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The Danish Government's response to the Commission's call for evidence and public consultation for the initiative for the 28th regime.

The Danish Government welcomes the opportunity to contribute to the European Commission's consultation regarding the initiative for a 28th regime. The Danish Government supports the aim of the 28th regime to make it possible for innovative companies to benefit from a single, harmonized set of EU-wide rules.

Instruments that simplify rules and reduce administrative burdens, including the proposed 28th regime, are important to reduce fragmentation and strengthen competitiveness. The EU must ensure that companies can scale up and operate successfully across the Single Market.

It is important to support start-ups and facilitate the growth of scale-ups. However, a 28th regime should embrace a wide range of companies to ensure burden reduction across Single Market. The Danish Government supports the aim of creating simple, flexible and fast procedures for setting up and operating a company under the 28th regime and making it easier for companies to attract cross-border investment.

The initiative must especially:

- 1) Build on prior initiatives and experiences - Digitalization and simplification
- 2) Create a flexible framework that ensures a level playing field and allow companies to evolve

1. Build on prior initiatives and experiences - Digitalization and simplification

As of now, companies in the EU face many barriers such as costs related to setting or scaling up in other member states and divergence in digital tools available for the companies. Another large barrier is attracting finance for companies in the EU. A broad set of tools that enable harmonization already exists within the European company law framework, such as the Directive on cross-border mobility and the two directives on digitalization. It is important that the 28th regime will be based on a digital-by-default framework where companies are only required to register once, after which the company is given a unique identifier such as an EUID. This will reduce administrative costs for companies and reduce the barriers companies

experience in cross border investment. Equally it will ensure predictability and transparency for the companies, creditors and investors.

The 28th regime, as outlined by the Commission, has the potential to reduce costs and barriers experienced by companies related to both national and EU company law. However, it is important to draw on previous experience and lessons learned from former European company law initiatives such as the SE and SCE-company forms that are not widely used today, and the SPE and SUP, which were never adopted. Therefore, the Danish Government calls for a rigorous impact assessment that takes into account why such prior initiatives have not reached their full potential.

2. The need for a proportional proposal

The 28th regime must create a harmonized framework across the Single Market with sufficient flexibility to encompass a wide range of companies. Therefore, a single set of rules applicable across the Single Market is necessary and can see upsides in a proposal based in either article 352 or article 50 and 114 of the Treaty on the Functioning of the European Union.

Because the 28th regime, as outlined by the Commission, refers to a voluntary legal framework that the companies can choose to adopt instead of navigating through the different national frameworks of the Member states, The Danish Government emphasizes that the 28th regime should have a broad scope and be available for all limited liability companies by not imposing unnecessary restrictions, e.g. by making the regulation sector-specific or based on narrow thresholds.

However, The Danish Government finds it necessary to include a minimum capital requirement in order to provide adequate safeguards. Safeguards must prevent the incorporation of non-viable companies and hinder abuse of a new company form for economic crime. They must also create a sound foundation for creditor and shareholder confidence. However, a minimum capital requirement should not be set too high to deter entrepreneurs. A low minimum capital requirement should be complemented by other safeguards, such as a restriction of distributions to shareholders if the company cannot continue to meet its obligations to creditors and/or a requirement for mandatory minimum capital increase in case of a significant annual loss (e.g. half of the company capital or more).

Since the scope of the 28th regime is outlined by the Commission as incorporating corporate law, insolvency, labour law and taxation, the Danish Government underlines the importance of national competence and unique national systems.