

**THE 28TH REGIME AS A PATHWAY FOR NON-EXTRACTIVE BUSINESS  
MODELS**

Suzanne M.L. Broer

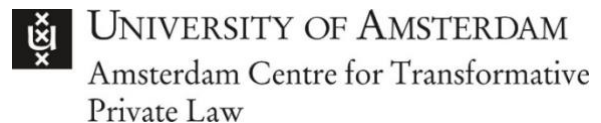
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## The 28th Regime as a Pathway for Non-Extractive Business Models

Designing Start-Ups the “European Way”

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## Designing Start-Ups the “European Way”

Suzanne M.L. Broer<sup>1</sup>

### Abstract

The EU's proposed 28th legal regime seeks to offer a harmonised private law structure for innovative companies across the single market. This whitepaper argues that the regime should reflect the EU's commitment to innovation "the European Way": combining social values, environmental ambition, and economic progress within the Union's social market economy. Drawing on innovation theory, the history of EU industrial policy, and comparative private law scholarship, the whitepaper shows that Europe's strongest growth coincided with active state steering and socially embedded markets, while the shift toward horizontal, market-facilitating policies left distributive safeguards behind. Current policy goals — decarbonisation, digital sovereignty, resilience, and social rights — require enterprise structures whose governance and financial architecture are aligned with those purposes rather than at odds with them. The whitepaper proposes that non-extractive ownership forms, specifically steward ownership and employee ownership, can serve as modular building blocks within the 28th regime. These forms embed purpose and long-termism into corporate governance by design. A modular approach avoids the political deadlock that stalled previous harmonisation attempts, while enabling purpose-driven enterprise to coexist alongside conventional company forms within the same legal framework.

**Key words:** 28th legal regime, industrial policy, innovation theory, start-ups, scale-ups, steward ownership, ESOP

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## Introduction

“We call it EU Inc.,” Von der Leyen said in her speech at Davos on 20 January 2026, almost a year after the first announcement of the 28<sup>th</sup> legal regime.<sup>2</sup> It is rather telling that an instrument introduced as “a new *truly European* company structure” is named after a non-European company form – a point that the Parliament’s rapporteur René Repasi made explicit.<sup>3</sup> The goal of the 28<sup>th</sup> regime, which will consist of a private law structure, is to make it “possible for innovative companies to benefit from a single, harmonised set of EU-wide rules,” to enhance European competitiveness vis-à-vis a changing global order.<sup>4</sup> This 28th regime builds on the reports by Draghi<sup>5</sup> and Letta<sup>6</sup> and is further supported by the EU’s Competitiveness Compass.<sup>7</sup> Both Draghi and Letta

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<sup>2</sup> European Commission, 'President von der Leyen Promotes Openness and Stronger European Competitiveness during Keynote Speech at the Davos World Economic Forum' (European Commission, 21 January 2025) <<https://ec.europa.eu/commission/presscorner/detail/en/ip\ 25\ 342>> accessed 6 May 2025.

<sup>3</sup> René Repasi, 'Press Conference by René Repasi (S&D, DE) on the 28th Regime: New Legal Framework for Innovative Companies' (European Parliament, 20 January 2026) <<https://multimedia.europarl.europa.eu/en/webstreaming/press-conference-by-rene-repasi-s-d-de-on-28th-regime-new-legal-framework-for-innovative-companies\ 20260120-1500-SPECIAL-PRESSER>> accessed 14 February 2026.

<sup>4</sup> European Commission (n 2).

<sup>5</sup> Mario Draghi, *The Future of European Competitiveness: Part A — A Competitiveness Strategy for Europe* (Report, September 2024).

<sup>6</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* (Report, April 2024).

<sup>7</sup> European Commission, *A Competitiveness Compass for the EU* (Communication COM(2025) 30 final, 29 January 2025).

stress the importance of “acting now,” as Europe is risking losing its position as a leading economy, global temperatures continue to rise, and the case for European strategic independence is growing stronger. At the time of writing, the Commission has just published its legislative proposal.<sup>8</sup>

There are three main goals identified by Draghi, also referred to as “transformational imperatives”, which are echoed in the EU’s Competitiveness Compass: closing the innovation gap, creating a roadmap for decarbonization and competitiveness, and reducing excessive dependencies and increasing security.<sup>9</sup> In the 28<sup>th</sup> regime, the EU turns to the innovative power of start-ups and scale-ups to help solve these problems. Regulatory fragmentation is cited as a main impediment to innovation, and much of the narrative surrounding competitiveness generally promotes regulatory “simplification.”<sup>10</sup>

Whereas true simplification should concern form rather than substance, regulatory simplification as exemplified in the Omnibus I Regulation has become a synonym for “regulatory relief.”<sup>11</sup> This U-turn in regulatory ambitions creates ambiguity as to the EU’s position on regulatory instruments and their power.<sup>12</sup> A tension emerges between regulation and innovation, underlined by the development of AI in the US, a process that nowadays occurs behind the closed doors of private companies.<sup>13</sup> While the EU has long been considered a regulatory standard-setter by means of the Brussels effect, some argue that, nowadays, the EU’s regulatory ‘Blue

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<sup>8</sup> European Commission, ‘Competitiveness Compass: Timeline of Actions’ <[https://commission.europa.eu/topics/eu-competitiveness/competitiveness-compass/timeline\\_en](https://commission.europa.eu/topics/eu-competitiveness/competitiveness-compass/timeline_en)> accessed 17 July 2025; European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the 28th Regime Corporate Legal Framework — ‘EU Inc.’* COM(2026) 321 final, 2026/0074 (COD) (8 March 2026).

<sup>9</sup> Draghi (n 5); European Commission, *A Competitiveness Compass for the EU* (n 7).

<sup>10</sup> Nathaniel G Arnold, Guillaume Claveres and Jan Frie, ‘Stepping Up Venture Capital to Finance Innovation in Europe’ (IMF Working Paper No 2024/146, International Monetary Fund, 2024) <<https://doi.org/10.5089/9798400280771.001>> accessed 8 November 2025.

<sup>11</sup> Sara Todeschini, ‘The Great EU Reversal: Fast-Track Deregulation and the Erosion of Europe’s Sustainability Ambition with the Omnibus I Regulation’ (*European Law Blog*, 27 October 2025) <<https://www.europeanlawblog.eu/pub/pqhw0y8j/release/1>> accessed 12 November 2025; Leonie Cater and Marianne Gros, ‘Brussels Accused of Undermining Democracy in Plans to Relax Lawmaking Standards’ (*Politico Europe*, 5 February 2026) <<https://www.politico.eu/article/brussels-accused-undermining-democracy-plans-relax-lawmaking-standards/>> accessed 14 February 2026.

<sup>12</sup> European Coalition for Corporate Justice (ECCJ), ‘PRESS RELEASE – EU’s “Deregulation” agenda claims its first victim: Corporate Sustainability Due Diligence Directive gutted’ (16 December 2025) <<https://corporatejustice.org/news/press-release-eus-deregulation-agenda-claims-its-first-victim-corporate-sustainability-due-diligence-directive-gutted/>> accessed 17 December 2025.

