



## COMPARATIVE STUDY OF DIGITALIZATION OF THE NOTARY

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## INTRODUCTION

The war in Ukraine has created new challenges in all areas, and notaries are no exception. Mass migration of the population has complicated access to basic public services, including many notarial acts,<sup>1</sup> as there is still an absolute requirement for the personal presence of the recipient of notarial services. According to UN estimates, the number of Ukrainians abroad is about 7 million,<sup>2</sup> which far exceeds the capacity of embassies and consular offices to notarize deeds, wills, powers of attorney, copies and other documents that require notarization under Ukrainian law.<sup>3</sup> In particular, while abroad, citizens do not have access to such notarial services as buying and selling real estate,<sup>4</sup> getting a loan,<sup>5</sup> making a will<sup>6</sup> or even issuing a power of attorney.<sup>7</sup> Conducting of these actions is also complicated on the territory of Ukraine due to the risks of war, in particular the risks of shelling or unstable electricity supply. Another challenge is the threat of physical destruction or loss of paper documents in connection with hostilities and shelling throughout Ukraine, which will complicate access to justice services in the future due to the loss of archival documents.<sup>8</sup> In the temporarily occupied territories, the risk of leakage of personal data and their misuse creates significant security challenges both in terms of financial fraud or threats, and in terms of the physical safety of family members of persons defending Ukraine against armed aggression.

The negative impact of these challenges can be significantly reduced by implementing a wide range of digital tools, including remote notary services. Digitization and implementation of remote public services in the country is one of the key indicators of their

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<sup>1</sup> Depending on the context in this research, such terms as "notarial actions", "notarial services", "remote services", "certification", "certification", "validation", "authentication" can be used and used not only in the meaning defined by the legislator of Ukraine, but in the meanings relevant to the law of other countries, or in the meaning of economic categories (for example, "services").

<sup>2</sup> Situation with refugees in Ukraine, Operational Data Portal, <https://data.unhcr.org/en/situations/ukraine>.

<sup>3</sup> On the Notary, Law of Ukraine, dated September 2, 1993 No. 93, <https://zakon.rada.gov.ua/laws/show/3425-12#n352> (hereinafter - On the Notary), Part 6 of Article 1 ("[In The performance of notarial acts abroad is entrusted to consular institutions.

<sup>4</sup> Civil Code of Ukraine, Law of Ukraine, dated March 16, 2003, No. 40-44, <https://zakon.rada.gov.ua/laws/show/435-15#Text> (hereinafter - the Civil Code of Ukraine), Article 657.

<sup>5</sup> Civil Code of Ukraine, Articles 1247, 1249.

<sup>6</sup> Civil Code of Ukraine, Articles 1247, 1249.

<sup>7</sup> Civil Code of Ukraine, Article 245.

<sup>8</sup> See, for example, Teplytsky District Court of Vinnytsia Region, Decision dated April 19, 2012, case No. 222/577/12, [Unified State Register of Court Decisions \(court.gov.ua\)](https://court.gov.ua).

quality and development level.<sup>9</sup> Despite the fact that notary services are one of the most conservative spheres of public services both in Europe and Ukraine,<sup>10</sup> we believe that their digitization is a necessary step that will improve their quality and simplify access to them.

### EXECUTIVE SUMMARY

We can provide the following recommendations for determining the legal policy for digitization of the notary system:<sup>11</sup>

1.The creation of a comprehensive digital system, which will allow to provide notarial services remotely, as well as notarial record keeping, including the creation and preservation of notarial documents. It corresponds to the best global practices, as well as the best practices of European countries that have a notary system that is similar to the Ukrainian one.

2.Provided that additional technical validators are applied to the procedure for providing remote notary services with notarization of a person's signature after authentication through a webcam, the risks of fraud and coercion should not significantly exceed the risks of notarization in person at the notary's office.

3.The possibility of creating automated remote notary services, i.e. services without the participation of a notary, should be postponed until experience is gained in implementing similar practices.<sup>12</sup> It can be considered after the implementation of remote notary services with notarization of a person's signature after authentication through a web camera and the corresponding accumulation of experience in the use of the electronic notary system and other remote services.

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<sup>9</sup> Bjerde, A., Digitalization and data can vastly improve public service delivery to citizens, World Bank Blog, March 30, 2021, <https://blogs.worldbank.org/europeandcentralasia/digitalization-and-data-can-vastly-improve-public-service-delivery-citizens>.

<sup>10</sup> See more about the conservative and liberal view of the digital notary in [Chapter 2](#).

<sup>11</sup> To ensure the comprehensiveness of this study, we touch not only on the issues of regulation of notarial activity, but also on possible alternative and additional mechanisms of validation of actions (services, transactions).

<sup>12</sup> Thus, in Estonia, Moldova, France, the USA, Spain and a number of other countries, there is already a practice of automating the performance of notarial acts. In particular, see The Electronic Identification Act and the Electronic Signature Act (Republic of Estonia), the Virginia Remote Notarization Act, the French Electronic Signature Act and the Notary Act, and the European eIDAS regulation governing electronic identification and trust services .

4.The best practices and experience of European countries indicate the need to introduce the possibility of providing a wide range of notary services. At the same time, the most risky remote services will require additional validators.

## SECTION 1. Digital notarization in Ukraine

Ukraine occupies a fairly high position in the field of digitization of public services and public management in general.<sup>13</sup> Thus, according to the UN e-Government study 2022, Ukraine moved from high to very high group of EGDI (E-Government Development Index), even with one of the lowest indicators of income per capita.<sup>14</sup> A similar study for 2024 confirmed this positive trend.<sup>15</sup> In particular, the introduction of the state free digital signature system "Diia Pidpys" makes the use of an electronic signature in Ukraine much simpler and more convenient, since the "traditional" process of creating an electronic signature requires a separate notarization stage. Also, the process is safer and is generally a popular public service, since "Diia Pidpys" also conducts an additional biometric identification through facial recognition and conducting of additional, each time different mimic actions, and in general is a popular state service.<sup>16</sup> At the same time, the field of notary services has room for improvement in comparison with other European countries, which will be further demonstrated. The current situation is caused by the interaction of many factors, from concerns about the rise of digital fraud to the conservative stance of stakeholders. In this study, we will try to directly address these factors.

