COMPANY INCORPORATION IN COMPARATIVE LAW

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Abstract:
The contemporary framework for incorporating commercial companies in Europe reflects four distinct legal traditions that respond differently to the pressure of digitalisation. French law has gradually integrated electronic tools into long-established institutional structures, allowing digital procedures to function alongside the traditional role of the commercial court registries. German law continues to give priority to notarial and judicial scrutiny, preserving a preventive model of legal certainty that shapes the entire incorporation process. Estonia has developed an almost entirely digital administrative architecture, where identity verification, document execution and registration operate through interoperable state systems and can be completed within remarkably short timeframes. Romania lies between these approaches: recent legislative reforms have introduced electronic incorporation and administrative control mechanisms, yet the practical functioning of the system still carries elements of the earlier formalistic model.
Viewed together, these jurisdictions illustrate the variety of legal responses to the European objective of facilitating corporate mobility and simplifying the creation of business entities. They also show that digitalisation, however advanced, remains anchored in the underlying legal culture of each system. The comparison suggests that European company law is moving towards a model in which technological efficiency is pursued without abandoning the safeguards that ensure transparency, reliability and the proper functioning of the corporate legal order.

Key words: comparative company law, digitalisation, European Law

INTRODUCTION

The incorporation of a commercial company constitutes a foundational act in the legal life of any modern economy. It marks the transition from individual entrepreneurial initiative to an institutionalised form of economic organisation, and the legal framework governing this process reflects the way in which a state conceives economic freedom, the protection of third parties, the role of public administration, and the degree of trust placed in technological tools. A comparative examination of incorporation procedures, therefore offers an effective means of understanding the deeper conceptual differences among legal systems.

Across Europe, the last two decades have been shaped by profound changes arising from the rapid digitalisation of public administrations and by the pressure exerted by the single market to simplify and harmonise company formation procedures. Directive (EU) 2019/1151 on the use of digital tools and processes in company law imposed, for the first time, an obligation on Member States to ensure the possibility of online incorporation for certain company forms, in particular the private limited company. The manner in which this directive has been implemented varies considerably among jurisdictions, reflecting divergences in technological infrastructure, administrative traditions and legal culture.

France, Germany, Estonia and Romania illustrate four distinct approaches within this European landscape. France combines the long-standing tradition of the Commercial Code and the supervisory role of commercial courts with a gradual process of digital modernisation aimed at increasing administrative accessibility and efficiency. Germany retains a rigorous formalistic model, in which the notary and the registry judge play decisive roles in validating incorporation, although controlled digital mechanisms have begun to emerge. Estonia constitutes the most advanced example of full digitalisation, offering a completely electronic process that is highly automated and accessible even to non-resident founders. Romania, situated between these models, has made significant progress following the adoption of Law No. 265/2022, yet continues to preserve administrative features that give the incorporation procedure the character of only partial digitalisation.

1. FRANCE. BETWEEN THE TRADITION OF THE COMMERCIAL CODE AND DIGITAL MODERNISATION

France offers one of the clearest illustrations of how a civil law jurisdiction can reconcile a long-established commercial tradition with a progressive and carefully calibrated process of digital transformation. The evolution of company formation in French law has been profoundly influenced by the Commercial Code of 1807, an instrument that shaped the conceptual structure of commercial activity and the public law mechanisms designed to protect third parties. For decades, this historical framework determined the centrality of legal certainty and public disclosure in incorporation procedures.

For a long period, the creation of a company was inseparable from the intervention of the *greffe du tribunal de commerce*, responsible for administering the *Registre du Commerce et des Sociétés*. The process was complemented by publication in the *Bulletin Officiel des Annonces Civiles et Commerciales* (BODACC), a measure intended to guarantee that creditors and potential partners could obtain reliable information about newly established commercial entities. French legal scholarship has consistently emphasised that this institutional structure was designed to uphold the security of commercial transactions and to ensure the transparency required in a market economy[1].

A significant shift began with the introduction of the *guichet-entreprises.fr* platform in 2009, followed by the development of *infogreffe.fr* and, from 2023 onwards, the unified portal *formalites.entreprises.gouv.fr*. These digital tools allow founders to submit incorporation documents electronically, sign them using a recognised electronic signature, and obtain the *extrait Kbis*—the official certificate of registration—without personally appearing before the commercial courts[2]. The digitalisation of procedures has been pursued with consistency, yet without abandoning the safeguards embedded in the traditional model.

