The EU Inc.: A Half-Naked 28th Regime

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Abstract

The European Commission's proposal for a 28th corporate law regime ("EU Inc.") has been presented as a cornerstone of the Union's strategy to foster innovation, retain high-growth firms, and strengthen Europe's venture capital ecosystem. This article argues that the proposal falls substantially short of those ambitions. Building on prior work showing how rigid corporate law rules can impede venture capital contracting and startup financing, the article evaluates whether EU Inc. delivers the self-contained, innovation-oriented legal framework envisioned by the Letta and Draghi Reports. It contends that the proposal has drifted from a targeted instrument for startups and scale-ups toward a broadly available corporate form designed to accommodate the interests of established firms and national constituencies. While the proposal introduces several welcome innovations—including non-par value shares, compatibility with SAFE-style financing instruments, harmonised employee equity arrangements, and reduced reliance on notarisation in key transactions—it simultaneously preserves extensive references to national law, broad Member State discretion, and procedural compromises that undermine legal uniformity and cross-border certainty. The article further argues that the proposal's emphasis on digitalisation over substantive legal integration, its broad scope, and its fragmented adjudicatory and governance architecture risk reproducing many of the shortcomings that frustrated earlier attempts to create pan-European corporate forms. Rather than constituting the transformative framework required to support Europe's innovation economy, EU Inc. emerges as a modest and incomplete reform. The article concludes that, unless substantially strengthened during the legislative process, the proposal is unlikely to alter the incentives that continue to drive innovative European firms toward foreign jurisdictions and legal frameworks.

Keywords: EU Inc., 28th Regime, European Company Law, Venture Capital, Corporate Law Harmonisation, Private Ordering, Regulatory Competition, Delaware Flip

JEL Classifications: K22, G24, F15, L26

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The European Commission's proposal for a 28th corporate law regime ("EU Inc.") has been presented as a cornerstone of the Union's strategy to foster innovation, retain high-growth firms, and strengthen Europe's venture capital ecosystem.

This article argues that the proposal falls substantially short of those ambitions. Building on prior work showing how rigid corporate law rules can impede venture capital contracting and startup financing, the article evaluates whether EU Inc. delivers the self-contained, innovation-oriented legal framework envisioned by the Letta and Draghi Reports. It contends that the proposal has drifted from a targeted instrument for startups and scale-ups toward a broadly available corporate form designed to accommodate the interests of established firms and national constituencies.

While the proposal introduces several welcome innovations—including non-par value shares, compatibility with SAFE-style financing instruments, harmonised employee equity arrangements, and reduced reliance on notarisation in key transactions—it simultaneously preserves extensive references to national law, broad Member State discretion, and procedural compromises that undermine legal uniformity and cross-border certainty. The article further argues that the proposal's emphasis on digitalisation over substantive legal integration, its broad scope, and its fragmented adjudicatory and governance architecture risk reproducing many of the shortcomings that frustrated earlier attempts to create pan-European corporate forms. Rather than constituting the transformative framework required to support Europe's innovation economy, EU Inc. emerges as a modest and incomplete reform.

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1. Introduction

For years, the European debate on closing the venture capital ("VC") gap with the United States has looked everywhere but at corporate law.[1] Tax incentives, public co-investment vehicles, pension-fund unlocks — all drew sustained attention.[2] Corporate law, by contrast, was treated as a settled background condition, largely irrelevant to the question of why European startups raise less capital and scale less aggressively than their US counterparts.[3]

Our work over the past few years has challenged that consensus. We have developed a theoretical framework that helps map one by one the various channels through which rigid corporate laws can impede the transplant of the presumptively efficient contractual technology governing VC deals in the US. We have provided systematic evidence from Germany and Italy showing that the corporate law regimes in force in both jurisdictions prevent VC investors and founders from achieving an agency cost-minimising allocation of cash-flow and control rights—whether by replicating US-style VC arrangements or by devising functional equivalents. We have investigated the causes of the status quo and advanced concrete reform proposals that now find clear echoes in the policy conversation.[4]

We're not claiming corporate law is the most important factor shaping VC markets — far from it. The argument is rather that corporate law matters *at the margin*. It won't make or break a VC ecosystem on its own but can meaningfully degrade the contractual architecture that VC finance runs on, and nudge founders and investors when their decisions are most finely balanced. And "at the margin" shouldn't be read as meaning that corporate law "barely matters": in markets where a handful of firms generate the vast bulk of returns[5] and where the contractual technology underpinning VC deals is sensitive to even modest legal frictions,[6] the

[1] C.A. NIGRO and A.A. GÖZLÜGÖL, Building an EU Venture Capital Market: What About Corporate Law?, in G. GIMIGLIANO and V. CATTELAN (eds.), Money Law, Capital, and the Changing Identity of the European Union, Hart, 2022, p. 165 ff., pp. 174-177 (showing that, even when designing measures instrumental in supporting entrepreneurship in general, VC fell under EU policymakers' radars).

[2] Id., pp. 171-174 (mapping the plethora of EU initiatives aimed at supporting the development of the VC market).