<sup>13</sup> Paul Oudin and Teodora Groza, ‘The Governance of AI Companies: Reconciling Purpose with Profits’ (SSRN, 20 September 2024) <<https://doi.org/10.2139/ssrn.4972751>> accessed 7 February 2025.

Wall' hinders it from setting standards and pushing boundaries at all.<sup>14</sup> On the other hand, in emulating the US, the risk is that "innovation" becomes reduced to deregulation and capital accumulation, detached from the social market economy that has long defined the European project. Still, while striving to follow the US' example of innovation, Letta, Draghi, and the Commission state that innovation should take place "the European Way": including the social values that have brought the EU the prosperity it knows today.<sup>15</sup> In the face of current developments, however, it remains unclear what exactly constitutes innovation "the European Way".

The choice between innovation and regulation in the comparison between the US and the EU is a false one: there are reasons other than Europe's commitment to protecting green and digital rights that explain why the Europeans have not been able to generate the companies the US has, such as historical military investments, current investment options, the punitive measures of insolvency law, and flexibility and scalability in business models.<sup>16</sup> These are matters of private law as much as public policy.

Socially oriented labels such as B Corp, which propose private law-based solutions to public problems, are gaining traction, underscoring interest in responsible corporate governance.<sup>17</sup> However, privately-run initiatives have limited ability to address the main source of the problem and do not offer the same institutional support that governments can.<sup>18</sup> Private law as regulation – governing property, liability, contracts and company forms – in its very basis provides an infrastructure upon which everyday activities are carried out, but it also shapes how we *think about* economics and society. Regulatory frameworks support economic paradigms and can

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<sup>14</sup> Kai Zenner and others, 'The European Way: A Blueprint for Reclaiming Our Digital Future' (SSRN, 12 May 2025) <<https://doi.org/10.2139/ssrn.5251254>> accessed 10 December 2025.

<sup>15</sup> Draghi (n 5); Letta (n 6); European Commission, *A Competitiveness Compass for the EU* (n 7).

<sup>16</sup> Anu Bradford, 'The False Choice Between Digital Regulation and Innovation' (2024) 119(2) *Northwestern University Law Review* 377; Anu Bradford (contributor), Workshop on the 28th Legal Regime (European Parliament, IUST\_BRI(2025)776367, 5 June 2025) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/776367/IUST\\_BRI\(2025\)776367\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/776367/IUST_BRI(2025)776367_EN.pdf)> accessed 15 September 2025.

<sup>17</sup> Lisa M Victoravich and others, 'Reflections on the roles of governance and leadership in profit-for-purpose companies: A European–United States comparative perspective' (2023) 41(3) *European Management Journal* 337; Giovanna Attanasio, Cinzia Battistella and Elia Chizzolini, 'B-Corp Certification: Systematic Literature Review and Research Agenda' (2025) *Corporate Social Responsibility and Environmental Management*.

<sup>18</sup> Oudin and Groza (n 13); Katharina Pistor, *The Law of Capitalism and How to Transform It* (Yale University Press 2025).

affect societal beliefs about what shared prosperity looks like.<sup>19</sup> Additionally, private law plays a role in wealth distribution and can cause structural inequalities, *and* these structures are supported by a state's institutional enforcement.<sup>20</sup> Non-extractive economic practices, defined as practices that prioritise reinvestment, distribute benefits broadly, and embed purpose into governance structures, suggest that private law can also be used to counteract these dynamics.<sup>21</sup>

The 28th regime offers an optional supranational private law framework that can reduce regulatory fragmentation and embed social justice into legal design, aligning competitiveness with broader societal objectives. To support this argument, this whitepaper will be divided in two main parts: one that explores the concept of innovation “the European Way” by diving into innovation theory, historical EU industrial policy, and current policy goals, and one part that proposes its integration into the design of the 28<sup>th</sup> regime by describing the history and potential of EU private law, the currently-known contours of the 28<sup>th</sup> regime, and the role of modularity as a design principle, before concluding that innovation “the European Way” is less about catching up than playing to our strengths.

### **Innovation “the European Way”**

The pursuit of innovation “the European Way”, as stated in Draghi's and the Commission's communication surrounding the 28<sup>th</sup> legal regime, should include its “unique social market economy” where “technology and social inclusion go together.”<sup>22</sup> Much of Draghi's report praises the US for its more fruitful start-up ecosystem, but it does not forego mentioning that “[w]hile Europe should aim to match the US in terms of innovation, it should aim to exceed the US in providing opportunities for education and adult learning and good jobs for all throughout their lifetimes.”<sup>23</sup> Draghi praises the EU's ability to “combine an open economy, market competition, and strong legal frameworks [...] to fight poverty and redistribute

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<sup>19</sup> Marija Bartl, *Reimagining Prosperity: Toward a New Imaginary of Law and Political Economy in the EU* (Cambridge University Press & Assessment, 2025) DOI 10.1017/9781009236195.

<sup>20</sup> Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019); Pistor (n 18).

<sup>21</sup> Kinanya Pijl, 'From an Extractive to a Non-Extractive Economy: Disentangling the Building Blocks of Non-Extractive Economic Practices' (SSRN, 17 February 2022) <<https://ssrn.com/abstract=4037070>> accessed 12 October 2025.

<sup>22</sup> Draghi (n 5); European Commission, *A Competitiveness Compass for the EU* (n 7).

<sup>23</sup> Draghi (n 5).

wealth.”<sup>24</sup> Rather than offsetting EU innovation with US innovation, let us examine more deeply what innovation entails, what is meant by the EU’s social market economy, and how European growth and prosperity are understood.

### **Innovation, Entrepreneurship, and the Role of the State**

Schumpeter, one of the first to describe ‘innovation’ as we know it today, connects the notion of innovation to the entrepreneur: in his theory of creative destruction, the entrepreneur introduces changes to the existing market, thereby driving economic growth.<sup>25</sup> The general view of entrepreneurship, intended by Schumpeter to mean larger companies, is nowadays coloured mostly by start-ups and scale-ups. This is because start-ups are not constrained by organizational norms and bureaucratic processes as larger companies may be, and their flexibility and efficiency drives creativity.<sup>26</sup> It follows that, due to their limited resources, they rely more on networks of collaborators, gaining access to other entrepreneurs, academic institutions, and industry experts – this aspect also aligns with Schumpeter’s theory, which emphasizes the importance of new combinations of existing knowledge.

Evidently, start-ups and entrepreneurs do not act in a vacuum. Sundbo integrates this idea in three perspectives: 1) the entrepreneurial, focused on innovation within firms; 2) the technological, centred on how new technologies produce economic effects within national and regional systems; and 3) the strategic, conceptualising innovation as a socially embedded process shaped by institutional contexts and strategic choices.<sup>27</sup> Mazzucato supports the idea of intertwined perspectives and states that innovation requires “the willingness and ability of economic agents to take on the risk,” which, in her research, is the state (or state actors), rather than the market alone, which she argues is more risk-averse.<sup>28</sup> Although nowadays development of innovative technologies in the US, such as AI, are largely driven by private actors, it was, in fact, state-driven military investment that laid the

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<sup>24</sup> *ibid.*

<sup>25</sup> Joseph A Schumpeter, *Capitalism, Socialism and Democracy* (first published 1942, Routledge 2010); Willem H Vanderburg, *Living in the Labyrinth of Technology* (University of Toronto Press 2005).

