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## **Nordic Financial Unions Position on the EU.Inc Proposal**

NFU supports efforts to strengthen Europe's innovation ecosystem and improve access to financing for startups and scale-ups. However, the proposed EU.Inc framework fundamentally misdiagnoses the structural challenges facing European venture capital markets. The problem is not merely one of fragmented incorporation procedures or administrative burdens. Rather, the core challenge lies in the difficulty of transplanting U.S.-style venture capital contracting into Europe's fundamentally different legal and institutional environment.

Venture capital financing depends on a sophisticated governance framework in which investors dynamically allocate liquidation rights, conversion rights, anti-dilution protections, board control, drag-along rights, redemption rights, and exit mechanisms throughout the lifecycle of a company. These contractual arrangements are not standalone clauses that can simply be copied from Silicon Valley into a European company form. They function as an integrated contractual ecosystem that relies on enabling corporate law, predictable judicial enforcement, insolvency rules, fiduciary doctrine, and investor expectations.

The EU.Inc proposal assumes that simplified incorporation procedures, harmonised templates, flexible share structures, and digital registration will be sufficient to reproduce the conditions that support venture capital investment in Delaware. This assumption is flawed. Article 2 of the proposal explicitly preserves the application of national law in areas not harmonised by the Regulation, meaning that EU.Inc companies will continue to operate within divergent national systems of insolvency law, labour law, taxation, creditor protection, judicial enforcement, and corporate governance. As a result, the proposal overlays a new optional company form onto the existing fragmented landscape without resolving the deeper institutional incompatibilities that continue to undermine cross-border venture capital contracting.

This creates a significant "functionality gap". In many Member States, mandatory corporate law rules, legal uncertainty, and differing enforcement practices weaken or complicate core venture capital mechanisms. Anti-dilution protections depend on enforceable conversion rights; liquidation preferences depend on predictable insolvency treatment; drag-along rights require reliable judicial enforcement; and redemption rights depend on national creditor-protection rules. If one element becomes uncertain or unenforceable, the effectiveness of the broader governance

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structure deteriorates. EU.Inc does not solve these underlying conflicts because the surrounding national legal regimes remain intact.

At the same time, the proposal risks intensifying regulatory competition inside the Single Market. Article 3 subjects employee participation rights to the rules of the Member State where the company is registered, creating incentives for forum shopping and regulatory arbitrage. Combined with fast-track online incorporation under Chapter II, reduced ex ante scrutiny, and the “once-only” registration principle under Article 4, the proposal lowers barriers to mobility without establishing equivalent safeguards against abuse. This increases the risks of letterbox companies, circumvention of labour standards, weakened creditor protection, and avoidance of national worker participation systems.

The proposal’s treatment of employee participation and governance rights is particularly concerning. The broader EU.Inc approach increasingly frames worker information, consultation, and board-level participation rights as obstacles to startup growth rather than as core elements of the European social market economy. The emphasis on simplified Employee Stock Open Schemes (ESOP) and flexible governance arrangements risks shifting entrepreneurial risk onto workers while weakening collectively negotiated protections and national participation models that have long contributed to economic stability and social trust in the Nordic and broader European context.

The EU.Inc proposal also reproduces many of the structural weaknesses that led to the failure of the earlier SPE and SUP initiatives. Like those proposals, EU.Inc relies on optional supranational incorporation, low capital requirements, simplified digital establishment, weak links between registered office and real economic activity, and extensive regulatory flexibility. Previous experience demonstrated that such models risk becoming vehicles for regulatory arbitrage rather than instruments for genuine market integration.

Nordic Financial Unions therefore caution against creating a privileged regulatory enclave for venture-backed firms without first addressing the broader institutional conditions necessary for sustainable and legally predictable venture capital markets. Europe cannot replicate Delaware merely by introducing a new corporate label. Effective venture capital ecosystems depend on coherent legal infrastructure, trusted enforcement mechanisms, balanced stakeholder governance, and regulatory certainty across the entire corporate lifecycle.

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In its current form, EU.Inc risks achieving the worst of both worlds: it may fail to resolve Europe's structural venture capital constraints while simultaneously undermining important elements of Europe's corporate governance, labour protection, and social market model.

**NFU amendment propositions****1. Replace the Regulation with a Directive-Based Framework****NFU proposes:**

- Replacing the current directly applicable Regulation with a maximum-harmonisation Directive focused on targeted company law barriers to venture capital financing.

**Reason:**

- A Regulation creates a parallel supranational company form that intensifies regulatory competition between Member States.
- A Directive would allow Member States to adapt reforms to national labour market systems, collective bargaining models, creditor protection structures, and insolvency frameworks.
- This approach aligns more closely with the cautious harmonisation model discussed in European company law scholarship and avoids the creation of a "Delaware-style" optional regime inside the Single Market.