[3] Id., p. 177. This is consistent with the findings of the classic law and finance works in this area. See S.N. KAPLAN, F. MARTEL and P. STRÖMBERG, How Do Legal Differences and Experience Affect Financial Contracts?, 16 Journal of Financial Intermediation 273, 2007 (finding "no substantive differences across low and high minority [shareholder] protection countries" because "there appear to be few institutional impediments to implementing U.S.-style [contract] terms"); L.A. JENG and P.C. WELLS, The Determinants of Venture Capital Funding: Evidence across Countries, 6 Journal of Corporate Finance 241, 2000 (finding no direct correlation between corporate law's quality and VC activity).

[4] See L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Venture Capital Contracting as Bargaining in the Shadow of Corporate Law Constraints, ECGI Law Working Paper No. 833/2025, 2025, available at <https://ssrn.com/abstract=5183235> ; Id., Can U.S. Venture Capital Contracts Be Transplanted into Europe? Systematic Evidence from Germany and Italy, ECGI Law Working Paper No. 848/2025, 2025, available at <https://ssrn.com/abstract=5287685; L. ENRIQUES and C.A. NIGRO, No Private Ordering Please, We're Italian, 11 Italian Law Journal 139, 2025 ; L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Mandatory Corporate Law as an Obstacle to Venture Capital Contracting in Europe: Implications for Markets and Policymaking, ECGI Law Working Paper No. 834/2025, 2025, available at <https://ssrn.com/abstract=5183256>. L. ENRIQUES, EU Corporate Law Reforms to Create an Integrated Market for Innovation, in L. MORETTI and K. KORNOSZ-KORONOWSKA (eds.), The EU's Strategic Autonomy and the Innovation-Finance Nexus, European University Institute, 2025, pp. 145 ff., available at <https://cadmus.eui.eu/bitstreams/d351b7f4-daa0-4b1b-abdc-f662b2ee1a42/download>.

[5] On the concentration of VC returns in a small share of "home-run" outcomes, see, e.g., F.M. SCHERER and D. HARHOFF, Technology Policy for a World of Skew-Distributed Outcomes, 29 Research Policy 559, 2000.

[6] On the sensitivity of the contractual technology governing VC deals to the flexibility of the applicable corporate law, see Venture Capital Contracting (n. 4); Can U.S. Venture Capital Contracts (n. 4); see also J. LERNER and A. SCHOAR, Does Legal Enforcement Affect Financial Transactions? The Contractual Channel in Private Equity,

margin is actually where a lot of the action is. At the same time, we're under no illusions: corporate law isn't *the* binding constraint on European VC. Investor base, talent, exit markets, university–industry linkages: these move the needle far more.[7] Even a perfectly designed corporate law regime wouldn't close the funding gap with the US and China.[8]

Against this background, the EU has put its weight behind the idea that corporate law matters and vowed to act. On 18 March 2026, the European Commission unveiled its long-awaited legislative proposal for the so-called 28th regime[9] (hereinafter: the Proposal)—the EU-wide corporate legal framework that was supposed to be Europe's answer to Silicon Valley, its weapon against the "Delaware flip", its instrument for keeping homegrown champions at home and growing. The proposal—which has already triggered a rich scholarly debate[10]—has landed. And what it reveals is a profound betrayal of the idea's original ambition: a diluted, scope-bloated, rhetoric-heavy instrument that serves the interests of yesterday's corporate establishment far more than it serves Europe's innovative firms of tomorrow.

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120 Quarterly Journal of Economics 223, 2005 (showing, across 210 private equity investments in developing countries, that both the contractual structures deployed and the resulting deal outcomes — including valuations and returns — vary systematically with the legal-enforcement environment, and that private contractual workarounds are "only a partial remedy" to legal frictions); O. ELDAR, J. GRENNAN and K. WALDOCK, Common Venture Capital Investors and Startup Growth, ECGI Finance Working Paper No. 902/2023, 2023, available at <https://ssrn.com/abstract=3406205> (exploiting the staggered introduction of corporate-opportunity waivers as a quasi-natural experiment and finding that the relaxation of fiduciary-duty constraints reshaped VC investment patterns and improved startup outcomes); B. BIAN, Y. LI and C.A. NIGRO, Conflicting Fiduciary Duties and Fire Sales of VC-backed Start-ups, LawFin Working Paper No. 35, 2025, available at <https://ssrn.com/abstract=4139724> (documenting the prevalence of fire sales in VC-backed acquisitions, and exploiting a court ruling that re-prioritised fiduciary duties to common shareholders to show that the corporate-law regime shapes VC funds' exit behaviour, distribution timing, fundraising conditions, and the financing and ex-ante performance of portfolio startups).

[7] For an overview, see L. GRILLI, G. LATIFI and B. MRKAJIC, Institutional Determinants of Venture Capital Activity: An Empirically Driven Literature Review and a Research Agenda, 33 Journal of Economic Surveys 1094, 2019.

[8] For the relevant figures and the resulting gap, see L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Mandatory Corporate Law (n 4), p. 5.