<sup>26</sup> Shaker A Zahra, ‘How Startups Create New Knowledge That Spark Disruptive Innovations’ (2024) 41(4) *Canadian Journal of Administrative Sciences* 451.

<sup>27</sup> Jon Sundbo, *The Theory of Innovation* (Edward Elgar 1998); Dmitry M Kochetkov, ‘Innovation: A State-of-the-Art Review and Typology’ (2023) 7(4) *International Journal of Innovation Studies* 263.

<sup>28</sup> Mariana Mazzucato, *The Entrepreneurial State: Debunking Public vs Private Sector Myths* (Anthem Press 2013).

groundwork.<sup>29</sup> R&D investment during the period of the Cold War led to the development of the internet, GPS, automated voice recognition, personal electronics, and the infrastructures required.<sup>30</sup>

Whether entrepreneurs and start-ups are driven by intrinsic motivation or market opportunities remains a key question without a single answer.<sup>31</sup> National or regional innovation systems, however, generally aim to achieve long-term economic growth and create a sustainable national competitive advantage.<sup>32</sup> The Commission's Competitiveness Compass surely supports that notion: competitiveness, productivity, and economic growth are quite literally the topic of the text. Next to the Compass, to further shape the EU view of innovation, the Commission's Directorate-General for Research and Innovation has encapsulated an "Innovation Principle" in the following working definition:

"EU policy and legislation should be developed, implemented and assessed in view of encouraging innovations that help realise the EU's environmental, social and economic objectives, and to anticipate and harness future technological advances."

The Innovation Principle further requires that innovative solutions embed EU values, including the Art. 2 TEU commitments to human dignity, democracy, equality, and the rule of law.<sup>33</sup> These values reflect a socially embedded idea of innovation.

The European *social* economy, to which Draghi refers specifically, was officially established in 1980, but has been implicitly present for much longer.<sup>34</sup> It is described as encompassing a variety of businesses, organisations and different legal entities that "share the objective of systematically putting people first, producing a positive impact

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<sup>29</sup> Oudin and Groza (n 13); Mazzucato (n 28).

<sup>30</sup> WarCosts, 'The War Economy: How War Drives the US Economy' (*WarCosts*) <<https://www.warcosts.org/analysis/war-economy>> accessed 12 February 2026; Mazzucato (n 28).

<sup>31</sup> Mark Casson and Catherine Casson (eds), *History of Entrepreneurship: Innovation and Risk-Taking, 1200–2000* (Edward Elgar 2013).

<sup>32</sup> Kochetkov (n 27).

<sup>33</sup> *Treaty on European Union* [2012] OJ C326/13, art 2; *Charter of Fundamental Rights of the European Union* [2012] OJ C326/391.

<sup>34</sup> OECD and European Union, *Social Economy in Europe: Contributing to Competitiveness and Prosperity* (Local Economic and Employment Development (LEED), OECD Publishing 2025) <<https://doi.org/10.1787/3432de93-en>>.

on local communities and pursuing a social cause.”<sup>35</sup> Today, social economy enterprises represent 10% of all businesses in the EU and are active across numerous economic and social sectors.<sup>36</sup> The OECD and EU jointly state that the social economy offers “opportunities to build sustainable competitiveness by pioneering innovations in economic, social and environmental activities,” and contributes to overall resiliency, demonstrating that socially embedded enterprise is not marginal but a structural feature of the European economy.<sup>37</sup>

The EU explicitly interweaves social values into its notion of innovation, next to sustainable objectives and economic progress. Moreover, innovation is not organized solely by the market; it requires support from state actors. Next, let us turn towards how this notion of innovation has been implemented in industrial policy over the years.

### **Industrial Policy in a Historical Perspective**

Industrial policy aims to reconfigure economic activity to meet public goals, most commonly by driving innovation, productivity, and economic growth, or broader goals such as climate transition, fostering jobs, or supporting lagging regions.<sup>38</sup> In the post-war decades, EU industrial policy was vertically grounded in active state intervention to direct growth, secure full employment, and stabilize wages.<sup>39</sup> As welfare states, markets were conceived as socially embedded institutions to be politically shaped for collective well-being.<sup>40</sup> European growth exceeded US growth<sup>41</sup> and income inequality was lowest in this post-war period.<sup>42</sup> The focus on rebuilding, as well as catching up to the frontier set by the US, led the EU to eventually push the frontier forward.<sup>43</sup> By the

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<sup>35</sup> European Commission, ‘Social Economy in the EU’ (European Commission) <[https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu\\_en](https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu_en)> accessed 10 February 2026.

<sup>36</sup> *ibid.*

<sup>37</sup> OECD and European Union (n 34).

<sup>38</sup> Réka Juhász, Nathan Lane and Dani Rodrik, ‘The New Economics of Industrial Policy’ (2024) 16 *Annual Review of Economics* 213; *Treaty on the Functioning of the European Union* [2012] OJ C326/47, arts 179–190, art 173.

<sup>39</sup> Bartl (n 19); Juhász, Lane and Rodrik (n 38).

<sup>40</sup> *ibid.*

<sup>41</sup> Antonin Bergeaud, Gilbert Cette and Rémy Lecat, ‘Productivity Trends in Advanced Countries between 1890 and 2012’ (2016) 62(3) *Review of Income and Wealth* 420.

<sup>42</sup> Thomas Piketty, *Capital in the Twenty-First Century* (Arthur Goldhammer tr, Harvard University Press 2014) ch 5.

<sup>43</sup> Luis Garicano, Bengt Holmström and Nicolas Petit, ‘The Constitution of Innovation: A New European Renaissance’ (SSRN, 10 November 2025) <<https://doi.org/10.2139/ssrn.5731202>> accessed 5 December 2025.

1980s, however, industrial policy was reframed as “horizontal”: the state’s role was no longer to steer production, but to ensure an undistorted playing field for private actors.<sup>44</sup> Legal instruments were increasingly redeployed to liberalize, privatize, and deregulate, consequently prioritizing and maximizing short-term profits and stock prices.<sup>45</sup>

The language of “Better Regulation” emerged in the 2000s to minimize law’s “burden” on economic activity.<sup>46</sup> For innovation policy specifically, this meant that competitiveness was redefined as cost efficiency, productivity, and innovation-friendly deregulation. After the 2008 financial crisis, the Commission’s 2010 and 2014 industrial policies largely upheld its horizontal, market-oriented approach without addressing the vulnerabilities the crisis had laid bare.<sup>47</sup> This is also where smaller companies receive attention: SMEs have been cited to suffer particularly from “inflexible administrative and regulatory environments, rigidities in some labour markets and weak integration in the internal market,” as a consequence of which the “regulatory and administrative costs can impact SMEs up to ten times more than larger companies.”<sup>48</sup> Surprisingly, the measures the Commission announced to target these regulatory burdens focused on industries that were hardly populated by SMEs and instead benefited the already large companies in those sectors.<sup>49</sup>

The European Green Deal (EGD) of 2019 articulated a “new growth strategy”, defining competitiveness in terms of leadership in circular, climate-neutral, and socially inclusive industries.<sup>50</sup> By doing so, the EU lawmaker partially returned to vertical steering, inspired by the idea of the entrepreneurial state as described by Mazzucato. However, the pandemic and the war in Ukraine—together with the accelerating clean-tech race with the US and China—caused the EU to increasingly

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<sup>44</sup> Bartl (n 19).

