In short, the Digitalisation Directive 2.0 looks promising. The deadline for its transposition is 31 July 2027, with an additional calendar year before its provisions begin to apply in practice.<sup>105</sup> It is still too early to tell how diverse its national transpositions across the 27 Member States will be. Certainly, it will not resolve all the challenges businesses face when crossing borders to exercise their freedom to provide services in another Member State. Yet, it holds the promise of addressing at least some of those issues. Saving time and money on authenticated and translated paperwork could make life easier for small companies expanding across borders.

It remains to be seen how “resistant” national transpositions will be to gold-plating practices and the involvement of vested interests from local stakeholders. It would be naïve to expect that all Member States will follow the spirit of the new Directive to the very last letter. It remains an open question whether, for example, the German transposition will eliminate the very possibility of the situation discussed in Section 2.2.

By the same token, the new Directive will not eliminate the need to submit documents to banks in the host Member State to comply with KYC and AML rules. However, it will be of great practical help to SMEs if banks are required to consult trade register information online and/or obliged to accept paperwork duly certified in the issuing Member State without any additional formalities (for example, it is not difficult to imagine a situation: “We cannot accept this document in the Netherlands because it was authenticated and stamped in Portugal; we need Dutch stamps on it”).

The idea of an electronic PoA for company representatives and an EU Company Certificate is appealing, but it is not difficult to foresee potential complications. How prepared will banks and other financial institutions in the host Member State be to connect to all the necessary registers to verify the authenticity of such electronic documents? And who would bear the costs of verification if a bank has doubts?

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<sup>103</sup> Art. 16d(1) Directive (EU) 2017/1132.

<sup>104</sup> Art. 16d(3) Directive (EU) 2017/1132.

<sup>105</sup> Art. 4(1)(2) Directive 2025/25.

#### 4. The 28<sup>th</sup> Regime

Before discussing the 28th regime proposal, it is essential to recall that broad public debate on its necessity began after the adoption of the Digitalisation Directive 2.0. President von der Leyen delivered her speech in Davos on 21 January 2025,<sup>106</sup> eleven days after the Directive’s official publication.<sup>107</sup>

The main elements of the new proposal were first publicly outlined with the release of the Repasi draft report in June 2025.<sup>108</sup> Further details were added a month later in reports prepared for the European Parliament’s JURI Committee.<sup>109</sup>

Among other things, the proposal for the 28th regime suggests introducing:

- (1) a special legal form for companies — the European Start-Up and Scale-Up Company (ESSU) — to be universally recognized across all EU Member States;<sup>110</sup>
- (2) simplified and expedited ESSU formation and registration, applying the “once-only” principle and allowing for online procedures and electronic submission of all required documentation;<sup>111</sup>
- (3) a Union-level ESSU digital register (complementing national company registers) with a unified company identifier to facilitate cross-border recognition across the Member States.<sup>112</sup>

It is not difficult to notice that these proposals bear a certain resemblance to the provisions of the Digitalization Directive 2.0, if not even “overlap” with them. As noted in one of the JURI Committee reports, the measures under the Directive

“collectively improve transparency, legal certainty, and administrative efficiency, but they stop short of creating a centralized EU-level approach to the registration of companies. As such, while Directive 2025/25 strengthens the digital infrastructure of company law, the 28<sup>th</sup>

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<sup>106</sup> Special Address by President von der Leyen (fn.11).

<sup>107</sup> Directive 2025/25 was published in the Official Journal on 10 January 2025.

<sup>108</sup> 2025/2079(INL). For a brief overview of the entire idea see *Catherine Cathiard/Rémi Dalmau et al.* (fn. 100), 31 – 32.

<sup>109</sup> *Florian Möslin*, Simplification of Registration of Companies in the 28<sup>th</sup> Regime – Towards a Single Digital Company Register, July 2025, PE 776.000; *Anne Sanders*, The Scope of the 28<sup>th</sup> Regime – A Legal Framework for Innovation the European Way”, July 2025, PE 776.311.

See also *Apostolos Thomadakis/Judith Arnal/J. Scott Marcus*, Establishing the 28<sup>th</sup> Regime in Europe - A Unified Legal Framework to Support Growth and Business: Study”, 1 October 2025.

<sup>110</sup> 2025/2079(INL), para. 9.