[9] 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, 18 March 2026, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52026PC0321>.

[10] See, A. PALOMBO, Why the 28th Regime Needs a Fallback Plan: The EU Inc Zone, Oxford Business Law Blog, 3 April 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/why-28th-regime-needs-fallback-plan-eu-inc-zone> (proposing an "EU Inc Zone" as a fallback institutional design, on the ground that the Proposal is not truly self-contained) ; W.-G. RINGE, EU Inc: Why Startups Gain — and Venture Capital Hesitates, Oxford Business Law Blog, 30 March 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/03/eu-inc-why-startups-gain-and-venture-capital-hesitates> (arguing that the EU Inc. is attractive for startups but may leave venture capital hesitant given insufficient certainty and investor alignment) ; S.M. SEPE, The EU Inc Business Judgment Rule: A Safe Harbour without a Harbour, Oxford Business Law Blog, 13 April 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/eu-inc-business-judgment-rule-safe-harbour-without-harbour> (arguing that Article 44 does not create a meaningful safe harbour, since the protection it promises is structurally too weak) ; G. STRAMPELLI, The Limits of the EU Inc-for-All Approach: The Unintended Consequences of Unrestricted Access to Capital Markets, Oxford Business Law Blog, 14 May 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/05/limits-eu-inc-all-approach-unintended-consequences-unrestricted-access> (arguing that the EU Inc.'s universal scope undermines its suitability for the startups and scale-ups it was primarily designed to serve) ; M. VENTORUZZO, Welcome EU Inc!, Oxford Business Law Blog, 2 April 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/04/welcome-eu-inc> (welcoming the Proposal as an innovative harmonising step while acknowledging remaining weaknesses).

The Commission has gone through the motions of boldness. It has wrapped a modest administrative tidying exercise in the language of competitiveness revolution. The emperor, on closer inspection, is modestly dressed.

2. What Was Promised : A Surgical Tool for Innovation

Let's go back to where this began. Both the Letta Report (April 2024) and the Draghi Report (September 2024) were unambiguous about what the 28th regime was supposed to be.[11] Letta called it a "transformative step towards a more unified single market," situated squarely in the context of unleashing startups and scale-ups—firms that are new, technology-driven, and high-growth.[12] Draghi, diagnosing Europe's innovation gap with surgical precision, pointed to the structural barriers preventing European startups from accessing cross-border VC, retaining talent through competitive equity compensation, and scaling without drowning in 27 overlapping national regulatory frameworks.[13] His recommendation was similarly targeted : a framework conceived for the specific lifecycle of innovative companies, from incorporation to exit.[14]

The Commission's own Competitiveness Compass of January 2025 placed the 28th regime squarely within its first "necessity" : closing the innovation gap.[15] The message was clear. This was a scalpel, not a sledgehammer.

The Proposal tells a different story.

3. The Scope Trap : Everyone In, Nobody Served ?

The Proposal's Explanatory Memorandum is careful to note that the EU Inc. framework "responds in particular to the needs of startup and scaleup companies but should be legally open to all founders and companies who see it fit for their business model".[16] Recital 5 of the actual Regulation text repeats this formula almost verbatim.

Read past the rhetorical frame, and the substance is unambiguous: any natural or legal person can form an EU Inc., existing companies of any size and age can convert into one, and corporate

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[11] E. LETTA, Much More than a Market — Speed, Security, Solidarity: Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens, European Council, April 2024, available at <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>; M. DRAGHI, The Future of European Competitiveness, European Commission, September 2024, available at <https://commission.europa.eu/topics/competitiveness/draghi-report_en>.

[12] LETTA (n. 11), p. 7 (calling for a "Simplified European Company" as a transformative step towards a more unified Single Market) ; see also id., p. 92.

[13] DRAGHI (n. 11), p. 20-24 (identifying fragmentation of national company law regimes as a structural barrier to scaling).

[14] Id., p. 29-30 (calling for an "Innovative European Company" tailored to the lifecycle of high-growth, technology-driven firms).

[15] Communication from the Commission, A Competitiveness Compass for the EU, COM(2025) 30 final, 29 January 2025, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025DC0030>, pp. 3-4.

[16] Explanatory Memorandum accompanying the 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, 18 March 2026, p. 9, available at <https://commission.europa.eu/document/download/3e9822aa-8cef-40a1-904e-a53fc68e7265_en> ; see also Proposal (n. 1), Recital 5.

groups can use it as a subsidiary vehicle.[17] The Commission's own 2026 Work Programme had already signalled this, announcing the regime for "all companies operating across the Single Market".[18] What was conceived as a targeted innovation instrument has become a general-purpose corporate vehicle.

The Commission's justification for this universal scope is, it must be said, intellectually honest if strategically revealing. The Explanatory Memorandum notes "general agreement among participants, including Member States, business associations and legal professionals, in favour of a broad scope for the corporate framework, i.e. not limited to a sub-set of companies such as start-ups or innovative companies, due to difficulties to establish an appropriate definition, administrative burden to demonstrate compliance and complications when companies no longer meet the definition".[19]

This is the lobbying consensus of the old economy dressed up as regulatory pragmatism. And it contains a real but badly mis-diagnosed problem.