<sup>45</sup> Bartl (n 19); Alex Edmans, 'A Critical Look at the Evidence for Short-Termism' (London Business School, 2017) <<https://alexedmans.com/wp-content/uploads/2015/03/Short-Termism.pdf>> accessed 14 November 2025.

<sup>46</sup> European Commission, *European Governance: Better Lawmaking* (Communication COM(2002) 275 final, 2002).

<sup>47</sup> Bartl (n 19).

<sup>48</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: For a European Industrial Renaissance* (Communication COM(2014) 14 final, 2014) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0014>> accessed 20 September 2025.

<sup>49</sup> Bartl (n 19).

<sup>50</sup> European Commission, *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: The European Green Deal* (Communication COM(2019) 640 final, 2019) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0640>> accessed 19 September 2025.

ease private risks and invest in strategic sectors, yet often without enforcing corresponding social or ecological obligations.<sup>51</sup> The Net Zero Industry Act and the Strategic Technologies for Europe Platform (STEP) exemplify this shift: vast public funds are mobilized to secure Europe's position in the green transition, but largely within a framework of public-private risk-sharing that enables distributive asymmetries.<sup>52</sup> By the end of 2024, regulatory simplification gained traction again with the revision of the body of sustainability law, published in the beginning of 2025, followed by the Competitiveness Compass. The revision threatens the effectiveness of the sustainability framework, leaving the EU's position as a regulatory standard-setter unclear.<sup>53</sup>

This historical view shows that the EU demonstrated growth when it was engaged in vertical policy, and it began to decline as it withdrew from the steering, risk-taking position. Over recent years, the state (or regional governments) has been withdrawing, on the justification that business is seen as the bringer of innovation rather than the state.<sup>54</sup> While the EU has since partially returned to vertical ambition through the EGD and recent industrial policy, the accompanying conditions and safeguards have largely stayed behind.<sup>55</sup> The following section will zoom in on this gap.

### **The Instrument of Innovation**

The EU's innovative ambition is closely interlinked with decarbonisation, as described in the Competitiveness Compass and illustrated by the EGD in the history of industrial policy described above, including the Horizon Europe strategic plan.<sup>56</sup> The 'twin transition', where technological and sustainable innovation go hand in hand, is expected to deliver solutions to current levels of extraction in the economy, thereby

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<sup>51</sup> Daniela Gabor, *The (European) Derisking State* (SocArXiv, Center for Open Science 2023) <<https://osf.io/hpbj2>> accessed 19 September 2025.

<sup>52</sup> Gabor (n 51); Mazzucato (n 28).

<sup>53</sup> Todeschini (n 11).

<sup>54</sup> Mazzucato (n 28).

<sup>55</sup> Mariana Mazzucato and Rosie Collington, *The Big Con: How the Consulting Industry Weakens Our Businesses, Infantilizes Our Governments and Warps Our Economies* (Allen Lane 2023).

<sup>56</sup> European Commission, Directorate-General for Research and Innovation, *Horizon Europe Strategic Plan 2025–2027* (Publications Office of the European Union, 20 March 2024) <<https://op.europa.eu/en/publication-detail/-/publication/6abcc8e7-e685-11ee-8b2b-01aa75ed71a1>>.

reducing society's carbon footprint.<sup>57</sup> However, in practice, the trajectories of the twins do not converge.<sup>58</sup> Decarbonisation and digitalisation of economies are likely to experience a process of imbalanced structural transformation, with the digital transition speeding ahead, just as it has been historically.<sup>59</sup> The EU's sustainability agenda can be viewed as encouraging a strong internal market amid the global climate crisis, the link to digitalisation can be seen as an attempt to create a place for the EU in the global digital race, but not as a policy choice that is inherently connected.<sup>60</sup> The twin transition rests on an assumption that is uncertain in the long term and geographically uneven.

Effective decarbonisation requires sustained investment in research, infrastructure, and industrial change in the long term, including companies willing to invest in long-term transition plans and research and development (R&D), rather than redirecting towards short-term profits and stock prices.<sup>61</sup> Evidence consistently shows that enterprises not under pressure to prioritize dividend distribution invest more in precisely these activities.<sup>62</sup> Digital sovereignty requires that the knowledge and technology generated through publicly supported innovation remain within European reach and cannot be transferred away through ownership changes or exit events.<sup>63</sup> The choice of instrument is not neutral.

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<sup>57</sup> Stefan Muench and others, *Towards a green & digital future: Key requirements for successful twin transitions in the European Union* (Publications Office of the European Union, EUR 31075 EN, Luxembourg, June 2022) <https://publications.jrc.ec.europa.eu/repository/handle/JRC129319> accessed 12 November 2025.

<sup>58</sup> Linnea Nelli, Maria Enrica Virgillito and Marco Vivarelli, 'A Twin Transition or a policy flagship? Emergent constellations and dominant blocks in green and digital technologies' (Maastricht Economic and Social Research Institute on Innovation and Technology (UNU-MERIT Working Paper 2025) doi:10.53330/BFVC9329; Timothée Parrique and others, *Decoupling Debunked: Evidence and Arguments Against Green Growth as a Sole Strategy for Sustainability* (European Environmental Bureau 2019) <<https://eeb.org/library/decoupling-debunked/>>.

<sup>59</sup> Roger Fouquet and Ralph Hippe, 'Twin transitions of decarbonisation and digitalisation: A historical perspective on energy and information in European economies' (2022) 91 *Energy Research & Social Science* 102736 doi:10.1016/j.erss.2022.102736.

<sup>60</sup> Zora Kovacic and others, 'The twin green and digital transition: High-level policy or science fiction?' (2024) 7 *Environment and Planning E: Nature and Space* doi:10.1177/25148486241258046.

<sup>61</sup> Pablo Muñoz and Boyd Cohen, 'Sustainable Entrepreneurship Research: Taking Stock and Looking Ahead' (2018) 27(3) *Business Strategy and the Environment* 300.

<sup>62</sup> Nena van der Horst, 'De toekomst van winstuitkeringen aan aandeelhouders in een maatschappelijk ondernemingsrecht' [2023] *Ondernemingsrecht* 696, art 98; Edmans, 'A Critical Look' (n 45).

<sup>63</sup> Florian Möslein, 'Simplification of Registration of Companies in the 28th Regime: Towards a Single Digital Company Register' (In-Depth Analysis, European Parliament, IUST\_IDA(2025)776000, 14 July 2025) <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776000/IUST\\_IDA\(2025\)776000\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776000/IUST_IDA(2025)776000_EN.pdf)> accessed 15 September 2025; Marija Bartl, Rutger Claassen and Nena van der Horst, 'Introduction' in Marija Bartl, Rutger Claassen and Nena van der Horst (eds), *Sustainable by Design: Industrial Policy for Long-Term Competitiveness in the EU* (Whitepaper, University of Amsterdam 2024) 1; Nien-hê Hsieh, 'Broadening Ownership for a Responsible Digital Revolution' in Bartl, Claassen and van der Horst (eds), *Sustainable by Design* 30.

