A closer look at...
Harmonising certain aspects of insolvency law

Emmanuelle Inacio takes a closer look at the agreement on the proposal for a Directive harmonising certain aspects of insolvency law

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The European Parliament and the Council (the co-legislators) reached a political agreement on the proposal for a Directive harmonising certain aspects of insolvency law on 19 November 2025.[1]

The final compromise text was confirmed by the Council and circulated to the European Parliament on 5 December 2025 . The Committee on Legal Affairs (JURI) of the European Parliament approved the final compromise text on 11 December 2025. If the European Parliament in plenary adopts its position at first reading without any amendments, the Council will subsequently approve it, and the directive will be formally adopted. The plenary sitting for the first reading is provisionally scheduled to take place on 9 March 2026.

The final text substantially revises the Commission's proposal for a Directive harmonising certain aspects of insolvency law, reflecting the outcome of negotiations among Member States.

Significantly, Title VI on simplified winding-up proceedings for microenterprises has been removed from the final text. As a reminder, provisions for liquidating insolvent microenterprises were introduced to strengthen procedural efficiency. According to the European Commission, the cost of ordinary insolvency procedures for these companies is prohibitively high and the possibility to benefit from a debt discharge would enable them to unblock entrepreneurship capital for new projects. Although the provisions of the original Directive proposal concerning simplified winding-up proceedings only apply to microenterprises, Member States could extend their application also to small and medium-sized enterprises that are not microenterprises.

The original Directive proposal provided that an insolvency practitioner will only be appointed if (a) the debtor, a creditor or a group of creditors requests such an appointment and (b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment. In practice, the appointment of an insolvency practitioner will never occur if this provision is adopted. Indeed, most of the insolvency proceedings in Member States where insolvency practitioners are appointed are winding-up proceedings of microenterprises which could harm this profession... Moreover, this provision is inconsistent with the ones strengthening the tracing of assets belonging to the insolvency estate since only an insolvency practitioner can request the courts to access bank account registries or access registries relating to the debtor's assets.

Thus, access to this information would not be possible in the context of simplified winding-up proceedings for micro-enterprise and the value of the insolvency estate for creditors would not be protected. Therefore, Title VI has been removed from the final compromise text due to concerns over its practical applicability, and its potential impact on existing national systems. However, in order to promote an efficient and inclusive insolvency framework that supports entrepreneurship and economic renewal, Member States should be able to maintain or introduce simplified winding-up proceedings for microenterprises.

The 28th Regime: A new legal framework for innovative companies

On 11 December 2025, with 18 votes in favour, four against and one abstention, the Committee on Legal Affairs (JURI) of the European Parliament approved series of recommendations for an upcoming Commission proposal on a new legal framework to support innovative companies, known as the "28th corporate regime"[2].

SMEs, start-ups, and scale-ups in the EU face fragmented and complex regulatory frameworks, which hinder financing, scaling, and global competitiveness. Current EU corporate forms are insufficient for these companies, creating a need for a simplified, harmonised legal framework that ensures clarity, legal certainty, and cross-border recognition. Such a framework would facilitate access to capital, talent, and markets, support innovation, prevent premature foreign acquisitions, and promote long-term growth. Strengthening predictability and harmonisation across Member

States is essential for the EU to remain a competitive and sustainable environment for entrepreneurship and innovation.

General principles

The European Parliament stresses that the 28th regime should be ambitious in substance and in form and the same throughout the EU. Therefore, Member States should not be allowed to maintain or introduce, in their national law, provisions which diverge from those laid down in the legal act on the 28th regime. A regulation is preferred but a maximum harmonisation directive could serve in order to achieve the objectives of the 28th regime.

The 28th regime legal framework

The European Parliament proposes the *Societas Europaea Unificata* (S.EU) as a unified corporate form for non-listed limited liability companies, integrated into national corporate frameworks. S.EUs must comply with EU and national labour, social, and insolvency laws, including employee participation and protections in insolvency proceedings. Company formation and administration should be fully digital, simple, and completed within 48 hours, supported by a Union-level digital portal and integrated with the European business wallet to facilitate cross-border operations. Registration should be open to all EU-established entities, accommodate diverse business models, and allow S.EUs to operate as single entities or within corporate groups.

Safeguards, including long-term strategies and optional forms

The European Parliament emphasizes that the 28th regime (S.EU) should include optional structures such as steward ownership, asset locks, and multiple share classes to support SMEs, start-ups, and scale-ups while protecting against 'killer acquisitions'. S.EUs must fully comply with Union and national laws, including labour, employee participation, and public interest safeguards, ensuring no circumvention of existing protections. The regime must prevent shelf or letterbox companies and exclude entities with proven violations of rules on fraud, taxation, social security, or employee participation.

Access to capital

The 28th regime (S.EU) should provide legal clarity and harmonised rules to facilitate cross-border investment by European and foreign investors. Standardised multilingual model documents for shareholder agreements, articles of association, and operational templates should be available across the EU, monitored via the Union-level digital portal, while allowing flexibility for specific business needs. Harmonised rules on equity-like debt instruments, including associated insolvency rules, should enable investment without granting control, and access to diverse financing (including venture capital, equity, social impact funds, and public investments) should be ensured, alongside support for research collaboration and knowledge transfer.

Dispute Resolution for S.EU

The European Parliament calls for an alternative dispute resolution mechanism to ensure fast and specialised handling of S.EU-related disputes. It also encourages Member States to consider dedicated panels within national courts for such disputes, with the option to conduct proceedings in English.

Impact Assessment, Review, and Evaluation of the 28th Regime (S.EU)

The European Parliament requests the European Commission to conduct a comprehensive and transparent impact assessment for any new legislative proposal on the 28th regime, evaluating harmonisation effects on companies, social, fiscal, and legal impacts, and risks to national protection standards. It also calls for a regular review and, if necessary, revision of the 28th regime, assessing adoption rates among SMEs, start-ups, and scale-ups, alignment with evolving business and societal needs, and effects on EU competitiveness.

Final Provisions (S.EU)

The European Parliament requests that the Commission submit a proposal by Q1 2026. ■

Footnotes:

1 The final compromise text is published here: https://data.consilium.europa.eu/doc/document/ST-16459-2025-INIT/en/pdf

2 The report with recommendations to the Commission on the 28th Regime: a new legal framework for innovative companies is published here: https://www.europarl.europa.eu/doceo/document/A-10-2025-0269_EN.html

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