It is true that defining innovative companies by regulatory fiat—creating a necessarily underdetermined legal category that firms must qualify for and maintain—would be troublesome. Any such definition would immediately become a battlefield : wasteful litigation, creative circumvention strategies, definitional bickering between member states, and an administrative burden on the very companies the regime was supposed to help. A startup founder in Warsaw does not want to spend legal fees proving she is innovative enough to use the corporate vehicle designed for her.

But the consistent answer to this problem is not to open the regime to all companies indiscriminately. The consistent answer is to build the regime's rules from the ground up around the substantive needs of innovative, high-growth firms—and let the design do the filtering.[20] Here it is worth being precise about what universal scope actually undermines and what it does not.

For the most substantive innovations in the Proposal—zero minimum capital, non-par value shares, SAFE and KISS instrument compatibility, the harmonised EU-ESO with tax deferral to disposal—universal access is largely harmless, because these features will be taken up almost exclusively by startups and scale-ups in any case. A large industrial conglomerate restructuring a European subsidiary has no particular interest in warrant-based employee stock options or SAFE-compatible convertible instruments. The self-selection happens naturally at the level of substantive need. On these provisions, the Commission's choice of universal scope does not meaningfully dilute the innovation-economy value of the tools.

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[17] Proposal (n. 1), Articles 11-13 (incorporation by natural and legal persons) and Chapter VIII (conversion of existing companies) ; see also Proposal (n. 1), Recital 5.

[18] Communication from the Commission, Commission Work Programme 2026 — Europe's Independence Moment, COM(2025) 870 final, 21 October 2025, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025DC0870>.

[19] Explanatory Memorandum (n. 16), p. 10 (summarising the public consultation, which received 1,467 replies, with 96% of company responses from SMEs, and reporting "agreement across stakeholders in favour of a broad scope for the framework").

[20] For an alternative solution, see J. Alfaro Aguila Real, Completing the EU Inc Regime: A VC-Gated Startup Sandbox, Oxford Business Law Blog, 28 April 2026 (suggesting a sandbox regime reserved to EU Inc. in "which "a recognised venture capital fund participates as the largest or second largest shareholder").

The damage from universal scope is felt elsewhere. It means the regime's procedural and administrative architecture—digital incorporation, simplified registration, the EU central interface, reduced filing costs—must be designed to accommodate the full range of corporate heterogeneity, from a two-person deep-tech startup to a multinational group restructuring exercise. This inevitably introduces compromises, escape valves, and member-state-level areas of discretion that would not be necessary with a narrowly targeted instrument. More importantly, universal scope is what invited the old-economy lobbying pressure that shaped the Proposal's weakest features: the preservation of national law gap-filling, the breadth of member state discretion, and the political negotiations around labour and codetermination rules that will complicate the legislative process ahead. The old-economy incumbents who lobbied hardest for universal access did not do so because they need zero-capital SAFEs. They did so because they wanted a cost-efficient corporate building block—and in getting it, they brought their political weight to bear on the instrument's overall design.

4. The Revival of the Dead : This Film Has Been Screened Before

There is a deeper problem lurking beneath the scope question. The 28th regime, as now conceived, is not new. It is a resurrection—the third attempt, after the failures of 2004 and 2011—to create a pan-European private limited liability company form.[21] The Commission's own Explanatory Memorandum acknowledges the ghost of the Societas Europaea[22]—the pan-European vehicle originally proposed in 1970, which took over three decades to reach the statute book and still sits largely unused today,[23] bloated with political compromise.[24]

[21] See Proposal for a Council Regulation on the Statute for a European Private Company (Societas Privata Europaea — SPE), COM(2008) 396 final, 25 June 2008, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008PC0396> (withdrawn) ; and Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies (Societas Unius Personae — SUP), COM(2014) 212 final, 9 April 2014, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014PC0212> (withdrawn). For academic discussions on these initiatives, see eg, H. HIRTE and C. TEICHMANN (eds.), The European Private Company — Societas Privata Europaea (SPE), De Gruyter, 2013 ; P.H. CONAC, The Societas Unius Personae (SUP): A "Passport" for Job Creation and Growth, 12 European Company and Financial Law Review 139, 2015.

[22] Explanatory Memorandum (n. 16), p. 5-6 (acknowledging the precedent of the Societas Europaea and the political difficulties of prior pan-European corporate-form initiatives).

[23] Commission Staff Working Document accompanying the Report from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), SEC(2010) 1391 final, 17 November 2010, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010SC1391 (documenting that, as at 25 June 2010, 13% of all SEs were shelf-SEs not yet activated and a further 36% had originally been set up as shelf-SEs before being activated later, with the majority of all SEs having no employees) ; see also L. HORNUF, A. MOHAMED and A. SCHWIENBACHER, The Economic Impact of Forming a European Company, 57 Journal of Common Market Studies 659, 2019 (analysing SE adoption patterns and confirming that SE incorporation is driven primarily by regulatory arbitrage motives rather than the integration goals originally envisioned).