The other policy goals that innovation is meant to serve — resilience and a foundation for social rights and democratic values<sup>64</sup> — face similar difficulties. Resilience requires companies anchored in regional supply chains and not structured for relocation or acquisition by non-European actors.<sup>65</sup> Social rights and democratic values require ownership models that distribute economic participation and decision-making power broadly.<sup>66</sup> These characteristics share a particular relationship between capital, purpose, and control: capital serves the enterprise's mission rather than governing it, returns are reinvested in long-term value creation rather than extracted for short-term liquidity, and ownership structures are designed for continuity rather than exit. Non-extractive economic practices, that incorporate this relationship between capital, purpose, and control, provide a solution.<sup>67</sup>

Notably, in the area of AI, the significant risks and resource requirements necessitate a shift toward alternative ownership and governance models that effectively reconcile profit motives with public-interest missions, as exemplified by the customized governance structures of OpenAI and Anthropic.<sup>68</sup> A similar move can also be seen in the rising popularity of the B Corp certificate: business leaders that combine their enterprise with a purpose turn towards structures that integrate that purpose by design.<sup>69</sup> However, labels such as B Corp have limited legal enforceability and no future guarantees.<sup>70</sup> A state-backed legal form, on the other hand, embeds purpose in the corporate structure itself.

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<sup>64</sup> The key strategic orientations outline the main priorities for 2025-2027 are the green transition, the digital transition, and a more resilient, competitive, inclusive and democratic Europe: Open strategic autonomy and securing Europe's leading role in developing and deploying critical technologies are overarching principles that apply across all three key strategic orientations. European Commission, Directorate-General for Research and Innovation (n 56).

<sup>65</sup> Bartl, Claassen and Van der Horst, 'Introduction' *Sustainable by Design* (n 63); Deborah Tappi, 'Towards 100% Renewable Energy: Democratizing the Energy Market with Energy Commons' in Bartl, Claassen and van der Horst (eds), *Sustainable by Design* (n 63) 127; Mariana Mazzucato, *Mission Economy: A Moonshot Guide to Changing Capitalism* (Allen Lane 2021).

<sup>66</sup> Eli G Rau and Susan Stokes, 'Income Inequality and the Erosion of Democracy in the Twenty-First Century' (2025) 122(1) *Proceedings of the National Academy of Sciences* e2422543121 <<https://doi.org/10.1073/pnas.2422543121>> accessed 10 February 2026; Bartl, Claassen and Van der Horst (n 62).

<sup>67</sup> Pijl (n 21).

<sup>68</sup> Oudin and Groza (n 13).

<sup>69</sup> Attanasio, Battistella and Chizzolini (n 17).

<sup>70</sup> Biff Baker, 'An Exploratory Analysis of B-Corp Decertification Patterns' (31 May 2025) SSRN <https://ssrn.com/abstract=5277008> accessed 14 February 2026.

Innovation "the European Way" is not confined to entrepreneurial initiative or market dynamics alone. Innovation is a socially embedded process in which the state plays a central role as risk-taker and coordinator. EU innovation policy explicitly links social, environmental, and economic objectives, embedding innovation within the Union's social market economy. The EU's strongest innovative capacity coincided with periods of active state steering and socially embedded markets, but the later shift towards horizontal policies weakened this role. More recent industrial policy initiatives partially revive a vertical ambition but lack safeguards for the benefits to flow back to society.

Innovation as the engine behind the EU's policy goals requires enterprise structures whose governance and financial architecture are aligned with those purposes rather than at odds with them. The legal question, then, is whether European private law can provide such structures in a form that is accessible, scalable, and available across the single market. Research on non-extractive economic practices suggests that the answer is yes, and that private law is the instrument through which innovation "the European Way" can be given legal form. The following chapter turns to that instrument.

### **Legal Design of the 28<sup>th</sup> Regime**

The instrument of private law has not often been used for innovative purposes in the European context, and opinions vary on whether it should. Some argue that private law, of which company law is part, should remain formal, only reflecting the natural law on which it is based and serving a facilitative function rather than a steering function.<sup>71</sup> Others will say that the EU lacks the competence to govern private law.<sup>72</sup> The past surely shows obstacles on the path to a common EU private law, which the following paragraphs will further illustrate.

### **EU Private Law as a Vehicle for Innovation**

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<sup>71</sup> Louis Kaplow and Steven Shavell, *Fairness Versus Welfare* (Harvard University Press 2002); Ernest J Weinrib, *The Idea of Private Law* (Harvard University Press 1995); Ernest J Weinrib, *Corrective Justice* (Oxford University Press 2012); Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Harvard University Press 2009) — all cited in Martijn W Hesselink, '(In)justice in European Private Law' in Marija Bartl, Laura Burgers and Chantal Mak (eds), *Uncovering European Private Law: A Student Handbook* (Hart Publishing 2022).

<sup>72</sup> Rafał Mańko, 'EU Competence in Private Law: The Treaty Framework for a European Private Law and Challenges for Coherence' (SSRN, 8 January 2015) <<https://ssrn.com/abstract=2553945>> accessed 10 February 2026.

Private law *already* has a steering function. Pistor establishes that capital is "coded" through modules of private law—such as property, contract, and limited liability—which endow assets with legal attributes like durability and priority, *and* that these structures are supported by a state's institutional enforcement.<sup>73</sup> This legal coding is the primary driver of contemporary inequality, structurally favouring the accumulation of wealth through private ownership.<sup>74</sup> Piketty's work supports this theory by establishing that the rate of return on capital is greater than the rate of economic growth.<sup>75</sup> Legal coding is not a neutral technical exercise but a deeply political one; as Hesselink identifies, private law is rooted in specific political philosophies and is never neutral.<sup>76</sup>

Private law contains several ways in which these philosophies become apparent: as instrument, as discourse, and as institution. As an instrument, it provides a vehicle for rules and practices of everyday life; as a discourse, it influences how people view prosperity and economic relations; and as an institution, it provides its own apparatus as a buffer against negative side-effects of policy and achieves justice.<sup>77</sup> Moreover, while it has been said that the EU's regulatory 'Blue Wall' hinders innovative companies, private law instruments would not structurally have the same limiting effects as public policy, purely *because* of its facilitative nature. Because private law is applicable across sectors and through time, it does not try to define concepts that are already outdated, like in the example of the AI Act, but it encloses deeper lying principles in the *design* of the enterprise.<sup>78</sup>

Nevertheless, the 28<sup>th</sup> regime is not the first attempt at European private law. Since the EU's inception there has been an interest in the integration of EU private and company law, which resulted in small steps, but after a period of legislative deadlock from the 1980s onwards, the *Societas Europaea* (SE) statute, the first official EU company form, was finally adopted in 2001, albeit in a watered-down form.<sup>79</sup> While

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<sup>73</sup> Pistor, *The Code of Capital* (n 20); Pistor, *The Law of Capitalism and How to Transform It* (n 18).

<sup>74</sup> Pistor, *The Code of Capital* (n 20).