Before considering the practice of foreign countries in the field of digitization of the notary and proposals for its improvement in Ukraine, it is necessary to find out the current state of legal regulation and highlight key initiatives and trends. To this end, in Chapter 1 we will consider the following aspects:

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<sup>13</sup>Power, S., USAID Administrator, speech at Diia [forum] in DC, May 23, 2023, <https://www.usaid.gov/news-information/speeches/may-23-2023-administrator-samantha-power-diia-dc> (" ... [S]amantha Power gave a positive assessment to the Ukrainian Diia govtech, referring to the lack of similar programs in the US); Grzegorzczuk, M., In the midst of war, Ukraine exports its govtech know-how, Emerging Europe magazine, 20 Jan. 2023, <https://emerging-europe.com/news/in-the-midst-of-war-ukraine-is-exporting-its-know-how-in-govtech/> ("..."[D]iia", a Ukrainian smartphone app that provides government services, has been so successful that other countries want to use the technology behind it.) .

<sup>14</sup> UN E-Government Review 2022, Full Report with Annexes, UN e-Government Knowledge Base, <https://desapublications.un.org/sites/default/files/publications/2022-09/Web%20version%20E-Government%202022.pdf>

<sup>15</sup> UN e-Government Review 2024, full report with annexes, UN e-Government Knowledge Base, <https://desapublications.un.org/sites/default/files/publications/2024-09/%28Web%20version%29%20E-Government%20Survey%202024%201392024.pdf> .

<sup>16</sup> Academy of electronic governance. "Action" mobile application. Evaluation Report, 2021, [diia-evaluation-report.pdf \(eu4digitalua.eu\)](https://eu4digitalua.eu/diia-evaluation-report.pdf) ("[As of November 2021, the ease of use of this service has generated 6 million signatures and 327,000 transactions with a success rate of 97%]").

- (1) Current legal regulation of personal and electronic notarization and electronic digital signature in Ukraine; and
- (2) Key initiatives and trends regarding remote automated notarization in Ukraine.

### **1.1. Current legal regulation of personal and electronic notarization and electronic digital signatures in Ukraine<sup>17</sup>**

Ukrainian law requires notarization of contracts and other transactions with valuable property. Thus, according to the Article 209 of the Civil Code of Ukraine, a written transaction is subject to notarization in cases established by law or by agreement of the parties. Also, Article 657(1) of the Civil Code of Ukraine establishes that the contract for the sale of land or other immovable property shall be concluded in writing and subject to notarization. In addition, according to Article 245 (1), the form of the power of attorney must correspond to the form in which, according to the law, the transaction must be performed. As in the case of real estate, transactions with shares of a member of an LLC, vehicles (with some exceptions), leases exceeding three years, wills, various agreements and other transactions are valid provided they are notarized. Powers of attorney are necessary not only for the execution of transactions and the conclusion of agreements, but also for confirming the authority for representation in state authorities, for example, courts.<sup>18</sup>

From 2003 to 2017, the Law of Ukraine "On Electronic Digital Signature" was in force, Article 4(4) of which<sup>19</sup> stipulated that "notarial actions to certify the authenticity of electronic digital signatures on electronic documents shall be carried out in accordance with the procedure established by law".<sup>20</sup> As you can see from the text above, this norm only referred

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<sup>17</sup> In this subsection, we outline the basic provisions of Ukrainian legislation for the purpose of familiarizing foreign readers with them. Determining the list of changes to the normative legal acts of Ukraine and potential regulatory challenges are not within the scope of this study.

<sup>18</sup> Civil Code of Ukraine, Article 62 (2); On state registration of property rights to immovable property and their encumbrances, Law of Ukraine, dated July 1, 2004 No. 51, <https://zakon.rada.gov.ua/laws/show/1952-15#Text>, Article 18 (7); On state registration of legal entities, natural persons - entrepreneurs and public organizations, Law of Ukraine, dated May 15, 2003 No. 31-32, <https://zakon.rada.gov.ua/go/755-15>, Article 6 (7).

<sup>19</sup> On electronic digital signature, Law of Ukraine dated May 22, 2003 No. 36, <https://zakon.rada.gov.ua/laws/show/852-15>.

<sup>20</sup> Supra.

to a separate law, did not regulate the procedure in a self-sufficient way, and did not provide for the development of by-laws in this area.

Finally, on October 5, 2017, the Law of Ukraine "On Electronic Identification and Electronic Trust Services" was adopted,<sup>21</sup> which created a new, higher-quality legal basis for the use of electronic digital signatures and digital services, including remote notarization. Thus, Article 17(4) of the Law stipulates that "notarial actions using a qualified electronic signature or seal or other means of electronic identification are carried out in accordance with the procedure determined by the central body of executive power, which ensures the formation and implementation of state policy in the field of notary [Ministry of Justice of Ukraine]".

However, as can be seen from the above-mentioned Article 17(4), the Law establishes only a general framework for digital notarization of deeds with reference to other legal acts.<sup>22</sup> In particular, Article 17(6) states that "[t]he acts subject to notarization and/or state registration in the cases established by law shall be performed electronically exclusively with the qualified electronic trust services." This norm was adopted to harmonize Ukrainian legislation in the field of electronic trust services with the requirements of Article 24 of Regulation (EU) No. 910/2014. Thus, in the explanatory note to the corresponding draft law, it was noted <sup>23</sup> that the introduction of mechanisms for remote identification of a person and confirmation of his data, including for obtaining electronic trust services, are of particular relevance in view of Article 24 of Regulation (EU) No. 910/2014,<sup>24</sup> which establishes general requirements for qualified providers of electronic trust services during such identification. At the same time, paragraph 21 of the Preamble to the Regulation states that it " ... should not

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<sup>21</sup> On electronic identification and electronic trust services, Law of Ukraine, dated October 5, 2017 No. 45, <https://zakon.rada.gov.ua/laws/show/2155-19#Text> .

<sup>22</sup> The relevant secondary legal acts are analyzed in more detail in [Subchapter 2](#).

<sup>23</sup> Draft Law on Amendments to Certain Legislative Acts of Ukraine on Ensuring the Conclusion of an Agreement between Ukraine and the European Union on Mutual Recognition of Qualified Electronic Trust Services and Implementation of European Union Legislation in the Field of Electronic Identification, Explanatory Note, <https://itd.rada.gov.ua/billInfo/Bills/Card/28015> .