<sup>111</sup> 2025/2079(INL), para. 11.

<sup>112</sup> 2025/2079(INL), para. 12, 13.

regime represents an opportunity to move decisively beyond coordination – towards a truly supranational, uniform system of company registration”.<sup>113</sup>

Given the above, it is impossible to analyse the 28th regime in isolation from the Digitalisation Directive 2.0. At the same time, this demonstrates how challenging the very task to have this new regime is, even though the registry component represents only one part of the highly ambitious concept behind the new regime. The proposal also encompasses harmonized equity-like debt instruments, dispute resolution mechanisms, and measures against “killer acquisitions.”<sup>114</sup> Moreover, the public consultation mentioned in Section 2 clearly demonstrated a strong demand among stakeholders to include areas such as tax law,<sup>115</sup> insolvency and liquidation,<sup>116</sup> and cross-border staff hiring,<sup>117</sup> among others. Below, the author will analyse the proposal’s potential regarding further harmonisation of company registration focusing on the available draft proposal and the available public consultation feedback.

#### *4.1. ESSU a Superficial Invention or a Real Necessity?*

Repasi draft report is somewhat confusing on the very nature of an ESSU. It states that the new 28<sup>th</sup> regime should cover only limited liability companies not listed on the stock market<sup>118</sup> and that the corporate form to be covered by the new regime shall be ESSU “to be added to existing national corporate form abbreviations.”<sup>119</sup> The draft then continues by clarifying that

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<sup>113</sup> Florian Mösslein (fn. 109), p. 23.

<sup>114</sup> 2025/2079(INL), para. 18, 22 – 23.

<sup>115</sup> See, for example, response by the Spanish Bioindustry Association (ASEBIO), “Call for Evidence for an Impact Assessment: 28<sup>th</sup> Regime – EU Corporate Legal Framework”, Feedback Ref. F33071564, 30 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071564\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071564_en)> accessed 14 November 2025; response by STARTUP VERBAND, see „Stellungnahme des Startup- Verbands zum geplanten „28. Regime“ (Referenzmodell „EU-Inc““, Feedback Ref. F33071716, 30 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071716\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071716_en)> accessed 14 November 2025; German Notaries' Association (*Deutscher Notarverein e.V.*), Feedback Ref. F33071816, 30 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071816\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071816_en)> accessed 14 November 2025.

<sup>116</sup> ASEBIO (fn. 115); response by DIGITALEUROPE, “The 28<sup>th</sup> Regime: Unlocking Growth With European Rules”, Feedback Ref. F33071556, 30 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071556\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071556_en)> accessed 14 November 2025.

<sup>117</sup> Response by NewSage ApS, Feedback ref. F33071883, 30 September 2025, <[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071883\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071883_en)> accessed 14 November 2025.

<sup>118</sup> 2025/2079(INL), para. 8.

<sup>119</sup> 2025/2079(INL), para. 9.

“the ESSU should build on corporate forms established under national law. The Member States should be free as to whether they choose to allow existing national corporate forms to convert into an ESSU or to create a new national corporate form. The founders or the owners of a national corporate form should be able to voluntarily opt in to the new regime, which would allow for the use of the company label ‘ESSU’”.<sup>120</sup>

Does it mean that only limited liability companies (such as the German GmbH, the French, Belgian, or Luxembourgish SARL, or the Estonian OÜ, for example) will be able to use the ESSU concept? Do “corporate forms established under national law” mean that the possibility will not be restricted to limited liability companies only? Does ESSU imply that it is a completely new corporate form, or does it mean that it remains a limited liability company as before, but simply enjoys special treatment under the 28th regime? The list of questions could go on, given the wording of the Repasi draft report.

It is not very helpful to consult another report elaborating on the scope of the 28<sup>th</sup> regime and referring to “a European supranational limited company or harmonised company law.”<sup>121</sup> Of course, it remains to be seen what the Commission will say in the final report and the draft instrument (whether a directive or a regulation), not available at the time of writing. But in any case, the idea to have an ESSU as a new corporate form seems to be unrealistic.