[24] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), J.O.U.E., 10 November 2001, L. 294, p. 1, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001R2157> ; Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, J.O.U.E., 10 November 2001, L. 294, p. 22, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0086>. For an academic discussion, see L. ENRIQUES, Silence is Golden: The European Company Statute as a Catalyst for Company Law Arbitrage, 4 Journal of Corporate Law Studies 77, 2004.

The Commission frames the EU Inc. as a clean break from those predecessors.[25] But the structural problem that killed the earlier proposals—the political economy of 27 member states with entrenched national company law traditions, notarial guilds, labour codetermination rules, and sovereign tax prerogatives[26]—has not changed. What has changed is the rhetorical framing and the political momentum behind it.

Universal scope makes this problem significantly worse. By opening the regime to all companies, the Commission has invited back into the room every single interest group that sank the earlier proposals. Trade unions, already alarmed by the prospect of codetermination circumvention, are watching closely.[27] The Proposal's answer—that EU Inc. companies are "subject to the employee participation rules applicable in the Member State in which they have their registered office"[28]—is correct but politically incendiary. That is because it does nothing to prevent regulatory arbitrage through strategic registered office choices, a concern that trade unions have been raising loudly throughout the consultation process and will likely prompt them to either kill the proposal or push for changes that make the EU Inc. unattractive for all.[29]

The sirens of the old economy have sung. The ship is heading for the same rocks it hit in 2004 and 2011, just with more modern navigation equipment.

5. Digital-Only : The Fig Leaf of the Non-Digital Native

The Proposal's most prominent selling point—its relentless insistence on "digital-only" procedures—deserves particular scrutiny, because it reveals something important about the Commission's understanding of what actually impedes innovative companies.

To be sure: fully online incorporation within 48 hours for €100, a pan-EU central interface built on BRIS, digital share registers, electronic shareholder meetings, digital-only insolvency filings[30]—all of this is valid. So much so, that it should have been implemented across the board many years ago, as basic infrastructure for a functioning single market. The 2019 and 2025 Digitalisation Directives moved in this direction,[31] and the Proposal builds sensibly on those foundations.

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[25] Explanatory Memorandum (n. 16), p. 6 (presenting the EU Inc. as a novel framework distinct from earlier pan-European corporate forms).

[26] See S. HARBARTH, From SPE to SMC — The German Political Debate on the Reform of the "Small Company", 12 European Company and Financial Law Review 231, 2015, p. 235 ; CONAC (n. 21), p. 141-142 (recounting that the SPE foundered on Member State opposition to a "29th regime", the real-seat/registered-office divide, and—"fatal[ly]"—German labour unions' fears that the SPE would be used to escape the German codetermination regime).

[27] European Trade Union Confederation, Response to the Commission's Plan for a 28th Company Regime for Innovative Companies — Defending Workers and Labour Law, adopted at the Executive Committee meeting of 4-5 March 2025, available at <https://www.etuc.org/en/document/response-commissions-plan-28th-company-regime-innovative-companies-defending-workers-and>.

[28] Proposal (n. 9), Article 12 ; see also Explanatory Memorandum (n. 16), p. 11 (providing that an EU Inc. is "subject to the employee participation rules applicable in the Member State in which it has its registered office").

[29] See ETUC (n. 27) ; see also ETUC, Missing Guarantees for Workers' Rights in EU Inc Plan, press release, 18 March 2026, available at <https://www.etuc.org/en/pressrelease/missing-guarantees-workers-rights-eu-inc-plan>.

[30] Proposal (n. 9), Chapter II (EU central interface, formation and filing); Article 14 (48-hour fast-track formation procedure, capped at EUR 100, where standard EU templates are used); Article 17 (5-day route for bespoke articles of association) ; see also Explanatory Memorandum (n. 16), p. 12.

[31] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, J.O.U.E., 11 July 2019, L. 186,

But the Commission's near-obsessive focus on digital procedures as the headline innovation strikes us as the fig leaf of the non-digital native who wants to appear modern. It is the corporate law equivalent of a government boasting about its new e-filing portal while leaving the underlying bureaucratic requirements intact. The digitisation of a cumbersome process yields a less cumbersome process. It does not yield a different process, let alone a different product.

The substantive corporate law impediments that prevent European startups from scaling—fragmented cap table rules, the absence of standardised early-stage financing instruments, 27 different approaches to employee equity, the lack of predictable cross-border insolvency for young companies[32]—are not, at their core, problems of digitisation. They are problems of substantive legal fragmentation. A founder who cannot structure a Series A does not need a faster filing portal. She needs harmonised substantive rules.

6. The SAFE Paradox : When Naming Something Risks Freezing It

One of the Proposal's more intriguing features deserves a closer look—not because it is wrong, but because it illustrates how even well-intentioned legislative drafting can carry unintended risks.