<sup>24</sup> On electronic identification and trust services for electronic transactions in the internal market and on the repeal of Directive 1999/93/EU, Regulation of the European Parliament and of the Council (EU), dated July 23, 2014 No. 910/2014 , [https://zakon.rada.gov.ua/laws/show/984\\_016-14#n328](https://zakon.rada.gov.ua/laws/show/984_016-14#n328) .



cover aspects related to the conclusion and validity of contracts or other legal obligations, where there are requirements regarding the form established by national law or Union law."<sup>25</sup>

More detailed regulation of procedural issues of notarial acts is established by the The Procedure for Performing Notarial Acts by Notaries of Ukraine, approved by the Ministry of Justice (hereinafter - the Procedure).<sup>26</sup> From its provisions, in particular, we can establish the obligation of the personal presence of the signatory in front of the notary during the notarization of the signature. Thus, Clause 4 of Chapter 9 of the Procedure stipulates that "[w]hen performing notarial acts that require the signature of individuals, the notary verifies the authenticity of the signature of these individuals by having them sign in his presence." At the same time, according to Clause 7 of Chapter 7 of the Procedure, "[a] notary certifies the authenticity of a qualified electronic signature, taking into account the provisions of the procedure for performing notarial acts using a qualified electronic signature or seal." However, this norm is also not sufficient for the introduction of the practice of electronic notarization, because, similarly to the above laws, it refers to non-existent regulation.<sup>27</sup> The absence of by-laws, the adoption of which is provided for by the law, creates a gap in the regulatory framework, since the law establishes only the general framework without detailed mechanism for its implementation. Such a state may be the basis for allegations of violation of such an important international standard of justice as the principle of legal certainty.<sup>28</sup>

Despite the fact that at the moment the by-law on the possibility of certifying notarial acts with the electronic signature and the beginning of the use of the relevant state electronic

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<sup>25</sup> Ibid, paragraph 19.

<sup>26</sup> On the approval of the Procedure for the performance of notarial acts by notaries of Ukraine, Order of the Ministry of Justice of Ukraine, dated February 22, 2012 No. 296/5, <https://zakon.rada.gov.ua/laws/show/z0282-12#Text>.

<sup>27</sup> The response of Deputy Minister of Justice Yevhenii Horovets to a journalist's inquiry ("... [T]he current legal acts do not provide for the possibility of performing notarial acts using a qualified electronic signature, seal or other means of electronic identification"), [https://dostup.pravda.com.ua/request/90238/response/336799/attach/1/.pdf?cookie\\_passthrough=1](https://dostup.pravda.com.ua/request/90238/response/336799/attach/1/.pdf?cookie_passthrough=1).

<sup>28</sup> Kats v. Ukraine, European Court of Human Rights (hereinafter – ECtHR), dated May 6, 2009 No. 29971/04, [https://zakon.rada.gov.ua/laws/show/974\\_485#Text](https://zakon.rada.gov.ua/laws/show/974_485#Text) (European Court of Human Rights, referring to the principle of legal certainty, indicated the need to adopt by-laws to ensure effective legal regulation, stressing that their absence may lead to human rights violations).

systems has not yet been adopted, there is<sup>29</sup> still a progress in this aspect. On December 29, 2023, the Cabinet of Ministers of Ukraine adopted Resolution No. 1406 "On some issues of the functioning of the Unified State Electronic System of e-Notary", the last changes to which were made on June 4, 2024. Clause 6 of Resolution No. 1406 provides for the following structure of the e-notary system: user's electronic workplace; electronic notarial archive; electronic register of notarial acts; unified register of powers of attorney; unified register of notaries; unified register of special forms of notarial documents; inheritance register. Such an e-notary system should provide electronic information interaction between the e-notary system and unified and state registers and information and communication systems, the holder of which is the Ministry of Justice, etc.; access to the components of the e-notary system; maintaining directories; formation, transmission/acceptance and processing of information necessary for the performance of a notarial act; conducting audio and video conferences, etc.<sup>30</sup>

In contrast to the notary sphere, remote verification of natural persons has already been implemented in a number of areas. In particular, the legislation of Ukraine allows identification of a natural person remotely for such important and sensitive purposes as participation in a court hearing, management of bank accounts, access to medical and pension data.<sup>31</sup> The absence of notorious cases of electronic fraud in terms of remote identification of an individual in the above situations indicates the possibility of introducing a wide range of remote notarial services.<sup>32</sup>

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<sup>29</sup>Some issues of the functioning of the Unified State Electronic System of e-Notary, Resolution of the Cabinet of Ministers of Ukraine, dated December 29, 2023 No. 1406, <https://zakon.rada.gov.ua/laws/show/1406-2023-%D0%BF#Text> (further - Resolution No. 1406), paragraph 2, which stipulates that "... [the] day of the start of operation of the Electronic Register of Notarial Acts, the Electronic Notarial Archive as components of the Unified State Electronic System of e-Notary is determined by the decision of the Ministry of Justice, published in Official Gazette of Ukraine" (hereinafter - the e-Notary System).

<sup>30</sup>Resolution No. 1406, paragraph 9.

<sup>31</sup> See [ADDITION. Public services in Ukraine that provide for remote verification of an individual.](#)

<sup>32</sup> See [Section II.](#)

Table 1. Validators used in Ukraine for providing remote services.

The field of legal relations	Judicial Proceedings <sup>33</sup>	Banking field <sup>34</sup>	Pension field <sup>35</sup>	Registration of acts of civil status (e.g., marriage, birth, or death) <sup>36</sup>	Medical services <sup>37</sup>
Date of implementation	August 17, 2021.	March 23, 2022.	November 20, 2023.	March 29, 2024.	June 28, 2024.
The set of validators in use	<b>1) Identity document</b> (passport, driver's license, etc.). The court may also require other documents that confirm the person's	<b>1) Photo fixation of the person.</b> Requirements: photo images must allow to clearly recognize the person and the details of the	<b>1) Video identification.</b> Requirements: during video identification, the authorized employee must be in a room that provides conditions for	<b>1) Electronic signature</b> based on a qualified electronic signature certificate and/or other means of electronic identification with	<b>1) Qualified electronic signature</b> or advanced electronic signature based on a qualified electronic

<sup>33</sup> On the approval of the Regulation on the procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System, Decision of the High Council of Justice of July 17, 2021 No. 1845/0/15-21, HYPERLINK "<https://zakon.rada.gov.ua/rada/show/v1845910-21#Text>" (hereinafter referred to as the GRP Decision).

<sup>34</sup> On the peculiarities of the implementation of certain requirements of the legislation in the field of financial monitoring, currency supervision, supervision in the field of the implementation of special economic and other restrictive measures (sanctions) during martial law, Resolution of the Board of the National Bank of Ukraine, dated March 23, 2022, point 3, <https://zakon.rada.gov.ua/laws/show/v0060500-22#Text> (hereinafter referred to as the Resolution of the NBU).