#### *4.2. Common Denominator - Impossible to Agree*

The draft Repasi report insists on introducing the new 28<sup>th</sup> regime through “a maximum harmonising directive” based on Arts. 50 and 114 TFEU.<sup>122</sup> This idea caused a lot of criticism from stakeholders during the public consultation on the proposal. The German Bar Association, for example, noted that

“The focus of the 28th Regime should clearly be on the creation of a new, harmonised company form for Europe. However, a significant improvement would, only be achieved if the new company form is genuinely uniform and does not allow Member States any options (e.g., in implementation). Such options would significantly dilute the intended objective”.<sup>123</sup>

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<sup>120</sup> Ibid. Annex to the Motion for a Resolution: Recommendations as to the Content of the Proposal Requested, p. 7.

<sup>121</sup> *Anne Sanders* (fn. 109), p. 7.

Report prepared for the EESC goes as far as suggesting two limited company forms: a European private limited company and a European public limited company. See *Apostolos Thomadakis/Judith Arnal/J. Scott Marcus* (fn. 109), p. 28 - 29.

<sup>122</sup> 2025/2079(INL), 12.

<sup>123</sup> Response by Deutscher Anwaltverein (DAV), see “Position Paper on the Public Consultation of the European Commission on the 28th Regime – a Single Harmonized Set of Rules for Innovative Companies Throughout the EU”, Position Paper No. 61/2025, Feedback Ref. F33071904, 30 September 2025, 7,

In other words, the association has diplomatically hinted at a regulation. Similar views were expressed by the European Law Institute (ELI),<sup>124</sup> *SMEunited*,<sup>125</sup> the European Startup Network (ESN),<sup>126</sup> and numerous other stakeholders who provided their feedback during the public consultation on the 28th regime proposal.<sup>127</sup> And indeed, one cannot agree more with the view that another directive would only contribute to further fragmentation of the regulatory playing field.<sup>128</sup> 27 varying ESSUs are definitely not what SMEs considering cross-border scaling or a simple move would like to see. It seems that some MEPs are leaning toward the idea of adopting a regulation instead of a directive.<sup>129</sup> However, it remains to be seen who will prevail and what the final wording of the respective legislative proposal will look like, especially given the complexities of the relevant legal basis under the Treaties.<sup>130</sup>

Regardless of the final choice between a directive or a regulation, one thing is clear: reaching an agreement among 27 Member States on a new corporate form will be extremely difficult, if not impossible. National differences in company law will inevitably take their toll. How can one reconcile varying management structures, capital requirements, and strict rules on co-determination (Germany being a prime example)?

Even if we were to assume that consensus is hypothetically achievable, one can easily foresee a dilution of harmonization efforts should a directive be adopted, as it would require national transposition. In the case of a regulation, the example of the *Societas Europaea* (SE)<sup>131</sup> comes to mind. After nearly a quarter of a century, SEs remain relatively uncommon across the EU; quite a number have failed or exist only on paper.<sup>132</sup> The analogy is even more relevant considering that the SE was designed for large companies with the monetary and human resources necessary to overcome the various complications that may arise in the course of cross-

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<[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071904\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071904_en)> accessed 14 November 2025.

<sup>124</sup> “ELI Response to the European Commission’s Public Consultation on 28th regime – a single harmonized set of rules for innovative companies throughout the EU”, 30 September 2025, 7,

<[https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Response\\_to\\_the\\_EC\\_Public\\_Consultation\\_on\\_28th\\_Regime.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Response_to_the_EC_Public_Consultation_on_28th_Regime.pdf)> accessed 14 November 2025 .

<sup>125</sup> “Making the 28<sup>th</sup> Regime work for SMEs” (fn. 28).

<sup>126</sup> Comments by Allied for Startups, ESN, EU Inc, see “Half-Measures Never Build a Champion: Joint Statement: MEP Repasi Report on the 28<sup>th</sup> Regime”, 15 July 2025, <[https://alliedforstartups.org/wp-content/uploads/Joint-Statement\\_Half-Measures-Never-Built-a-Champion-1.pdf](https://alliedforstartups.org/wp-content/uploads/Joint-Statement_Half-Measures-Never-Built-a-Champion-1.pdf)> accessed 14 November 2025.

<sup>127</sup> Fn. 26 supra.

<sup>128</sup> See also *Francisco Garcimartin/Christoph Paulus*, “The 28<sup>th</sup> insolvency law: Reflections on a *lex concursus eoropaea*”, *International Insolvency Review* 2025, 428, 431.