Recitals 45 and 51 of the Proposal explicitly name Simple Agreements for Future Equity (SAFEs) and Keep It Simple Securities (KISS) as the paradigm cases that the EU Inc.'s enabling framework for convertible instruments is designed to accommodate.[33] The operative articles—principally Article 68—do not mention these instruments by name; they simply provide for "convertible instruments, warrants or other instruments entitling to new shares" in general terms.[34] The Commission is technically correct to say the framework is broadly enabling rather than prescriptive.

But the decision to name SAFEs and KISS in the recitals is strange, and potentially counterproductive. Recitals are not binding law, but in the civil law traditions that govern most EU member states, they carry significant interpretive weight.[35] National courts and regulators unfamiliar with early-stage financing mechanics—which is to say, most of them—will reach for the recitals when confronted with a novel instrument structure and ask : does this look like a SAFE or a KISS? If it does not, they may apply the framework more cautiously or restrictively. The explicit naming of today's dominant US VC instrument templates as the

p. 80; Directive (EU) 2025/25 of the European Parliament and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law, J.O.U.E., 10 January 2025, OJ L, 2025/25, 10 January 2025.

[32] See generally L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Can U.S. Venture Capital (n. 4), pp. 46-50 (documenting, e.g., the fragmentation of the regimes governing employee equity awards and early-stage financing instruments across Germany and Italy).

[33] Proposal (n. 9), Recitals 45 and 51 (identifying SAFEs and KISS as the paradigm convertible-instrument templates the enabling framework is designed to accommodate).

[34] Proposal (n. 8), Article 68.

[35] On the legal significance and interpretive function of recitals in EU legislation, see CJEU, Case 24/62, Germany v. Commission, judgment of 4 July 1963, EU:C:1963:14, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61962CJ0024> ; Case C-162/97, Nilsson and Others, judgment of 19 November 1998, EU:C:1998:554, para 54, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61997CJ0162>.

reference point risks creating an interpretive gravitational pull toward current market practice,[36] subtly discouraging the contractual innovation that efficient capital markets depend on.[37] Legislation that enshrines the status quo of VC contract drafting is not a neutral enabling framework—it is a snapshot that ages.

Worse, this interpretive risk is unevenly distributed across member states. Jurisdictions with more sophisticated capital markets and greater familiarity with US VC practice will apply the general enabling language generously. Those without will anchor on the named examples. The result is yet another vector through which the patchwork of divergent national approaches—the very fragmentation the 28th regime is supposed to eliminate—survives in practice, this time embedded not in statutory rules but in interpretive culture. The Commission has tried to enable contractual freedom and may inadvertently have mapped its limits.

7. Patchwork Preserved : The Member State Escape Routes

Read the fine print of the Proposal, and a pattern emerges : for every harmonised rule, there is room for member state discretion or a gap-filling reference to national law that quietly reintroduces the very fragmentation the regime purports to eliminate.

Article 4 is foundational and devastating : “Matters that are not covered by this Regulation or by the articles of association shall be governed by national law, including the provisions transposing Union law, which apply to relevant national legal forms in the Member State in which the EU Inc. has its registered office”. The Commission even requires each member state to designate which national legal form’s rules fill these gaps. The result is 27 different versions of the EU Inc., each with its own national legal substrate—precisely what Commissioner McGrath warned against during the parliamentary debate in January.[38]

Employee participation is governed by the national law of the registered office (article 12)—leaving the codetermination map of Europe fully intact and creating continued incentives for strategic registered office choices. Seemingly uniform rules on directors’ duties explicitly leave scope for additional member-state-level liability rules (article 44(4)). Accounting rules are national. The simplified insolvency provisions in Chapter X apply only to “EU Inc. companies that are innovative startups”, creating a definitional sub-category that reintroduces the precise classification problem the Commission claimed to be avoiding by adopting universal scope. Member states retain broad discretion over preventive controls, the involvement of public authorities in formation procedures, and the conditions for fast-track liquidation (Article 14 and Chapter X). The 48-hour, €100 incorporation promise applies only when the standard EU templates are used (Article 14)—and is subject to the caveat that “physical presence can be requested by a public authority in exceptional and duly justified circumstances”.

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[36] On the risk that legal standardisation can crowd out subsequent innovation in corporate contracting, see M. KAHAN and M. KLAUSNER, Standardization and Innovation in Corporate Contracting (or: “The Economics of Boilerplate”), 83 Virginia Law Review 713, 1997.

[37] On contractual experimentation and innovation as a driver of efficient VC markets, see R.J. GILSON, Engineering a Venture Capital Market: Lessons from the American Experience, 55 Stanford Law Review 1067, 2003 ; see also R.P. BARTLETT III, Standardization and Innovation in Venture Capital Contracting: Evidence from Startup Company Charters, Rock Center for Corporate Governance at Stanford University Working Paper No. 253, 2023, available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568695>.

[38] M. McGRATH, Remarks at the Plenary Debate on the 28th Regime, European Parliament, SPEECH/26/341, 21 January 2026, available at <https://ec.europa.eu/commission/presscorner/detail/en/speech_26_341>.