<sup>35</sup> Establishment by the territorial body of the Pension Fund of Ukraine of the recipient of a pension, monthly lifetime stipend for a retired judge, other social benefits by means of a video conference, Order of the Pension Fund of Ukraine, dated November 20, 2023 No. 49-2, <https://zakon.rada.gov.ua/laws/show/z2111-23#Text> (hereinafter referred to as the PF Procedure).

<sup>36</sup> On the implementation of an experimental project regarding state registration of marriage in electronic form, Resolution of the Cabinet of Ministers of Ukraine, dated March 29, 2024 No. 345, HYPERLINK "<https://zakon.rada.gov.ua/laws/show/345-2024-%D0%BF#Text>" (hereinafter - Resolution of the CMU No. 345), actually implemented from September 9, 2024.

<sup>37</sup> On amendments to the order of the Ministry of Health of Ukraine dated June 7, 2024 No. 994, Order of the Ministry of Health of Ukraine dated June 28, 2024 No. 1127, HYPERLINK "<https://moz.gov.ua/uk/decrees/nakaz-moz-ukrayini-vid-28-06-2024-1127-pro-vnesennya-zmin-donakazu-ministerstva-ohoroni-zdorov-ya-ukrayini-vid-07-cherovnya-2024-roku-994>".

	<p>authority (for example, a lawyer's certificate, a power of attorney, etc.).<sup>38</sup></p> <p><b>2) Motion for participation in a court hearing in video conference mode.</b><sup>39</sup></p> <p><b>3) Keeping a record of the protocol (journal) of the court session in electronic form.</b><sup>40</sup></p> <p><b>4) Recording of the court session.</b><sup>41</sup></p>	<p>identification document.</p> <p><b>2) Identity document</b> of the person (pages/sides containing the photo of the owner).</p> <p><b>3) The person's clear and unequivocal consent</b> to conduct a video call before the start of such a procedure (including a photograph of the person and/or the screen with his image and relevant documents presented by him).</p> <p><b>4) Video call recording</b></p> <p>Requirements: the video communication must be conducted by the bank in real time without interruption, otherwise it must be repeated in full.</p>	<p>obtaining high-quality audiovisual information and that prevents the dissemination of personal data and personal information. In case of interruption, the procedure must be repeated in full.</p> <p><b>2) The person's clear and unequivocal consent</b> to video communication before the start, which is recorded in the video recording of the video identification session.</p> <p><b>3) Document certifying the person / legal representative / assistant, children - on the basis of the child's birth certificate.</b></p> <p><b>4) Asking mandatory and, if necessary, additional questions .</b></p>	<p>a high or medium level of trust.</p> <p><b>2) Application for state registration of marriage in electronic form</b> using the mobile application of the Diya Portal in a form suitable for perceiving its content. Requirements: the application must contain information provided by legislation in the field of state registration of acts of civil status.</p> <p><b>3) Sending a proposal</b> for state registration of marriage in electronic form, which can be accepted by the second applicant within 14 days.</p> <p><b>4) Verification of the information specified in the application by an employee of the Department of State Registration of Civil Status Acts</b> and verification of information (by contacting the State Register of</p>	<p>signature certificate.</p> <p><b>2) Identification through the Diya mobile application -</b> integration with Diya allows identification through BankID or MobileID.</p> <p><b>3) Identification through the eHealth system</b> – use of a login and password associated with relevant registers and databases.</p>
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<sup>38</sup> VPR decision, item 5.5. See, for example, the Civil Procedure Code of Ukraine, Law of Ukraine dated March 18, 2004 No. 40-41, HYPERLINK "<https://zakon.rada.gov.ua/laws/show/1618-15#top>", part 4 Article 212.

<sup>39</sup> Decision of the VPR, paragraph 46.

<sup>40</sup> Decision of the VPR, paragraph 51.

<sup>41</sup> Supra.

			<p><b>5) Inspection by an authorized representative of the identity document / child's birth certificate for signs of damage, forgery and ownership of the given document .</b></p>	<p>Civil Status Acts) about the applicants' marital status. Notary has the authority to refuse such registration in case of non-compliance with the legislation (for example, one of the applicants is already in a registered marriage).</p>	
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From the information given in the table, it can be concluded that each subsequent stage of implementation of remote services is characterized by the use of a wider range of verifiers, which reduces the risks associated with the electronic form of service provision.

Summarizing this subsection, we note that Ukrainian legislation does not establish a sufficient legal basis for providing a digital notarization, and requires the adoption of secondary legislation.<sup>42</sup>

### **1.2. Key initiatives regarding remote notarization in Ukraine: advantages and criticism**

On December 29, 2021, the Ukrainian Government approved the proposal of the Ministry of Justice to implement a pilot project for the phased implementation of the Unified State Electronic System e-Notary by December 31, 2023.<sup>43</sup> The experimental project was to be implemented in three stages, which include:

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<sup>42</sup> As noted, in this study we do not focus on possible legislative and regulatory challenges, so a specific list of changes requires additional research. Also, the Government of Ukraine has a positive experience of introducing experimental projects and resolving legislative gaps.

<sup>43</sup> Some issues of the implementation of the experimental project regarding the phased introduction of the Unified State Electronic System e-Notary (Kyiv), Resolution of the Cabinet of Ministers of Ukraine, dated December 29, 2021 No. 1444, <https://zakon.council.gov.ua/laws/show/1444-2021-%D0%BF#Text>.

1) creation of updated electronic registers (Inheritance Register, Unified Register of Powers of Attorney, Unified Register of Special Forms of Notarial Documents), creation and implementation of a notary's electronic workplace, Electronic Register of Notarial Acts;

2) modernization of the Unified Register of Notaries, creation and implementation of the Electronic Notary Archive, modernization of the notary's electronic workplace, the Electronic Register of Notarial Acts;

3) creation and implementation of the client's electronic cabinet, introduction of the electronic notary system into commercial operation.<sup>44</sup>

At the same time, in connection with the full-scale invasion of the Russian Federation on the territory of Ukraine on February 24, 2022 and the continuation of its armed aggression, not all the goals (tasks) of the experimental project could be implemented within the established time frame. In the course of the implementation of the experimental project, the main tasks were achieved, namely: the key electronic registers operating in the field of notarial services were modernized, the software of the Unified State Electronic System of e-Notarial Services was developed. Thanks to the specified software, the use of an electronic identifier (QR-code) on notarial documents for the purpose of their verification has been tested.

The mentioned achievements made it possible to create the legal basis necessary for the functioning of the Unified State Electronic System of e-Notary on a permanent basis, not as an experimental project, through the adoption by the Cabinet of Ministers of Ukraine of Resolution No. 1406 dated December 29, 2023 "Some issues of the functioning of the Unified State Electronic System of e- notary office".

