Priority question for written answer P-003589/2026
to the Commission
Rule 144
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Subject: The 28th regime/EU Inc.: can the Commission guarantee the soundness of its legal basis?

Article 114 of the Treaty on the Functioning of the European Union (TFEU) was chosen as the legal basis for the 28th regime, even though the Commission's impact assessment identified Article 50 TFEU, which relates to freedom of establishment, as the appropriate basis[1].

That choice is not accidental. Under Article 50(1) of the Treaty, legislation can be adopted only by means of a directive[2].

The Council Legal Service itself, having received a referral from several Member States, concluded that Article 50 TFEU was indeed the appropriate legal basis[3].

According to settled case law, the Court of Justice of the European Union (CJEU) points out that the choice of legal basis must be based on 'objective factors', in particular 'the aim and content of the measure', and 'may not depend simply on an institution's conviction'[4].

1. Does the Commission confirm that the legal basis must be determined by the aim and content of the text, and not by the choice of legal instrument?

2. What objective factors justify Article 114 TFEU being used as the legal basis instead of Article 50 TFEU?

3. Has the Commission assessed the consequences for entrepreneurs and workers if the CJEU annuls the regulation due to an inappropriate legal basis?

Supporter[5]

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1 European Commission, SWD(2026) 321 final, Impact Assessment Report, section 3.1 'Legal basis', p. 23: 'For ... freedom of establishment, the appropriate legal basis ... could be Article 50 of the Treaty on the Functioning of the European Union (TFEU), requiring a Directive'; 'The choice of the legal instrument would depend on the choice of the legal basis for the initiative'.

2 Ibid.

3 French Senate, Information Report No 795 of 25 June 2026 on the proposal for a regulation COM(2026) 321 final: 'Several Member States have […] referred the matter to the Council Legal Service for an opinion'. Its conclusions were presented to the working party on 11 June 2026. According to the report, the Legal Service considers that 'the main purpose of the proposal […] falls under freedom of establishment' and concludes that the harmonisation of company law must be carried out on the basis of Article 50 TFEU.

4 CJEU, 11 June 1991, Commission v Council, C-300/89, paragraph 10.

5 This question is supported by a Member other than the authors: Jean-Paul Garraud (PfE).