The *greffier* of the commercial court continues to exercise formal control over the legality of the documents submitted, ensuring that electronic procedures do not compromise the level of scrutiny traditionally associated with French company law. In contemporary doctrine, it is often observed that administrative speed cannot displace the protective function of legal oversight, which remains indispensable to the reliability of the commercial register[3] .

Empirical data confirm the efficiency of the modernised French model. According to international comparative assessments, incorporation costs generally range between 40 and 70 euros, while the average processing time is between three and five working days[4]. These figures result from the combination of streamlined digital processes and the retention of a structured legality review. Rather than replacing established mechanisms, digitalisation has been integrated into them in a way that reinforces accessibility without diluting legal safeguards.

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[1] Georges Ripert, *Traité élémentaire de droit commercial* (*Elementary Treatise on Commercial Law*) LGDJ, Paris, 1951.

[2] https://formalites.entreprises.gouv.fr, accessed 5 November.2025

[3] Philippe Malaurie, Laurent Aynès, *Droit commercial – Sociétés commerciales*, (*Commercial Law – Commercial Companies*) 13e éd., LGDJ, Paris, 2021, p. 47

[4] World Bank Group, *Doing Business 2020 – France – Starting a Business, Washington D.C., World Bank Publications 2020*, p. 11–12.

The contemporary French model thus reflects a carefully balanced approach, in which technological innovation strengthens rather than supplants traditional legal controls. Positioned between the more flexible systems of other Western European jurisdictions and the fully digitalised architecture of Estonia, France demonstrates that digital transformation in company law can be pursued without disrupting the fundamental logic of the commercial legal order. The French experience confirms that digital tools, when properly integrated, can coexist with and even enhance the institutional arrangements that have long defined the stability of civil law systems.

2. GERMANY. BETWEEN LEGAL FORMALISM AND PREVENTIVE CONTROL

Germania reprezintă unul dintre cele mai solide și influente modele de constituire a societăților comerciale din spațiul european, caracterizat de un nivel ridicat de formalism juridic și de o atenție constantă acordată protecției terților. Reglementarea constituirii societăților se fundamentează pe *Gesetz betreffend die Gesellschaften mit beschränkter Haftung* (GmbHG), legea care guvernează societățile cu răspundere limitată încă din anul 1892 și care, în esențialele ei dispoziții, rămâne neschimbată și astăzi. Această tradiție juridică a conferit sistemului german reputația unei ordini corporative stabile, în care siguranța juridică prevalează asupra rapidității de constituire.

German company law has long been associated with a rigorously structured approach to incorporation, centred on the idea that legal certainty is best achieved through preventive oversight. The organisational model built around the *Gesellschaft mit beschränkter Haftung* (GmbH) reflects this orientation. The GmbH Act of 1892 (*GmbHG*) remains a foundational statute, its essential architecture surviving largely intact despite numerous reforms over the past century[5]. The endurance of this framework attests to the strong preference of German legal culture for stability, predictability and judicially supervised legality.

Incorporation of a GmbH requires the articles of association to be executed before a notary, whose role extends far beyond the authentication of signatures. The notary is entrusted with ensuring the validity of the founding act, verifying the identity and capacity of the founders, reviewing compliance with mandatory provisions of company law and confirming that the minimum share capital requirement of EUR 25,000 has been satisfied [6]. German legal doctrine consistently treats this notarial intervention as a cornerstone of corporate legitimacy, limiting the scope for future disputes by concentrating legal scrutiny at the entry point into the market.

The process continues with the deposit of the share capital into a dedicated bank account and the submission of incorporation documents to the *Handelsregister*, administered by the local *Amtsgericht*. The registry judge (*Registerrichter*) conducts an independent review of the application, which reinforces the preventive character of the system. In practice, this judicial stage introduces a degree of procedural duration, yet it is widely regarded as essential for maintaining the integrity of the commercial register.

Measured comparatively, incorporation in Germany is slower and more costly than in other European jurisdictions. International data indicate total costs commonly ranging from EUR 300 to 600, once notarial and registry fees are accounted for, while completion typically takes between one and two weeks[7]. These figures reflect the deliberate choice of a preventive model prioritising the quality of legal control rather than procedural speed.

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[5] See also Marcus Lutter, *Europäisches Gesellschaftsrecht*, (*European Company Law*) Otto Schmidt Verlag, Köln, 2019.