At the same time, the Ministry of Justice, together with the People's Deputies of Ukraine and the notary community, took part in the development of amendments to the Law of Ukraine "On Notaries", which were related, including digitalization of the notary field.

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<sup>44</sup>On making changes to some resolutions of the Cabinet of Ministers of Ukraine regarding notary, state registration and functioning of state electronic information resources under martial law, Resolution of the Cabinet of Ministers of Ukraine, dated May 9, 2023 No. 469, <https://zakon.council.gov.ua/laws/show/469-2023-%D0%BF#Text>.

On February 15, 2022, draft law No. 5644 "On Amendments to Certain Legislative Acts of Ukraine on Improving the Regulation of Notary Activities" was adopted as a basis.<sup>45</sup> First of all, the act contains provisions on strengthening the notary institution as a guarantee of protection of the rights of individuals and legal entities, improving the quality of notarial acts, ensuring accessibility of notarial and registration acts, and creating new anti-raider tools.<sup>46</sup>

The draft law, among other things, provided for the introduction of an electronic notary system and ensuring the availability of notarial services in all notarial districts. It was proposed to add the provision that "the procedure for maintaining the notary's registration file in electronic form using the electronic notary system is determined in the regulation on the electronic notary system."<sup>47</sup> An important change was also the proposed modification of Article 14 "Notarial record keeping and reporting", according to which "notaries conduct the prescribed reporting and submit it using the electronic notary system".<sup>48</sup> Article 26-1 of the draft law provided for the implementation of the aforementioned part 4 of Article 17 of the Law of Ukraine "On electronic identification and electronic trust services". Thus, according to it, "a notary must have a qualified electronic signature issued by a qualified provider of electronic trust services."<sup>49</sup>

In turn, Article 26-2, which will refer to the electronic notary system, defines this concept at the legislative level, and also outlines its components: "...electronic notarial archive, electronic register of notarial acts, electronic workplace of a notary and other subsystems defined by the regulation on the electronic notary system approved by the Ministry of Justice of Ukraine in agreement with the Notary Chamber of Ukraine".<sup>50</sup>

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<sup>45</sup> On adoption as a basis of the draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Improving the Regulation of Notarial Activities, Resolution of the Verkhovna Rada of Ukraine dated February 15, 2022 No. 2051- IX, <https://zakon.rada.gov.ua/laws/show/2051-IX#Text>.

<sup>46</sup> Supra.

<sup>47</sup> At the same time, it is worth noting that Resolution No. 1406 of the CMU, which will be discussed below, is not such a regulation adopted to implement the relevant provision of the draft law.

<sup>48</sup> On Amendments to Some Legislative Acts of Ukraine on Improving the Regulation of Notarial Activities, Draft Law of Ukraine, dated June 10, 2021 No. 5644, <https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=5644&conv=9> ( hereinafter — Draft Law No. 5644), Article 14.

<sup>49</sup> Draft Law No. 5644, Article 26-1.

<sup>50</sup> Draft Law No. 5644, Article 26-2.

These and other proposed innovations are significant steps towards simplification and proximity to the client of notarization services. Nevertheless, draft law No. 5644 (analyzed by us above) and draft law No. 6146,<sup>51</sup> which provided for the use of replacement of notary services with digital tools, were not accepted unambiguously by the notary and legal community.

In particular, the proposal to give the remote consent of the spouses for the child's trip abroad with the other spouse was criticized.<sup>52</sup> The main concerns include: the proposed system allows parents to independently generate consent for the child's departure through the application without checking the capacity, and authenticity of the signature, which excludes control over these aspects. It also contradicts the purpose of the State Register of Civil Status Acts, since applications for consent to the departure of a child do not correspond to its purpose. In addition, such applications through the Diia portal cannot be recognized by foreign institutions, which can complicate the processing of documents abroad.<sup>53</sup>

Similarly, the introduction of the possibility of remote marriage has caused concern. One of the caveats is that this service may raise issues regarding data security and identity verification, as the procedure is conducted remotely, and because the process lacks physical control and confirmation of legal capacity of citizens when submitting an application.<sup>54</sup> Another issue is that divorced Ukrainians may face difficulties when using the online marriage service if their divorce information has not been updated in the civil registry office. The absence of such data in the civil registry office may be caused by the fact that since July 27, 2010, the court decision on divorce is a document confirming the divorce and the entry in the civil registry office is not carried out. Thus, it will not be possible to remarry online.<sup>55</sup> In such

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<sup>51</sup> On the adoption as a basis of the project of the Law of Ukraine on Amendments to Certain Legislative Acts Regarding Parents' Resolution of Children's Temporary Departure Outside Ukraine, Resolution of the Verkhovna Rada of Ukraine, dated July 8, 2022 No. 2363-IX, <https://zakon.rada.gov.ua/laws/show/2363-IX#Text>.

<sup>52</sup> Yurliga, the Notary Chamber appeals to the Verkhovna Rada. The Council postpones the vote on the bill on allowing parents to temporarily leave their children abroad, dated November 10, 2022. [https://jurliga.ligazakon.net/news/215272\\_notaralna-palata-zaklika-radu-dopratsyuvati-zakonoprokt-shchodo-virshennya-batkami-pitan-timchasovogo-vizdu-dtey-za-kordon](https://jurliga.ligazakon.net/news/215272_notaralna-palata-zaklika-radu-dopratsyuvati-zakonoprokt-shchodo-virshennya-batkami-pitan-timchasovogo-vizdu-dtey-za-kordon).

<sup>53</sup> Ibid.

<sup>54</sup> Velichko, L., Video wedding: how remote marriage registration will take place in "Diya", *Telegraf*, May 1, 2021, <https://news.telegraf.com.ua/ukr/ukraina/2024-05-01/5849375-vesillya-po-video-yak-vidbuvatimetsya-distantsiyna-reestratsiya-shlyubiv-u-dii>.

<sup>55</sup> Ibid.



a case, users must first contact the civil registry office department, submit a copy of the court decision and update the data before using the service.

The draft law passed the first reading, was adopted as a basis and is being prepared for the second reading, but we estimate the chances of its adoption as low at the moment. Also, the concerns and cautions of the notary and legal community regarding security are significant and are addressed below.<sup>56</sup>

In November 2022, the Ministry of Digital Transformation of Ukraine introduced the initiative of special verification of the authenticity of notarized documents in the Diia application: their authenticity can be checked using a QR scanner in the Diia app.<sup>57</sup> Thus, notarial documents with a QR code were additionally protected, because information about them is stored in the e-notary system, and it is impossible to make changes to the text of the notarial document after uploading it to the system. In addition, the formation of a document with a QR code occurs exclusively with the assistance of the Unified State e-Notary System by notaries performing notarial activities.<sup>58</sup> However, this service in itself is not digitization of the notary. Rather, it is an attempt to integrate digital tools into Ukrainian notary practice and accustom notaries to use such tools.