<sup>75</sup> Piketty (n 42).

<sup>76</sup> Hesselink (n 71).

<sup>77</sup> Bartl (n 19).

<sup>78</sup> Oudin and Groza (n 13).

<sup>79</sup> Jessica Schmidt, *Twenty Years Societas Europaea* (2021) 18(4) *European Company Law* 116; Paul Oudin, 'The Promises and Perils of a 28th Regime for European Innovative Companies' (*Oxford Business Law Blog*, 2 October 2025) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2025/10/promises-and-perils-28th-regime-european-innovative-companies>> accessed 12 October 2025; Apostolos Thomadakis and others, *Establishing the 28th Regime in Europe: A Unified Legal Framework to Support Growth and Business* (Study, European Economic and

take-up numbers for the SE are decently high,<sup>80</sup> its success remains limited since it relies heavily on Member State law<sup>81</sup> and has high minimum capital requirements.<sup>82</sup> These factors make it difficult for companies, in particular SMEs, to make use of the legal form.

The *Societas Cooperativa Europaea* (SCE), a structure for cooperatives approved in the slipstream of the SE, has proven even less successful with few registrations.<sup>83</sup> Moreover, the Commission's proposals for a *Societas Privata Europaea* (SPE),<sup>84</sup> a *Societas Unius Personae* (SUP),<sup>85</sup> and a Common European Sales Law (CESL)<sup>86</sup> all sought to simplify private law-based cross-border operations, yet none were adopted, and few attempts have been made since. It has been cited that this was due to active lobbying by parties with a strong interest in preserving the status quo, combined with Member States' concerns regarding codetermination, labour protections, and regulatory arbitrage.<sup>87</sup> Some lessons that can be drawn are that over-ambitious harmonization breeds political resistance, while over-reliance on Member State law defeats the purpose. Also, there is a risk of a lowest-common-denominator design that hollows out the content while complexity disproportionately affects SMEs, including start-ups and scale-ups.

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Social Committee/CEPS/Ecorys, November 2025)  
<[https://www.ecmi.eu/sites/default/files/study\\_eesc\\_28th\\_regime.pdf](https://www.ecmi.eu/sites/default/files/study_eesc_28th_regime.pdf)>.

<sup>80</sup> Schmidt (n 79).

<sup>81</sup> Paul Storm, 'The *Societas Europaea*: A New Opportunity?' in Dirk van Gerven and Paul Storm (eds), *The European Company* (Cambridge University Press 2010) 3–24; Eva M Goetz, 'The European Company (SE) — A Proposal for Reform of Cross-Border Mobility of SEs from a Socio-Legal and Legal-Economic Perspective in the Context of EU Company Law, Insolvency Law and Tax Law Harmonization' (February 2025) <<https://dial.uclouvain.be/pr/boreal/object/boreal:299340>> accessed 17 October 2025.

<sup>82</sup> Schmidt (n 79). The SE has a minimum capital requirement of €120,000, which is high in comparison to other EU Member States. For example, the Dutch B.V. has a minimum capital requirement of €1.

<sup>83</sup> European Union Network for the Social Economy (ENSIE), *SCEr Final Report: Social Cooperatives in Europe* (ENSIE, February 2022) <<https://www.diesis.coop/wp-content/uploads/2022/02/SCEr-final-report.pdf>> accessed 19 October 2025; Cooperatives Europe and Euricse, *Study on the Implementation of Regulation 1435/2003 on the Statute for European Cooperative Society (SCE): Final Study — Executive Summary and Part I: Synthesis and Comparative Report* (5 October 2010) <[https://base.socioeco.org/docs/sce\\_final\\_study\\_part\\_i.pdf](https://base.socioeco.org/docs/sce_final_study_part_i.pdf)> accessed 19 October 2025.

<sup>84</sup> European Commission, *Proposal for a Council Regulation on the Statute for a European Private Company (Societas Privata Europaea)* COM(2008) 396 final (25 June 2008).

<sup>85</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council on Single Member Private Limited Liability Companies (Societas Unius Personae)* COM(2014) 212 final (9 April 2014).

<sup>86</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law* COM(2011) 635 final (11 October 2011).

<sup>87</sup> Carlos Gorriz, 'The Evolution of EU Company Law' (Edinburgh Law School Seminar, September 2010) <[https://www.researchgate.net/publication/283727631\\_The\\_evolution\\_of\\_EU\\_Company\\_Law](https://www.researchgate.net/publication/283727631_The_evolution_of_EU_Company_Law)> accessed 11 October 2025; Carlos Górriz, 'EU Company Law: Past, Present and ... Future?' (2018) 19 *Global Jurist*, DOI 10.1515/gj-2017-0029.

All in all, the 28<sup>th</sup> regime represents a renewed attempt at EU private law, yet it also reveals constraints: any endeavour to define innovation “the European Way” must operate within the legacies of fragmented company law across Member States as well as previous harmonization initiatives, shifting industrial incentives, and interpretations of sustainability policy.

### The Contours of the 28<sup>th</sup> Regime

Start-ups, scale-ups, and other SMEs will agree with the Commission that, across the European market as a whole, they face regulatory fragmentation, funding gaps, talent and mobility challenges, and the costs and stigma of failure.<sup>88</sup> Founders will be concerned with the *purpose* of the enterprise to varying degrees; some are motivated by the realisation of their idea, others by the payout, or somewhere in between - either way, few founders will deny they want their company to grow. Whereas reports show that the EU does not lack ideas, it does appear to lack the capability to grow start-ups into scale-ups and beyond.<sup>89</sup> For example, the double “Valley of Death” illustrates two moments of significant struggle for start-ups in the EU: first, the difficulty of turning an idea or concept into a product, and second, the difficulty of growing the product commercially.<sup>90</sup>

A voluntary 28<sup>th</sup> regime is proposed under the first pillar of the Competitiveness Compass, focusing on closing the innovation gap by supporting SMEs and mid-caps, alongside several other initiatives.<sup>91</sup> Both the Parliament and the Commission agree that the regime is to provide a harmonised legal framework for

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<sup>88</sup> Allied for Startups, *One Company, One Market: Delivering a True 28th Regime for Europe's Startups — Call for Evidence* (Allied for Startups, 30 September 2025) <<https://alliedforstartups.org/wp-content/uploads/AFS-Position-28th-regime.pdf>>; DIGITALEUROPE, *The 28th Regime: Unlocking Growth with European Rules* (DIGITALEUROPE, 26 September 2025) <<https://www.digitaleurope.org/resources/the-28th-regime-unlocking-growth-with-european-rules/>>; European Business and Innovation Centre Network (EBN), *The 28th Regime — A Strategic Necessity for Scaling European Innovation* (EBN, 8 October 2025) <<https://ebn.eu/2025/10/08/ebn-position-paper-in-the-28th-regime-a-strategic-necessity-for-scaling-european-innovation/>> accessed 15 October 2025; EU-INC, *An Industry Blueprint for the Upcoming 28th Regime* (EU-INC, January 2025) <<https://proposal.eu-inc.org>>.

<sup>89</sup> Draghi (n 5); European Commission, *A Competitiveness Compass for the EU* (n 7).