[6] Klaus J. Hopt (coord.), *Handbuch des Europäischen Gesellschaftsrechts*, (*Handbook of European Company Law*) C.H. Beck, München, 2020.

[7] World Bank Group, *Doing Business 2020: Germany – Starting a Business*, World Bank Publications, Washington, D.C., 2020, p. 17.

Digitalisation has nonetheless begun to reshape certain aspects of the German incorporation process. As part of the implementation of Directive (EU) 2019/1151, the DiRUG Act of 2021 introduced the possibility of incorporating a GmbH through videoconference, with electronic signatures recognised for that purpose.[8] Even so, the notary remains indispensable, and the digital process is embedded within the same logic of preventive verification. Rather than signalling a departure from traditional foundations, digital tools have been inserted into a system that continues to rely on human expertise and judicial oversight.

German legal scholarship has emphasised that technological modernisation cannot replace the normative value of this preventive model. Habersack, among others, notes that simplification must not come at the expense of the procedural safeguards that have long ensured the reliability of German company law.[9] The approach adopted in Germany reflects a conviction that efficiency and legal certainty are not mutually exclusive, but that the latter must guide the implementation of the former.

As a result, Germany occupies a distinctive position within the European landscape. While France and Romania increasingly rely on administrative digitalisation, and Estonia demonstrates the operational success of full electronic incorporation, Germany retains a model in which formality and legal scrutiny are integral. This creates a system somewhat slower in execution, yet highly trusted and structurally resilient—qualities that continue to shape its influence within European company law.

3. ESTONIA. A FULLY DIGITALISED MODEL

Among European jurisdictions, Estonia stands apart through the extent to which digital infrastructure shapes the entire process of company incorporation. The transformation began in the early 2000s, when the Estonian state undertook a systematic redesign of public administration based on electronic identity, interoperable databases and the principle that any administrative action capable of automation should be automated. This approach has gradually produced an incorporation system that operates almost entirely without physical interaction.[10]

The central instrument of this model is the e-Business Register (*Äriregister*), administered by the Centre of Registers and Information Systems (RIK) under the authority of the Ministry of Justice. Incorporation of a private limited company (*osaühing – OÜ*) is carried out electronically through this platform, using one of the state-issued digital identification tools—ID-kaart, Mobile-ID or Smart-ID. These instruments allow founders to authenticate themselves securely, execute documents digitally and complete all formalities online.

According to official data published by the Estonian authorities, the vast majority of companies are incorporated within a few hours, and in many cases within the same day[11]. The administrative fee for registration is EUR 190, and the minimum share capital requirement has been reduced to EUR 1 in order to encourage entrepreneurship and lower barriers to entry[12]. Estonian company law permits deferred payment of share capital as long as no distributions are made, a solution intended to facilitate the rapid establishment of new entities.

One of the most distinctive elements of the Estonian model is the e-Residency programme, launched in 2014, which allows non-residents to obtain a digital identity recognised by the

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[8] Bundesgesetzblatt, *Gesetz zur Umsetzung der Digitalisierungsrichtlinie (DiRUG* (Act Implementing the Digitalisation Directive)*)*, BGBl. I, 2021, p. 3338

[9] Mathias Habersack, *Gesellschaftsrecht – Allgemeiner Teil (Company Law – General Part*), C.H. Beck, München, 2022.

[10] Government of Estonia, *e-Estonia Briefing Centre – Introduction to the Estonian Digital State*, Tallinn, Government Office, 2024.

[11] e-Business Register (Äriregister), „Company Registration Statistics", Government of Estonia, https://ariregister.rik.ee, accessed 8 November 2025.

[12] Republic of Estonia, *Commercial Code (Äriseadustik)*, consolidated version 2024, Secțiunea 136(2).

Estonian state and to incorporate companies remotely. By 2025, more than 100,000 individuals from over 160 countries had obtained e-Residency status, and approximately 25,000 companies had been created through the programme.[13] This innovation extends the functional scope of Estonian company law beyond traditional territorial limits and has positioned Estonia as a global reference point for digital governance.