In addition to the above, another step on the way to the digitalization of the notary field was the creation of a legal basis that enabled the notary to verify the validity of documents or obtain information from the Unified State Demographic Register when performing a notarial act. On July 11, 2023, the Resolution of the Cabinet of Ministers was adopted, which provided for notaries to have access to the state demographic register.<sup>59</sup>

To obtain such access, the notary must be authorized in the e-Notary System and send a request to provide information from the Register using the software of the e-Notary System, in the manner of electronic information interaction between the e-Notary System and the

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<sup>56</sup> See RECOMMENDATION II. Introduce remote execution of notarial actions, the security of which will be ensured by additional technical validators.

<sup>57</sup>The official website of the Diia application. In the Diia application, you can check a notary document using a QR The official website of the Diya application. In the Diya application, you can check a notary document using a QR code, dated November 2, 2022, <https://diia.gov.ua/news/zahist-vid-pidrobki-dokumentiv-ta-ekonomiya-chasu-vidteper-u-diyi-mozhna-pereviriti-notarialni-dokumenti-z-qr-kodom>.

<sup>58</sup>Ibid.

<sup>59</sup>Resolution No. 700.

Register. <sup>60</sup>At a notary's request, the Registry generates and transmits to the e-Notary System a response containing information, data and other personal data available in the Registry, or informs about the absence of information regarding the person and document in respect of which the request was made.<sup>61</sup>

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<sup>60</sup>Resolution No. 700, paragraph 3.

<sup>61</sup>Resolution No. 700, paragraph 10.

## **SECTION 2. Conservative and liberal view of digital notarization in the light of common and continental law approaches.**

The role of notaries in common law countries is significantly different from the role of notaries in continental law countries. A notary public in the common law system is rather a state-authorized impartial witness to the signing of important documents and the taking of oaths and is responsible for verifying the person signing the documents.<sup>62</sup> For example, in the USA notaries are not required to be lawyers.<sup>63</sup>

On the contrary, in Ukraine, as in other countries of the continental legal system, notaries are not just witnesses, but, rather, servants of justice and part of the legal system. The approach of the continental law system also involves giving the notary the functions of ensuring the legality of transactions and providing legal advice.<sup>64</sup> They are responsible for ensuring the legality of the agreement, ensuring that the parties have the necessary legal capacity, understand the subject matter, essence and all important terms of the agreement.<sup>65</sup>

This difference is also observed in the classification of notarial actions into two groups, namely functional notary (*notariat fonctionnel*) and professional notary (*notariat professionnel*).<sup>66</sup> Such terminology reflects different approaches to notarial acts that arose in connection with the historical features of the development of this profession in France and other countries of the continental legal system. In the concept of functional notary, a certified document is considered true, has the force of formal proof and does not require additional confirmation in court, which is why only highly qualified lawyers become notaries.<sup>67</sup>

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<sup>62</sup>Koos, S., Digitization of notarial tasks - a comparative review and prospects of "cybernotariat " in Indonesia and Germany, Indonesian Journal of Socio-Legal Research: Vol. 2: No. 2, Article 1, <https://scholarhub.ui.ac.id/ijsls/vol2/iss2/1/>; see also as an example Appointment of Notaries, Consolidated Laws of the State of New York, Apr. 7, 2023, <https://www.nysenate.gov/legislation/laws/EXC/130>, § 130.

<sup>63</sup>US National Notary Association, Notary Basics: Avoiding the Unauthorized Practice of Law, National Notary Association Official Website, July 8, 2015, <https://www.nationalnotary.org/notary-bulletin/blog/2015/07/notary-basics-avoiding-unauthorized-practice-of-law>.

<sup>64</sup> Lubis, I., A Comparison of Civil Law Regarding the Implementation of Cyber-Notariat in Countries with Common Law and Civil Law Traditions, IUS Journal Kajian Hukum Dan Keadilan 10, No. 1 (2022): 4–5, <http://dx.doi.org/10.29303/ius.v0i0.981>.

<sup>65</sup> Supra.

<sup>66</sup> Tan, D., Cyber Notaries from a Contemporary Legal Perspective: Paradox in Indonesian Law and Minor Compromises to Find a Balance, Indonesian Law Review: Vol 10: No 2, Article 1, <https://scholarhub.ui.ac.id/ilrev/vol10/iss2/1>.

<sup>67</sup> Supra.

Notarization in the concept of a professional notary does not entail the authenticity of the document or its probative value, as the notary acts as an independent specialist providing services to private individuals or legal entities.<sup>68</sup>

According to the information portal of the Federal Notary Chamber of Germany, the judicial system of Germany (which is a country of continental law system) is based on the "model of preventive legal control" carried out by notaries. Preventive administration of justice by notaries is aimed at protecting inexperienced and unqualified participants from legal discrimination, ensuring legal security and preventing disputes.<sup>69</sup> In this model, certified documents have increased probative value, as notaries take responsibility for their content, confirming their authenticity.<sup>70</sup>

It can be concluded that the notary has a more responsible role in the countries of the continental system of law than in the countries of the common system.<sup>71</sup> According to scholars, the important role played by notaries in the countries of the continental law system makes the implementation of digital notary a more difficult process for this category of countries.<sup>72</sup>

Also, it is worth paying attention to the differences in the definition of the main concepts. Thus, countries with a continental legal system apply the law by interpreting regulations, and not by comparing the circumstances of a specific case with court precedents.<sup>73</sup> In order to define such new concepts as "digital notary", "electronic notarization", "remote services" and "notarization through camera", which are currently absent in Ukrainian legislation, it is necessary to understand what these definitions should cover.

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<sup>68</sup>Khoroshenyuk, O., Savchenko, V., Andrukhov, O., Babichev, A., and Bortniak, V. (2023). Notarial practice of declaring a will in civil transactions in the countries of the European Union. Political issues, Volume 41: No. 76, Art. 76-99.

<sup>69</sup> Job profile ("Berufsbild"), the official information portal of the German Federal Chamber of Notaries ("Bundesnotarkammer" ), <https://www.notar.de/der-notar/berufsbild> .