<sup>129</sup> “Amendments 1 – 344: Draft report Rene Repasi. The 28<sup>th</sup> Regime: a new legal framework for innovative companies”, PE773.199v01-00, Amendment 38.

<sup>130</sup> *Jacques Ziller*, *Harmonisation of Corporate Law Under the 28<sup>th</sup> Regime and What Other Aspects Should Be Covered in View of the Competencies of the Union*, July 2025, PE 776.160.

<sup>131</sup> Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), O.J. L 294/1.

<sup>132</sup> See, for example, *Berndt Keller/Sophie Rosenbohm*, “The European Company: Original Expectations and Deficiencies of Implementation”, *European Journal of Industrial Relations* 2020, 23.

border business. Smaller players, such as newly established micro or small enterprises, are an entirely different matter in this regard. In this context, it is impossible to overlook the example of the European private company (*Societas Privata Europaea*), and EU-level proposal that has formally remained pending since 2008, with no visible progress.<sup>133</sup>

In the author's view, the most realistic way forward would be to retain the national corporate form, such as a limited liability company, and add "ESSU" to its name to indicate that the company has opted into the 28th special regime, granting it automatic recognition across the other 27 Member States without additional red tape. That alone would already represent a breakthrough, making the idea of the Single Market more tangible than it is today.

#### *4.3.Simplified and Expedited Formation and Registration – Realistic?*

Formation and registration procedures are embedded in national company laws and vary considerably among the Member States. The existing procedures differ in terms of registration authorities (special courts, company registrars), the need to involve notaries, language requirements, authentication processes, and other factors. Harmonizing 27 distinct procedures will be as challenging as agreeing on a new company form that is universally recognized across all Member States (see the section above).

The two generations of digitalization directives mentioned in Sections 2 and 3 aim at harmonization and improved digital connectivity between Member States, with businesses being the primary beneficiaries of these reforms. As noted in Section 3.2, it remains to be seen whether Digitalization Directive 2.0 will be successful.

The idea of a 28th regime appears to build on these efforts by introducing special procedures for ESSUs. However, the proposal raises several fundamental questions:

1. Will the new procedure be built upon existing national procedures and practices, or will it be completely new and separate? For example, in Germany, the domestic GmbH is to be formed and registered entirely differently from the EU-wide GmbH ESSU. This issue alone presents numerous difficulties and complications to be resolved.
2. What will be the language of the new procedure? For maximum convenience and to facilitate recognition across all 27 Member States, the use of English would be most advantageous. However, will all Member States be prepared to accept this? The complex case of Belgium serves as an illustrative example. Insisting on the national language of each Member State would necessitate translation, authentication, and related processes,

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<sup>133</sup> Proposal for a Council Regulation on the statute for a European private company, 25 June 2008, COM(2008) 396 final.

ultimately leaving SMEs to bear the resulting administrative burdens. In the end, they might not be better off than they are today.

3. Will Member States be ready to bear the costs associated with training registry staff, implementing new software, and adopting new standards? In turn, it might lead to significant delays in the implementation.

The ambition behind the idea is high. Introducing a fast, English-language procedure governed by an EU regulation, with all necessary documentation issued in English, while ensuring that other Member States can verify and accept all information without further questions, seems brilliant on paper. However, if this idea begins to be discussed at the EU level, disagreements<sup>134</sup> among Member States are likely to emerge immediately.

#### *4.4. Union-Level ESSU Digital Register – Challenging Digits*

A Union-level digital register with a unified digital identity and company identifier for ESSUs is a logical proposal, given the need to simplify cross-border recognition and company operations. At the time of writing, several reports and opinions include recommendations to use blockchain technologies, the EU Digital Identity Wallet, electronic signatures, and various other digital tools (such as AI and digital verification for cross-border data exchanges, introducing a customer due diligence passport as a digital file).<sup>135</sup> However, none of these documents mentions a detail that, in the author’s view, is crucial to illustrate the complexity of the proposed innovation: the difference in Member States’ standards for machine-readable company identifiers. The table below gives a comparison from only six Member States:

<b>Member State</b>	<b>National trade/commercial register value</b>	<b>Short name used within the Member State</b>
Austria	236674 X	FB-Nr.
Estonia	99999999	rg-kood
France	999999999	SIREN

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<sup>134</sup> For a brief analysis of the existing discrepancies and complications, see *Florian Mösslein* (fn. 109).