<sup>90</sup> European Commission, *The EU Startup and Scaleup Strategy: Choose Europe to Start and Scale* (Communication COM(2025) 270 final, 28 May 2025); European Law Institute, *Response to the European Commission's Public Consultation on the 28th Regime — a Single Harmonised Set of Rules for Innovative Companies throughout the EU* (European Law Institute, 30 September 2025) <[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 12 October 2025.

<sup>91</sup> European Commission, *A Competitiveness Compass for the EU* (n 6), Pillar 1; European Commission, *Proposal for a Regulation on the 28th Regime Corporate Legal Framework — 'EU Inc.'* (n 8).

innovative limited-liability companies that are not listed on public exchanges on an opt-in basis, complementing national legal regimes, initially covering incorporation and operational requirements, with later extensions to insolvency, taxation, and labour.<sup>92</sup> The regime furthermore focuses on “digital-by-default” solutions, allowing an incorporation process of less than 48 hours.<sup>93</sup> Capital requirements are low or non-existent.<sup>94</sup> However, where the Parliament’s report makes mention of modularity, alternative ownership forms, and labour on under the working title “Unified European Company” (*Societas Europaea Unificada, S.EU*), the Commission’s proposal for an EU Inc. – named after a US company form – leaves all those things out.<sup>95</sup> This divergence will likely be a central point of negotiation in the trilogues, and the argument of this chapter is that the Parliament's broader scope better reflects the EU's own stated objectives.

A future-proof private law instrument that harmonizes EU policy, simplifies rules, and encourages innovative companies is ideally grounded in regulation that links social, environmental, and economic objectives, with a structural, long-term view - innovation “the European Way.” Next to conventional company forms such as limited liability companies, there is an opportunity for alternative ownership forms, and more specifically, non-extractive ownership forms, to contribute to that. Non-extractive ownership forms, such as steward-ownership and employee-ownership, codify purpose and distributiveness into their legal architecture, providing the much-needed safeguards for state-driven risk-absorption. As such, a non-extractive module can provide a unique legal structure that aligns with the Commission’s goals while attracting truly innovative ideas.

### **Modularity as Enabling Building Blocks**

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<sup>92</sup> European Commission, *Proposal for a Regulation on the 28th Regime Corporate Legal Framework — 'EU Inc.* (n 7); European Parliament, Committee on Legal Affairs, *Report with Recommendations to the Commission on the 28th Regime: A New Legal Framework for Innovative Companies* (European Parliament, A10-0269/2025, 17 December 2025) <[https://www.europarl.europa.eu/doceo/document/A-10-2025-0269\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-10-2025-0269_EN.html)> accessed 10 January 2026.

<sup>93</sup> European Commission, *Proposal for a Regulation on the 28th Regime Corporate Legal Framework — 'EU Inc.* (n 7); European Commission, *The EU Startup and Scaleup Strategy* (n 90).

<sup>94</sup> European Parliament, *Report* (n 92).

<sup>95</sup> *ibid*; European Commission, *Proposal for a Regulation on the 28th Regime Corporate Legal Framework — 'EU Inc.'* (n 8).

The true success of a company is hard to predict at the beginning stages; hence VCs generally invest in many small companies at a time, spreading the risk and betting on at least one “unicorn” within a specific group, with high growth targets to make up for the other losses. Companies that don’t directly prioritize exits are seen as riskier because it creates uncertainty for investors’ returns.<sup>96</sup> Yet, companies that have higher internal investments in R&D are more innovative and yield higher returns in the long run.<sup>97</sup> When incentivised to optimize short-term stock price, organisations are less likely to invest in transition plans or R&D.<sup>98</sup> According to some, this is due to shareholder pressure, according to others this is due to the general incentives for managing directors in conventional companies.<sup>99</sup> Either way, both these mechanisms are inflated in the venture capital funding cycles, where each funding round focuses on increased valuation in order to reach the unicorn status, creates dependency on the next round, and overlooks profitability in search for exit.<sup>100</sup>

A modular approach would allow the regime to focus on the true needs of innovative businesses, including those that do not prioritize exit.<sup>101</sup> The modular approach includes predefined, legal, or structural components—*modular blocks*—that founders and financiers can adopt based on their business model, mission, and financing strategy. The modular approach would support conventional businesses in a conventional module, next to non-extractive founders, in a non-extractive module,

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<sup>96</sup> Franziska Cooman, ‘Imprinting the Economy: The Structural Power of Venture Capital’ (2023) 56(2) *Environment and Planning A: Economy and Space* <<https://doi.org/10.1177/0308518X221136559>>.

<sup>97</sup> Particularly in enterprise foundations; see Steen Thomsen and Nikolaos Kavadis, ‘Enterprise Foundations: A Review — Law, Taxation, Governance, and Performance’ (2022) 6(4) *Annals of Corporate Governance* 227 <<https://doi.org/10.1561/109.00000031>>; Steen Thomsen and others, ‘Industrial Foundations as Long-Term Owners’ (2018) 26(3) *Corporate Governance: An International Review* 185.

<sup>98</sup> Van der Horst (n 62); Beate Sjøfjell, ‘Sustainability and Law and Economics: An Interdisciplinary Redefinition of Agency Theory’ in Beate Sjøfjell, Roseanne Russell and Maja van der Velden (eds), *Interdisciplinary Research for Sustainable Business: Perspectives of Women Business Scholars* (Springer 2023); Alex Edmans, ‘Response to the Green Paper on Building our Industrial Strategy’ (London Business School, 16 February 2017) <<https://alexedmans.com/wp-content/uploads/2015/02/Green-Paper-Response-201701216.pdf>> accessed 16 January 2026; Edmans, ‘A Critical Look’ (n 45); William Lazonick, ‘Profits Without Prosperity’ (2014) 92 *Harvard Business Review* 46; John Kay, *The Kay Review of UK Equity Markets and Long-Term Decision Making: Final Report* (Department for Business, Innovation and Skills, July 2012) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253454/bis-12-917-kay-review-of-equity-markets-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253454/bis-12-917-kay-review-of-equity-markets-final-report.pdf)>.

<sup>99</sup> Sjøfjell (n 98); Edmans, ‘Response to the Green Paper’ (n 98); Edmans, ‘A Critical Look’ (n 45).

<sup>100</sup> Andreas Kuckertz, Maximilian Scheu and Per Davidsson, ‘Chasing Mythical Creatures — A (Not-So-Sympathetic) Critique of Entrepreneurship’s Obsession with Unicorn Startups’ (2023) 19 *Journal of Business Venturing Insights* e00365; Josh Lerner and Ramana Nanda, ‘Venture Capital’s Role in Financing Innovation: What We Know and How Much We Still Need to Learn’ (2020) 34(3) *Journal of Economic Perspectives* 237.

<sup>101</sup> Anne Sanders, ‘The Scope of the 28th Regime: A Legal Framework for Innovation the European Way’ (European Parliament, IUST\_IDA(2025)776311, 2025) <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST\\_IDA\(2025\)776311\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA(2025)776311_EN.pdf)> accessed 15 September 2025.

more strongly motivated by purpose. Importantly, modularity avoids the political deadlock that stalled the SPE and SUP: rather than imposing a single model, it allows Member States to accept a framework in which non-extractive forms coexist alongside conventional ones.