<sup>70</sup>Khoroshenyuk, O., Savchenko, V., Andrukhov, O., Babichev, A., and Bortniak, V. (2023). Notarial practice of declaring a will in civil transactions in the countries of the European Union. Political issues, Volume 41: No. 76, Art. 76-99.

<sup>71</sup> Koos, S., Digitization of notarial tasks - a comparative review and prospects of "cybernotariat " in Indonesia and Germany, Indonesian Journal of Socio-Legal Research: Vol. 2: No. 2, Article 1, <https://scholarhub.ui.ac.id/ijsls/vol2/iss2/1/> .

<sup>72</sup>Supra.

<sup>73</sup> Common Law and Civil Law Traditions, Robbins Collection, University of California, Berkeley, <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>

Let's consider the concepts of "notary" and "notarization" in a continental law country (Germany is chosen as an example) and a common law country (the USA is chosen as an example). According to German law, notaries “..are independent public officials who are appointed in the Länder<sup>74</sup> to record legal acts (“notarial records”) and to perform other tasks in the field of preventive administration of justice”.<sup>75</sup> Under US law (New York State law is an example), a notary is “...a public official appointed by the Secretary of State to perform various official acts, including the administration of oaths and affirmations, the acceptance of confirmations and proofs of deeds, mortgages and other written documents, and the notarization of copies of powers of attorney, acts and other documents”.<sup>76</sup>

The term "notary public" in Ukrainian legislation is defined in accordance with Article 3 of the Law of Ukraine "On Notaries", according to which a notary is “...a natural person authorized by the state, who performs notarial activities in a state notary office, a state notarial archive or an independent professional notarial activity, in particular certifying rights, as well as facts of legal significance, and performs other notarial acts provided for by law in order to give them legal probability”.<sup>77</sup>

Next is the concept of "notarization". The US National Notary Association defines notarization as “...a formal fraud-prevention process that assures parties to a contract that a document is authentic and can be trusted”.<sup>78</sup>

The legislation of Ukraine and Germany are similar in that they establish additional duties for a notary public. For example, Ukrainian legislation, defining the "notarization", provides the requirements to establish the identity of those who applied, to check their legal capacity and to find out whether the content of the deed meets the requirements of the law

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<sup>74</sup>In Germany, "Länder" (German: *Länder*) are federal administrative-territorial units similar to states in the United States or provinces in other countries. Germany is made up of 16 Länder, each with its own constitution, parliament and government, with significant autonomous powers in areas such as education, the police and culture.

<sup>75</sup>On the Federal Notarial Statute, Law (Federal Republic of Germany), No. 303-1, <https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html>, § 1.

<sup>76</sup>Executive Law, Law of the State of New York, <https://www.nysenate.gov/legislation/laws/EXC/130>, chapter 6, § 130.

<sup>77</sup>On the Notary, Law of Ukraine, dated September 2, 1993 No. 39, <https://zakon.rada.gov.ua/laws/show/3425-12#Text> (hereinafter - the Law of Ukraine "On the Notary" ), Article 3.

<sup>78</sup> National Notary Association, What is Notarization ?, National Notary Association website, <https://www.nationalnotary.org/knowledge-center/about-notaries/what-is-notarization>.

and whether it does not violate the rights and interests of other persons.<sup>79</sup> The German legislator, although he does not specify these requirements in one definition, similarly establishes that the notary is obliged to identify the participants of the transaction with the documents confirming their identity, to make sure that the participants fully understand the content of the documents, and their expression of will corresponds to their intentions.<sup>80</sup> In addition, the notary must also check whether the deed complies with current legal regulations and does not violate the rights and interests of other persons.<sup>81</sup>

From the above we can see that the definitions given for the main concepts in the countries of the continental system also indicate a more expanded functionality of the notary and its more important place in the legal system of these countries. This functions includes not only the technical aspect of confirming the fact of signing documents, but also a deeper legal analysis, verification of the will of the parties and protection of their rights and interests.

In recent studies, dated 2022 and 2023, scholars analyzing the options and approaches for implementing a digital notarization system used the term "cybernotary" , defining it as "...a notary system that uses technological developments to prepare authentic acts in cyberspace". The main idea embedded in this definition is that notary functions can be performed using electronic media with audio or video calling functions.<sup>82</sup> Another recent study defined the term "electronic notarization" as "...notarization of documents by electronic means. The term "remote services" was also introduced,<sup>83</sup> indicating actions that are performed without the physical presence of the client and the notary, using digital technologies.<sup>84</sup>

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<sup>79</sup>Law of Ukraine "On Notary", Article 44.

<sup>80</sup> On the notary, Law of 28 August 1969 No. 271 (Federal Republic of Germany ), [https://www.gesetze-im-internet.de/beamg/17.html#:~:text=Beurkundungsgesetz%20\(BeurkG\),unzweideutig%20in%20der%20Niederschrift%20wiedergeben](https://www.gesetze-im-internet.de/beamg/17.html#:~:text=Beurkundungsgesetz%20(BeurkG),unzweideutig%20in%20der%20Niederschrift%20wiedergeben) (hereinafter BeurkG), §§ 10, 17.

<sup>81</sup>BeurkG, § 14.

<sup>82</sup>See Lubis, I., Murwaji, T., and Sukarja, D., The Development of the Cybernotary Concept in Common and Continental Law Systems, Law and Humanities Quarterly Reviews, 1, 2020, Article 4.

See also Koos, S, Digitization of notarial tasks - a comparative overview and prospects of "Cybernotariat" in Indonesia and Germany, Indonesian Journal of Socio-Legal Studies: Volume 2: No. 2, 2023, Article 1, <https://scholarhub.ui.ac.id/ijsls/vol2/iss2/1> .

<sup>83</sup>Khanh, B.N. and Lin, P.H., Electronic Notarization in the Context of Digital Transformation in Vietnam: Challenges and Recommendations, International Journal of Engineering, Management and Applied Sciences and Technology, 13(9), 13A9U, 1 -13. <http://TUENGR.COM/V13/13A9U.pdf> .

<sup>84</sup> Supra 68.

In the US, the National Notary Association also uses the term "electronic notarization".<sup>85</sup> It provides the same function as a physical one, except that the document being notarized is digital and the notary uses an electronic signature.<sup>86</sup> Also used is the term "notarization via webcam" - a process during which the person signing the document connects with the notary using audio or video technology.<sup>87</sup>

Based on the definitions already available in Ukrainian legislation, the experience of other countries and modern scientific works, it is possible to form a list of new terms and their definitions for our legislation:

- Digital notary is a system of notarial actions carried out in electronic form with the digital technologies, which includes confirmation of the authenticity of documents, deeds and facts without the need for the physical presence of a notary.
- Electronic notarization is a notarization of documents or transactions in digital format, which is carried out by means of an electronic signature and recorded using appropriate software.
- Notarization through a web camera is a process of notarization of documents by a notary, in which the person who signs the document interacts with the notary through audio or video communication, ensuring the remote conduct of the procedure.