The effectiveness of this framework derives from an institutional architecture founded on interoperability. The e-Business Register communicates automatically with the population register, the tax board, banking institutions and other state databases. This allows for immediate verification of identity, legal capacity, criminal sanctions, tax status and other conditions relevant to incorporation. International evaluations note that this infrastructure has significantly reduced administrative burdens; the OECD reports an estimated 80% reduction in procedural costs linked to company formation. [14]

Academic commentary highlights that Estonia's system succeeds not merely because of advanced technology, but because technological tools have been embedded within a coherent legal and institutional environment. Kerikmäe observes that the Estonian model presupposes a high level of trust in digital identity, data integrity and automated verification, and that such conditions cannot be replicated without corresponding cultural and institutional transformations. [15] Other European jurisdictions, even those with advanced administrative systems, maintain varying degrees of human oversight precisely because their legal traditions treat preventive verification differently.

As a result, Estonia exemplifies a distinctive mode of digital incorporation: one that reduces procedural friction to a minimum while relying on a unified digital infrastructure that centralises verification, authentication and registration. Although unique in its completeness, the Estonian model offers valuable insights into the possibilities of modernising company law in ways that enhance both administrative efficiency and legal transparency.

4. ROMANIA. TRANSITION FROM FORMALISM TO PARTIAL DIGITALISATION

Company incorporation in Romania reflects the broader evolution of Romanian commercial law after 1990: a shift from a formalistic and judicially supervised model to a predominantly administrative structure that increasingly integrates digital tools. The adoption of the Companies Law No. 31/1990 constituted the foundation of modern Romanian company law. Inspired by continental European codes—particularly French and Italian models—it established the legal regime for the private limited company and introduced a system of judicial oversight through the delegated judge of the trade register[16].

For many years, incorporation followed a sequence of formalities that required physical interaction with multiple institutions. The founders were obliged to reserve the company name, prepare the articles of association, authenticate or attest the document before a notary or an attorney, provide proof of registered office, deposit the initial share capital and submit the entire incorporation file for judicial review by the delegated judge. Publication in the Official Gazette followed.[17] This highly structured process reflected a legal culture that placed considerable emphasis on preventive legality and the protection of creditors.

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[13] Government of Estonia, *e-Residency Statistics Report 2025*, Tallinn, 2025.

[14] OECD, *Digital Government Review: Estonia 2023*, OECD Publishing, Paris, 2023, p. 28.

[15] Tanel Kerikmäe, *The Law and Artificial Intelligence: Estonia as a Digital Testbed*, Baltic Journal of Law & Politics, vol. 14, nr. 2, 2022, pp. 215–230.

[16] Stanciu Cărpenaru, *Drept comercial român (Romanian Commercial Law*), ed. VI, Universul Juridic, Bucharest, 2019.

[17] Smaranda Angheni, *Drept comercial. Profesioniștii – întreprinderea – societățile comerciale*, (*Commercial Law: Professionals – The Enterprise – Commercial Companies*), C.H. Beck, Bucharest, 2018.

Romanian doctrine has long observed that the system, despite its formal rigour, was cumbersome and often ill-suited for a modern commercial environment. The increasing volume of economic activity, together with the need to align domestic law with EU requirements, generated sustained pressure for simplification and administrative reform.[18]

A decisive moment in this transformation was the adoption of Law No. 265/2022 on the Trade Register, which repealed the older Law No. 26/1990 and placed the National Trade Register Office (ONRC) at the centre of the incorporation process. The reform abolished the role of the delegated judge and replaced it with administrative legality control exercised within ONRC. At the same time, the law explicitly transposed Directive (EU) 2019/1151, thereby ensuring that incorporation may be completed entirely by electronic means.[19]

The current framework allows founders to upload incorporation documents electronically, sign them using a qualified electronic signature and receive the certificate of incorporation in digital form[20]. The Trade Register interfaces with other national databases, such as those of the tax administration, population records and criminal records, to conduct the required ex ante checks. In principle, this architecture significantly reduces the procedural burden that previously characterised Romanian company formation.

In practice, however, the transition remains incomplete. Although electronic submission is widely available, the administrative approach continues to display elements inherited from the former judicial model. These include non-uniform interpretations among registry offices, requests for additional documents and occasional delays where procedural discretion is exercised cautiously. Recent doctrinal commentary notes[21] that digitalisation, while substantial on paper, often functions more as a formal rather than a transformative change, as the underlying administrative culture evolves at a slower pace than the legal framework.

Notwithstanding these limitations, the incorporation of a limited liability company in Romania has become significantly more efficient. Comparative indicators place the usual duration between two and five working days, provided that the documentation is complete and compliant.[22] Costs remain moderate, consisting mainly of registry fees and, where applicable, professional fees for drafting corporate documents.