**Effect:**

- Preserves the Nordic labour market model and national social partnership systems.
- Avoids fragmentation between EU.Inc companies and ordinary national firms.
- Reduces incentives for forum shopping and regulatory arbitrage.

**2. Amend Article 2 – Limit Regulatory Arbitrage and Preserve Real Economic Link**

**Relevant provision:** Article 2 (optional supranational company form while national law remains applicable)

**NFU proposes:**

- Require EU.Inc companies to maintain:
  - their principal place of business,

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- central administration,
- and substantial economic activity  
in the same Member State as the registered office.

**Reason:**

- The current proposal overlays an EU-level shell on top of divergent national legal systems while allowing strategic jurisdiction shopping.
- This reproduces many of the problems associated with the failed SPE and SUP proposals.
- Weak links between registered office and real activity increase risks of letterbox companies and social dumping.

**Effect:**

- Prevents companies from choosing jurisdictions solely to avoid labour participation or social security obligations.
- Strengthens legal certainty for creditors and workers.

### **3. Amend Article 3 - Apply Worker Participation Based on Real Economic Activity**

**Relevant provision:** Article 3 (employee participation linked to Member State of registration)

**NFU proposes:**

- Worker participation, information, consultation, and board-level representation rights should apply based on:
  - the location of the majority of employees, or
  - the company's principal economic activity, not merely the registered office.

**Reason:**

- The current formulation encourages forum shopping into jurisdictions with weaker participation rights.
- The European Trade Union Institute has warned correctly that this places national labour protections into direct regulatory competition.
- This is particularly incompatible with Nordic labour market governance models based on strong social dialogue and workplace participation.

**Effect:**

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- Prevents circumvention of Nordic co-determination systems.
- Protects collective bargaining structures.
- Ensures fair competition between companies operating in the same labour market.

#### **4. Amend Chapter II - Remove “Fast-Track” Incorporation Deadlines**

**Relevant provisions:** Chapter II / 48-hour incorporation system

**NFU proposes:**

- Remove mandatory accelerated incorporation deadlines.
- Preserve substantive review powers for: notaries, registries, labour authorities, tax authorities, and anti-money laundering bodies.

**Reason:**

- Venture capital markets depend on legal certainty and enforceability, not merely speed.
- Excessively reduced scrutiny increases legal uncertainty in complex financing structures and cross-border disputes.

**Effect:**

- Protects creditors, workers, and public finances.
- Reduces risk of abusive shell structures.
- Maintains trust in company registration systems.

#### **5. Introduce Maximum Harmonisation of Insolvency and Creditor Protection Rules**

**Relevant proposal gap:** Insolvency and capital maintenance rules remain largely national

**NFU proposes:**

- Introduce EU standards concerning:
  - creditor protection,
  - insolvency ranking,
  - capital maintenance,
  - and enforceability of shareholder rights.

**Reason:**

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- The proposal wrongly assumes that flexible share structures alone can reproduce U.S.-style venture financing.
- In practice, liquidation preferences, anti-dilution clauses, redemption rights, and drag-along mechanisms depend on surrounding insolvency and creditor protection systems.
- Without substantive convergence, EU.Inc merely reproduces the contractual transplant problem identified in comparative VC literature.

**Effect:**

- Improves legal certainty for investors without undermining labour protections.
- Creates more coherent cross-border financing structures.
- Reduces litigation risks.

**6. Introduce Explicit Safeguards for Collective Bargaining and Nordic Labour Models**

**Relevant proposal gap:** No robust protection for national industrial relations systems

**NFU proposes:**

- Insert a horizontal non-regression clause guaranteeing that EU.Inc companies:
  - cannot circumvent collective agreements,
  - cannot avoid board-level participation,
  - and cannot reduce labour protections through choice of incorporation jurisdiction.

**Reason:**

- Nordic labour markets rely on coordinated bargaining systems rather than extensive statutory intervention.
- EU.Inc risks undermining these systems indirectly through corporate mobility and regulatory competition.

**Effect:**

- Protects Nordic social partnership structures.
- Prevents downward pressure on labour standards.
- Preserves fair competition.

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## **7. Restrict ESOP-Based Substitution of Wages and Social Contributions**

**Relevant proposal sections:** ESOP and venture financing provisions

### **NFU proposes:**

- ESOP schemes must:
  - remain supplementary to collectively agreed wages,
  - remain subject to social security contributions and not replace ordinary remuneration.

### **Reason:**

- Excessive reliance on stock options transfers entrepreneurial risk onto workers while weakening tax and social security systems.
- Startups have high failure rates, making stock-based compensation inherently unstable.

### **Effect:**

- Protects social insurance financing.
- Prevents erosion of collectively bargained wages.
- Limits precarisation of startup employment.