Non-extractive ownership forms already suffer more from fragmentation than conventional entities because their business models exhibit greater variation and are less consistently recognised across Europe.<sup>102</sup> Challenges such as financing and scaling are more pronounced for non-extractive ownership forms, and they face more administrative barriers – exactly those that the regime aims to overcome. Determining exactly how to include the various possibilities and their requirements in different Member States can be a complicated task, and bespoke legal advice can be costly. To maintain the simplicity that is needed, this paper revisits two structures that can embody these different measures in different ways: the steward-owned enterprise and the employee-owned enterprise.

In steward ownership, the ultimate control is separated from the direct financial gain of the enterprise. Steward ownership rests on two core principles: self-governance, where voting control is held by active stewards rather than outside investors, and asset lock, where profits are principally reinvested in the enterprise rather than distributed to shareholders.<sup>103</sup> The steward-owned structure acts as a defence against foreign investors and hostile takeovers, because ultimate control rights cannot be sold or inherited but are passed on to selected stewards. This is especially relevant given ongoing concerns about non-EU acquisitions (“killer acquisitions”) of European tech, which aligns with the EU’s wish for strategic autonomy.<sup>104</sup> Notably, with respect to the investment of public funds, alignment with purpose is important to ensure symmetrical distribution of benefits, rather than contributing to the accumulation of benefits for few.<sup>105</sup> Steward-owned firms attract capital through capped-return equity and revenue-based financing, instruments that

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<sup>102</sup> OECD and European Union (n 34).

<sup>103</sup> Anne Sanders, ‘Binding Capital to Free Purpose: Steward Ownership in Germany’ (2023) 19(4) *European Company and Financial Law Review* 622, <https://doi.org/10.1515/ecfr-2022-0020>; Anne Sanders, ‘Steward-Ownership — Transformative Business Ownership in Europe and Germany’ in Marija Bartl, Rutger Claassen and Nena van der Horst (eds), *Sustainable by Design: Industrial Policy for Long-Term Competitiveness in the EU* (Whitepaper, University of Amsterdam 2024) 43.

<sup>104</sup> *ibid.*

<sup>105</sup> Gabor (n 51).

align investor returns with the enterprise's mission — a model that also suits public co-investment.

Employee ownership models, and more specifically, ESOPs, offer a mechanism to incentivize long-term commitment and address succession challenges by enabling workers to acquire ownership stakes.<sup>106</sup> This ensures business continuity, but also helps attract talent when financial compensation may not yet be convincing in the start-up phase.<sup>107</sup> ESOPs can align employees' interests with the company's, resulting in boosted motivation and productivity.<sup>108</sup> It has been shown that ESOP structures take more risks as a company, but those risks are often directed toward R&D investments, which tend to have a positive impact on the company's progress.<sup>109</sup> Beyond corporate governance and financing structures, complementary measures in labour, insolvency, and tax law can further strengthen alternative, non-extractive enterprises.

The proposed 28<sup>th</sup> regime reflects a renewed attempt at a common EU private law form, in support of EU innovation. Private law is facilitative but also has a steering function and is decidedly never neutral – it is a vehicle for broader policy objectives. As such, the 28<sup>th</sup> regime is set to provide a voluntary, harmonised legal structure for start-ups and SMEs across the EU. To effectively incorporate innovation “the European way,” the regime would benefit from a modular design that includes a non-extractive ownership module. Steward ownership and employee ownership, as two coherent forms of non-extractive ownership, recognise the role of ownership and governance in shaping innovation, and align safeguards and incentives with long-term value creation.

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<sup>106</sup> Iñigo González-Ricoy, 'Employee Ownership and Employee Participation' in Marija Bartl, Rutger Claassen and Nena van der Horst (eds), *Sustainable by Design: Industrial Policy for Long-Term Competitiveness in the EU* (Whitepaper, University of Amsterdam 2024) 79.

<sup>107</sup> Tej Gonza, 'Using the ESOP Model to Scale Broad-Based Employee Ownership' in Marija Bartl, Rutger Claassen and Nena van der Horst (eds), *Sustainable by Design: Industrial Policy for Long-Term Competitiveness in the EU* (Whitepaper, University of Amsterdam 2024) 84.

<sup>108</sup> Q Zhou, H Han and J Han, 'Does Employee Stock Ownership Plan Have Monitoring and Incentive Effects? An Analysis Based on the Perspective of Corporate Risk Taking' (2024) 10 *Heliyon* e24489.

<sup>109</sup> Employee ownership aligns employees' economic interests with the long-term success of the firm, increasing their motivation to engage in innovation and invest in R&D, while also benefiting from organizational stability and lower turnover that support longer-term projects. See T Ren, Y Xiao, D Pinto and H Yang, 'Employee Ownership and Firm R&D Investment: Evidence from China' (2022) *Journal of Participation and Employee Ownership*; Y Zhang, 'Employee Stock Ownership Plans and Corporate Innovation' (2023) *Academic Journal of Management and Social Sciences*; Joseph R Blasi, Richard B Freeman and Douglas L Kruse, *The Citizen's Share: Putting Ownership Back into Democracy* (Yale University Press 2013).

## Conclusion

The development of the 28th regime provides an opportunity to support business models committed to purpose-driven control and long-termism, diverging from the traditional VC model oriented toward a lucrative exit. The structural design elements of the 28<sup>th</sup> regime contain the potential to support the founder's vision of long-term independence, protecting their jobs, growth, and know-how within Europe.

Innovation “the European way” is not simply the product of entrepreneurial initiative or market dynamics. Innovation is a socially embedded and institutionally conditioned process, with the state acting as risk-taker and coordinator. EU policy documents explicitly connect innovation to social, environmental, and economic objectives, and Europe’s strongest growth periods coincided with vertically oriented, socially embedded strategies. The later shift toward horizontal, market-facilitating approaches was followed by the state increasingly absorbing risk without distributive safeguards. Current policy goals – such as decarbonisation, resilience, digital innovation, and a foundation for social rights and democratic values – are not always well-served by the incentive structures in conventional company forms. Non-extractive business models may constitute a fitting instrument. Taken together, innovation “the European way” emerges as an idea that may be well served by non-extractive business models to achieve its objective to combine social, environmental, and economic progress.

Private law functions not only as a facilitator but as a foundational framework that encodes capital and shapes societal beliefs about prosperity, which requires support from state actors. The history of EU company law—ranging from the SE and SCE to several failed attempts—illustrates both the ambition and sensitivity of supranational private-law projects. A renewed attempt, the proposed EU Inc., offers lower administrative and structural barriers while enabling predefined modules—such as steward ownership or employee participation, alongside conventional models. The modular design could reconcile scalability with long-termism and embed non-extractive principles by design, thereby encouraging innovation “the European Way.” Complementary developments in labour, insolvency, and tax law would further support this idea.

Yet, the legislative proposal is pending, and trilogues may significantly reshape the regime. Further research should therefore examine the final text of the proposal

and study the economic and distributive effects of alternative ownership structures. Finally, the 28th regime has the potential to become more than a tool for start-ups and scale-ups—it can become a building block for an economic model that is genuinely “European.”