The patchwork does not disappear. It puts on a new suit. Twenty-seven slightly different versions of the EU Inc. will emerge from transposition, each bearing the EU Inc. label while operating under substantially different national legal environments. The cross-border legal certainty that investors value—the ability to understand a company's governance, capital structure, and insolvency exposure without jurisdiction-specific legal opinions—will remain elusive.[39]

8. The Notary Problem : A Bold Move, But Not Bold Enough

On the question of notaries, the Commission deserves genuine credit—and a pointed asterisk.

The Proposal makes a real and courageous push in two critical areas. Article 67(6) explicitly prohibits member states from "imposing any additional formalities, including a requirement for a notarial deed, for the subscription [of new shares] to be legally valid". Article 59(5) does the same for share transfers.[40] This is genuinely significant : future funding rounds, cap table restructurings, and secondary share transfers under the EU Inc. framework cannot be held hostage to notarial involvement. For a startup navigating a Series A or a scale-up managing a complex growth-stage financing round, this removes a real and costly friction that currently deters cross-border investors in notary-heavy jurisdictions like France and Germany.[41] Stripping notaries from these transactions—against the predictable opposition of one of the most effectively organised professional lobbies in European corporate law—took political will, and it should be acknowledged.

But then comes Article 14. Formation of an EU Inc.—the founding moment, the act of birth—must be "subject to preventive administrative, judicial or notarial control". For companies using the standardised EU templates and the fast-track route, this is where the Commission does show real nerve : the entire procedure—registration plus whatever preventive control member states apply—must be completed within 48 hours and at a total cost of no more than €100.[42] The Commission's own Explanatory Memorandum acknowledges this will cause "reduced revenue for intermediaries, and in particular notaries".[43] That is a striking admission, and a genuine one. For the simple, template-based incorporation, notaries are effectively cut off from their traditional fleshpots : the procedure is capped, digitised, and time-bound in a way that leaves little room for customary fee schedules.

[39] See, e.g., FRESHFIELDS, EU Legislative Initiative to Establish a New 28th Regime for Innovative Companies - Client Briefing, September 2025, available at <https://www.freshfields.com/en/our-thinking/briefings/2025/09/eu-legislative-initiative-to-establish-a-new-28th-regime-for-innovative-companies> (commenting on the JURI Committee's draft report, which prefigured the Commission's approach : rather than delivering a supranational corporate form, the regime would amount to a "supranationalisation of essential elements of an otherwise national corporate form").

[40] Proposal (n. 9), Article 59(5).

[41] P. HARENBERG and C.A. NIGRO, Reforming German Corporate Law for Startups: Clear Ambitions and Skewed Vision, Oxford Business Law Blog, 16 January 2026, available at <https://blogs.law.ox.ac.uk/oblb/blog-post/2026/01/reforming-german-corporate-law-startups-clear-ambitions-and-skewed-vision> (discussing the significance of notarization requirements for startups under German corporate law).

[42] Proposal (n. 9), Article 14.

[43] Explanatory Memorandum (n. 16), p. 16 (stressing that the EUR 100 cost ceiling for template-based incorporation will entail "reduced revenue for intermediaries, and in particular notaries") ; see also Commission Staff Working Document, Impact Assessment Report for EU Inc. — Executive Summary, SWD(2026) 322 final, 18 March 2026 (quantifying the impact on business registers and other authorities involved in the registration, including preventive control).

But this concession has a hard boundary. The moment a company opts for tailor-made articles of association, Article 17 governs instead, the five-day deadline replaces the 48-hour one, and the cost ceiling disappears.[44] In notary-tradition jurisdictions, this means the full notarial apparatus re-enters the picture with its customary fee schedule intact.[45] The notary is not merely kept at the door for bespoke incorporations; it is restored as full gatekeeper.

How much this matters in practice turns on a question the Proposal conspicuously leaves unanswered. The actual content of the standard EU templates is nowhere defined in COM(2026) 321 final—it is delegated entirely to future implementing acts under Article 8.[46] Whether those templates will accommodate multiple share classes, preferred equity, weighted voting rights, and the other complex features that any high-growth company raising external capital will need from day one—remains to be seen. If the templates are carefully designed to reflect markets' best practices (and regularly updated to incorporate successful contractual experimentation), a meaningful proportion of innovative companies could benefit from the fast-track, cost-capped procedure, and the notarial fees that come with it would be tightly constrained. If the templates are designed narrowly, as basic single-class, single-tier structures, then virtually every company of commercial significance will be pushed into bespoke articles and the full notarial cost regime.[47] The Commission has handed itself enormous discretion through the implementing act mechanism—and with it, enormous responsibility.[48] The profession's lobbyists will be watching those implementing acts very closely indeed. So should everyone else.

9. Why Shouting "The Emperor Is Half-Naked" Is the Right Thing to Do

There is a familiar objection to criticism of the kind we have advanced. It goes like this : *you are imperilling a laudable project; the 28th regime is directionally correct, meaningfully useful, and politically hard-won; to attack it so fundamentally is to hand ammunition to those who want nothing to change; don't let the perfect be the enemy of the good.*

We reject this framing—not despite caring about the project, but precisely because we do.