The Romanian model therefore occupies a middle ground between the highly structured German system and the fully digitalised Estonian approach. Romania has removed judicial oversight and adopted a digital framework, yet retains practical elements of administrative formalism that reflect the gradual nature of institutional reform. The combination of long-standing legal traditions and more recent technological requirements produces a hybrid system characteristic of legal orders undergoing structural modernisation.

In essence, Romania demonstrates that digitalisation cannot be fully effective without broader administrative adaptation. The normative basis exists, and the technological tools have been introduced, yet the full realisation of these reforms depends on the degree to which institutional practice internalises the shift from judicial to administrative logic. Within the comparative landscape, the Romanian trajectory is one of progressive alignment with European standards while maintaining elements of continuity with its earlier model of corporate control.

CONCLUSIONS

[18] Radu Bufan (coord.), *Drept comercial. Tratat*, (*Commercial Law: Treatise*), Hamangiu, Bucharest, 2019.

[19] Law No. 265/2022 on the Trade Register, published in the *Monitorul Oficial* (Official Gazette), No. 750/26 July 2022.

[20] National Trade Register Office (ONRC), *Annual Activity Report 2024*, Bucharest, 2025.

[21] Anca Nemeș, „Digitalizarea procedurilor de înmatriculare a profesioniștilor în lumina Legii nr. 265/2022”, (“Digitalising the Registration Procedures for Professionals in Light of Law No. 265/2022”), *Revista Română de Drept al Afacerilor*, nr. 3/2023, Universul Juridic.

[22] World Bank Group, *Doing Business 2020: Romania – Starting a Business*, World Bank Publications, Washington, D.C., 2020, p. 8–10.

The comparison of incorporation regimes across France, Germany, Estonia and Romania reveals the extent to which company law remains shaped by national legal culture, even when the same European legislative requirements influence the overarching framework. Each jurisdiction has responded to the demands of digitalisation through mechanisms that reflect its institutional history, administrative capacities and conception of legal certainty.

French company law illustrates an incremental approach, in which the traditional structure of commercial court registries has been adapted—rather than displaced—by digital tools. Administrative efficiency has increased, but the logic of preventive scrutiny exercised by registrars continues to underpin the system. The coexistence of long-established institutions with modern electronic procedures demonstrates a legal culture that integrates technological innovation without abandoning the structural safeguards that have long defined the French model.

Germany maintains a more pronounced form of preventive control. The central role accorded to notarial intervention and judicial verification produces a system that is slower and more formalistic than its European counterparts, yet highly valued for its predictability. Digitalisation has been introduced, particularly through remote authentication and electronic signatures, but these developments remain embedded in a framework where legal certainty takes precedence over administrative speed. The German approach shows that efficiency gains are pursued only insofar as they do not compromise the integrity of corporate formation.

Estonia represents the opposite end of the spectrum. Its administrative architecture demonstrates the possibilities of a fully digitalised system, in which incorporation formalities can be completed within hours and where automated verification replaces most forms of human scrutiny. The interoperability of public databases and the use of state-issued electronic identity have produced a model whose operational logic differs fundamentally from the preventive traditions of France and Germany. The Estonian experience confirms that digitalisation can function as a structural redesign rather than a mere procedural enhancement, provided that institutional and societal trust in digital identity is sufficiently robust.

Romania occupies an intermediate position. The reforms enacted through Law No. 265/2022 have aligned the legislative framework with European standards and enabled electronic incorporation, yet the practical functioning of the system still reflects elements of the earlier, more formalistic administrative culture. The transition from judicial to administrative control has simplified procedures, but the persistence of uneven practices across registry offices shows that the implementation of digitalisation is shaped as much by institutional habits as by legislative design.

Taken together, these trajectories indicate that European company law is moving towards a model in which technological tools are increasingly integrated into incorporation procedures while the core legal guarantees of transparency and reliability are preserved. Digitalisation is not transforming company law into a uniform European model; instead, it is reinforcing the distinctive ways in which national systems balance administrative efficiency with legal certainty. The comparative analysis shows that the future development of corporate formation procedures in Europe will likely continue along this path of functional convergence, in which innovation operates through, rather than against, the structural logic of each legal system.

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13. G. Ripert, *Traité élémentaire de droit commercial* (*Elementary Treatise on Commercial Law*), LGDJ, Paris, 1951.

14. World Bank Group, *Doing Business 2020: France, Germany, Romania – Starting a Business*, World Bank Publications, Washington, D.C., 2020.