<sup>135</sup> Ibid, p. 38 – 39; ELI (fn. 124), 11 – 13; response by Axeptio, “Appel à contribution: 28e régime – Cadre juridique européen pour les entreprises”, Feedback Ref. F33071350, 29 September 2025, < [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071350\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071350_en)> accessed 14 November 2025; response by European Crypto Initiative (EUCI), see “Consultation Response to the Proposed 28th Regime”, Feedback Ref. F33071764, 30 September 2025, < [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071764\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14674-28th-regime-a-single-harmonized-set-of-rules-for-innovative-companies-throughout-the-EU/F33071764_en)> accessed 14 November 2025; EESC (fn. 109), 30.



Germany	HRB 247669 X	HRB
Ireland	9999999	CRO number
Luxembourg	X99999999	RCS

**Table 1.** Numerical differences in company identifiers <sup>136</sup>

The examples above focus on incorporated businesses only (such as limited liability companies); applicable numbering systems and the number of digits may vary for branches, partnerships, cooperatives, and sole proprietorships. In short, it is evident that even among limited liability companies there are significant differences in number design across the six examples presented above. The number of digits varies, and some countries include letters.

The system of the European Unique Identifier (EUID) envisaged in Regulation (EU) 2021/1042<sup>137</sup> and the Digitalization Directive 2.0<sup>138</sup> is not very unified either. It includes a combination of identifiers for the issuing Member State and the trade register name as well as the company's identifier in the trade register. The table below based on the same six Member States illustrates the complexity:

Member State	EUID value
Austria	ATBRA.999999-999
Estonia	EEARIREG.99999999
France	FR9999.445942519
Germany	DEK9999X.HRB999999
Ireland	IECRO.9999999
Luxembourg	LURCSL.B999999

**Table 2.** Numerical differences in company EUID <sup>139</sup>

As one can see, the EUID does not resolve the differences in styles. On the other hand, the system has long been used to interconnect business registers within the BRIS network, and it has been approved and tested in practice.

<sup>136</sup> All numbers are fictional, and any coincidences with real businesses are purely coincidental. Examples are based on the European Commission's data, see "Company identifier (machine readable)", <<https://wikis.ec.europa.eu/spaces/UDBBIS/pages/90278474/Company+identifier+Machine+readable>> accessed 14 November 2025.

<sup>137</sup> Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244, O.J. L 225/7.

<sup>138</sup> Fn. 99 supra.

<sup>139</sup> All numbers are fictional, and any coincidences with real businesses are purely coincidental. Examples are based on European E-Justice Portal, "Business registers – search for a company in the EU", <[https://e-justice.europa.eu/topics/registers-business-insolvency-land/business-registers-search-company-eu\\_en](https://e-justice.europa.eu/topics/registers-business-insolvency-land/business-registers-search-company-eu_en)> accessed 14 November 2025; "EUID – search a company's information, fund-xp.lu, <<https://fund-xp.lu/euid-search/>> accessed 14 November 2025.

This raises questions such as:

1. Will there be a common EU-wide standard for the ESSU company identifier?
2. If the new standard is to be developed, will it be different from the pan-EU EUID?
3. If the number assigned by each Member State is to be based on its existing national standard, how can a unified register be designed to accommodate such differing systems and approaches? This is precisely where the number of digits and the inclusion of letters will play a crucial role.

As noted in previous sections, it will not be easy for Member States to reach an agreement on this seemingly simple yet highly technical issue. In the case of adopting a common standard (for example, similar to the already existing EUID or EU VAT numbers), the primary challenge for Member States will be adapting to its domestic use. Conversely, if existing national standards are maintained, the difficulties in establishing a unified register will be immediately apparent. The Repasi draft report once again emphasizes the need to complement and extend the existing BRIS network;<sup>140</sup> however, it unsurprisingly provides no guidance on how to reconcile the existing numerical disparities. It has to be decided and agreed upon by the Member States. On top of that, it will be important to decide on the language or languages to be used for maintaining this new unified register.

The challenges outlined above represent only a small fraction of those that the proposal for the new 28th regime will face. However, it is evident that even this small fraction is serious enough to raise a fundamental question: how realistic is it to achieve the goals declared by President von der Leyen?