Europe does not have the luxury of incremental adequacy. We are not debating the optimisation of a stable, well-functioning system with time on its side. We are debating whether Europe can generate the innovative companies, the productive capital markets, and the economic dynamism needed to sustain open societies under conditions of acute geopolitical stress, proliferating populism, and accelerating technological disruption.[49] The Letta and Draghi

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[44] Proposal (n. 9), Article 17.

[45] On the role of notaries and the incentive structure defining their behaviour, see L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Mandatory Corporate Law (n. 4), pp. 18-19.

[46] Proposal (n. 9), Article 8 (empowering the Commission to adopt implementing acts establishing the standard articles of association).

[47] For a more articulated critique of the template approach and the conclusion that " [a]s currently designed … the Proposal outlines a response that is poorly calibrated to the needs of those very VC-backed firms it aims to serve", see L. ENRIQUES, C.A. NIGRO and T.H. TRÖGER, Templates in the EU Inc. Regulation Proposal, ECGI Law Working Paper No. 925/2026, 2026, available at <https://ssrn.com/abstract=5287685>, p. 16.

[48] Id., pp. 10-14 (pointing out the aspects of the Proposal regarding the templates that raise concerns in light of the specific needs of VC-backed firms) and 14-16 (delivering recommendations on how the Commission could exercise their delegated powers to make templates work for VC-backed firms).

[49] "S. NIINISTÖ, *Safer Together — Strengthening Europe's Civilian and Military Preparedness and Readiness*, European Commission, October 2024, available at https://commission.europa.eu/document/download/5bb2881f-

Reports were not merely technical diagnostics. They were warnings about the trajectory of a civilisational project.

In that context, an "okay" solution—one that modestly improves the status quo, provides marginal administrative savings to companies at large, preserves the notarial profession's most lucrative work, and leaves the patchwork of national law intact in its twenty-seven variations—is a step in the right direction but a very small one. Unless the Council and the European Parliament push for something bolder, this piece of legislation will have squandered scarce political capital that could have been spent on something transformative. The 28th regime will not be legislated again for a generation. The window of opportunity created by Letta, Draghi, and the political momentum of this Commission will not remain open for long.

We are, in a very real sense, spending our last chips. And the question is whether we spend them on a regime that delivers a marginal cost reduction to dinosaurs who sat out every disruption of the past decade without changing their business models—or on one that genuinely changes the odds for the founders, the risk-takers, and the capital allocators who might yet make capitalism deliver for the people who are losing faith in it.

That is why we level this critique. The ambition that animated Letta and Draghi—and that this Commission has the mandate to act on—deserves a vehicle equal to it. EU Inc. could be that vehicle. It is not there yet.

10. To Conclude : Strong on Rhetoric, Weak on Substance

In sum : step back from the technical details, and a clear picture emerges. The Proposal :

- adopts universal scope under pressure from the old economy lobby, abandoning the targeted design that would have served innovative companies and created natural selection without definitional battles;
- repackages existing digital infrastructure as headline innovation, while leaving the substantive corporate law fragmentation largely intact through cascading references to national law;
- preserves the patchwork through 27 different national implementations, member state discretions, and gap-filling by domestic law;
- delivers real innovations—zero capital, EU-ESO, non-par value shares, SAFE compatibility—which will in practice be taken up almost exclusively by startups and scale-ups regardless of universal eligibility, since large incumbents have little use for these tools ; the universal scope causes less damage here than on the regime's procedural architecture, where it invited the political compromises and member state discretion that are the Proposal's greatest weaknesses ; and
- is estimated to produce savings of between €328 million and €440 million over ten years for an estimated 308,000 companies[50]—figures that, even taken at face value, amount to

9e29-42f2-8b77-8739b19d047c_en?filename=2024_Niinisto-report_Book_VF.pdf. See also LETTA (n. 9) and DRAGHI (n. 9).

[50] Commission Staff Working Document, Impact Assessment Report for EU Inc. — Executive Summary, SWD(2026) 322 final, 18 March 2026 (estimating administrative-cost savings of between EUR 328 million and EUR 440 million over ten years for an estimated 308 000 28th regime companies); see also Commission Staff Working Document, Impact Assessment Report for EU Inc. — Part 3, SWD(2026) 321 final, 18 March 2026 (detailing the take-up assumptions underlying the 308 000 figure).

rounding-error territory when spread across a decade and a continent-sized competitiveness gap.

The innovation gap will be closed not by giving dinosaurs a slightly more comfortable enclosure but by creating the conditions under which the next generation of European champions can emerge, grow, and stay European.

The Commission had the map, the mandate, and the moment. It threw the map overboard to please the passengers, rebranded the wreckage as “EU Inc.”, and has presented it as a competitiveness revolution.

In deciding whether to reincorporate in Delaware, the founders in Warsaw, Tallinn, and Amsterdam will read the Proposal, note that it was designed for someone else, and draw the same rational conclusions as before. Unless, that is, the legislative process delivers a more ambitious, self-sufficient, private ordering-friendly product.

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