In conclusion, the author would like to pose one final, fundamental question: who will inform the primary stakeholders – SMEs - about the availability of the new regime and the fact that they can choose between the applicable national law and this new supranational regime? Will it be the notary responsible for notarization and registration procedures when incorporating a new limited liability company? Will it be the commercial registry court? Perhaps national chambers of commerce or business associations? And how prepared will they be to do so?

This factor is extremely important, considering that smaller businesses are often unaware of and unprepared to use the legal tools available to them.<sup>141</sup> The capacity of Member States to educate, train, and maintain general awareness is therefore crucial.

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<sup>140</sup> 2025/2079(INL), para. 12.

<sup>141</sup> This can be illustrated by small businesses' low awareness of preventive restructuring tools allowing them to restructure their debts and keep the business as a going concern instead of insolvency and liquidation. See, for example, *Jonathan McCarthy*, "A Class Apart: The Relevance of the EU Preventive Restructuring Directive for Small and Medium Enterprises", *European Business Organization Law Review*, 895, 906 (general lack of awareness among SMEs); *Ionel Didea/Diana Maria Ilie*, COVID-19 – The Catalyst of a Legislative Reform in the Field of Insolvency, in: *Thierry Bonneau/Cristina Elena Popa Tache* (eds.), *Innovation and Development in*

## 5. Conclusion

The 28th regime proposal reflects the EU's renewed ambition to overcome the persistent fragmentation of company law and to offer SMEs a genuinely supranational legal framework. Building on the progress achieved through the First and Second Digitalisation Directives, it aims to make cross-border establishment and operation simpler, faster, and more predictable. Yet, as the analysis in this paper has shown, the gap between aspiration and implementation remains considerable.

The EU's intentions are commendable. At Union level, the need to ensure genuine, easy access to the Single Market for SMEs is widely recognised, and efforts are being made to harmonise national laws and eliminate a variety of domestic barriers. However, at the level of some Member States, these efforts are at times diluted or even obstructed. The persistent diversity of national company laws, authentication procedures, and administrative practices continues to impede the full realisation of the Single Market's potential. The examples discussed (ranging from Germany's restrictive approach to electronic notarisation to the linguistic and procedural constraints in Belgium and other Member States) illustrate how deeply entrenched national particularities can frustrate even well-intentioned harmonisation initiatives.

The Digitalisation Directive 2.0., with its rather ambitious introduction of electronic documents and the "once-only" principle, offers significant potential for SMEs. Yet the ultimate effectiveness of this framework will depend heavily on how Member States transpose it, and where new friction points may emerge in practice.

Similarly, the ESSU concept introduced by the new 28th regime proposal, while promising in theory, risks adding yet another layer of complexity at the negotiation stage alone, given the sheer number of issues that would need to be agreed upon by the Member States.

At the same time, digitalisation by itself cannot overcome the cultural and institutional inertia that has long characterised the EU's regulatory landscape. Effective implementation of the 28th regime will require not only legislative precision and political consensus but also sustained investment in administrative capacity-building and business education. SMEs, the very actors the initiative seeks to empower, must be informed, trained, and supported to make meaningful use of the new framework. This demands a genuine commitment by Member States to invest

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Business Law, 2021, p. 112, 130 (problems with awareness in Romania); *Morten Møller/Piya Mukherjee*, "Early Warning Systems in Denmark and Europe", *Eurofenix*, Summer 2019, No. 76, 20, 21 (reluctance of business owners to act and need to foster a new culture among entrepreneurs); *Padraig Gallagher/Tara Doherty/Simon Stevens*, "Early Warning Systems for Small Business: Insights from Across Europe", *Journal of Enterprise Culture* 2022, 453, 461, 464 (the problem with already existing warning tools and managers'/owners' unwillingness to use them; the need to improve the owners' managerial and accounting skills; the need to increase awareness about the existing tools).

resources in educating stakeholders: SMEs, business associations, and especially national authorities and officials responsible for business registration, who are often reluctant to engage with matters lying outside their traditional national company-law frameworks.

Ultimately, the success of the 28th regime will depend on whether it can convert regulatory harmonisation from a formal objective into a practical reality. If it succeeds, it may yet become a cornerstone of a more integrated, innovative, and globally competitive European economy. If not, it risks joining the long list of well-intentioned but insufficiently implemented EU initiatives.