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<sup>85</sup> National Notary Association (USA), What Businesses Need to Know About E-Notarization Technologies, Trends and Webcams, National Notary Association Official Website, [https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/enotarizationwhitepaper2016\\_161109.pdf?srsId=AfmBOor8Mb8Wce937AQC4x--ubZ1P5itBp-l1fzhniRidFUFh9kfSFUm](https://www.nationalnotary.org/file%20library/nna/knowledge%20center/special%20reports/enotarizationwhitepaper2016_161109.pdf?srsId=AfmBOor8Mb8Wce937AQC4x--ubZ1P5itBp-l1fzhniRidFUFh9kfSFUm) (may require VPN to access from Ukraine).

<sup>86</sup> Supra.

<sup>87</sup> Supra.

**RECOMMENDATION I. It is necessary to continue the introduction of an electronic system to ensure digital notary records and provide remote electronic services**

We consider the division of the process of digitalization of notary services into two meaningful parts: (i) creation of an electronic subsystem that provides digital notary records and (ii) creation of an electronic subsystem that provides remote electronic services. In accordance with the Resolution of the Cabinet of Ministers "On some issues of the implementation of an experimental project regarding the phased introduction of the Unified State Electronic System of e-Notary" (Resolution of the Cabinet of Ministers of Ukraine No. 1444 of December 29, 2021),<sup>88</sup> the first subsystem consists of the user's electronic workplace and corresponding electronic registers (archive, power of attorney register, notary register, register of forms, and inheritance register). The e-notary system interacts with unified and state registers, information and communication systems, the holder of which is the Ministry of Justice, which are not components of the e-Notary System, as well as other information and communication systems of state bodies and institutions (registries, cadastres, databases etc). The second subsystem includes a set of elements of state registers and services that provide access to remote services for individuals and legal entities. Also, we emphasize on the preservation of the European notary model existing in Ukraine and do not envisage fundamental changes to this model.<sup>89</sup>

In addition, the above is ensured by the Resolution of the Cabinet of Ministers of Ukraine of May 30, 2024 No. 619 "Some issues of the implementation of the experimental project regarding the registration of notarial acts performed by notaries in the Electronic Register of Notarial Acts. In Ukraine, there are all the necessary prerequisites for the introduction of electronic notarial records, especially in view of the long-term the practice of European countries in this field. The following is an analysis of the digital recordkeeping systems of notaries in different European countries.

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<sup>88</sup> Some issues of the implementation of the experimental project regarding the phased introduction of the Unified state electronic system of e-notariat, Resolution of the Cabinet of Ministers of Ukraine No. 1444, December 29, 2021 (Ukraine ), <https://zakon.rada.gov.ua/laws/show/1444-2021-n#Text>.

<sup>89</sup> Appendix I. Conservative and Liberal Views on Digital Notary Publicity in the Light of Common Law and Civil Law Approaches.



Table 2. Comparison of digital notary record keeping systems of European countries.

	<b>Federal Republic of Germany</b>	<b>French Republic</b>	<b>Republic of Estonia</b>	<b>Republic of Lithuania</b>	<b>Republic of Moldova</b>
<b>1. Is there an electronic system?</b>	<b>Yes.</b> It includes the following subsystems: <sup>90</sup> electronic archive of documents, <sup>91</sup> electronic storage of notarial documents, <sup>92</sup> directory of notaries, <sup>93</sup> special electronic notary boxes <sup>94</sup> and video communication system. <sup>95</sup>	<b>Yes,</b> the Central Electronic Register of Notaries of France (MICEN).	<b>Yes,</b> E-Notary (E-notari) <sup>96</sup> , which is a part of the Center of Registration and Information Systems of Estonia.	<b>Yes,</b> eNotaras, which functions through the e-Government Portal. <sup>97</sup>	<b>Yes,</b> "Register of representative powers based on electronic signature" (hereinafter - MPower). <sup>98</sup>

<sup>90</sup> On the conduct of notarial cases and directories, Decree, October, 13, 2020, (Federal Republic of Germany), HYPERLINK "<https://www.gesetze-im-internet.de/notaktvv/BJNR224610020.html>" (hereinafter - NotAktVV), Section 11.

<sup>91</sup> NotAktVV, §§ 78h-78j.

<sup>92</sup> NotAktVV, § 78k.

<sup>93</sup> NotAktVV, § 78l.

<sup>94</sup> NotAktVV, § 78n.

<sup>95</sup> NotAktVV, § 78p.

<sup>96</sup> E-Notary | Center of registers and information systems, Main page, HYPERLINK <https://www.rik.ee/en/other-services/e-notary>.

<sup>97</sup> E-Notary, HYPERLINK "<https://www.enotaras.lt/>"

<sup>98</sup> Electronic register of authorizations, HYPERLINK <https://mpower.gov.md/#/en/main>.

<b>2. Is it mandatory to enter information into the system?</b>	<b>Yes.</b> <sup>99</sup>	<b>Yes</b> , without this, the act will not be considered authentic. <sup>100</sup>	<b>No (no information).</b> <sup>101</sup>	<b>Yes.</b> <sup>102</sup>	<b>Yes</b> , because its information is quickly synchronized with data within other state registers and information systems. <sup>103</sup>
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<sup>99</sup> BNotO, § 78k

<sup>100</sup> The Electronic Authentic Act (AAE): Everything You Need to Know Bonnefous, <https://www.bonnefous.com/en/blog/the-electronic-authentic-act-eaa-part-and-parcel-with-the-new-world-of-notaries/>.

<sup>101</sup> In public domain, we could not get an answer to this question. It will be considered in more detail after consultations with the Ministry of Justice of the respective country.

<sup>102</sup> On Notary, Law No. I-2882, September 15, 1992 (Republic of Estonia), <https://www.global-regulation.com/law/lithuania/12512033/law-on-the-notary-office.html>, Chapter I (2)

<sup>103</sup> On the approval of the Concept of the Automated Information System "Register of Representative Powers on the Basis of Electronic Signature" (MPower) and Regulations on the Procedure for Keeping the Register of Representative Powers on the Basis of Electronic Signature, Resolution No. 375, June 10, 2020, (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=121919&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121919&lang=ro) (hereinafter - Resolution of the Republic of Moldova), paragraphs 36, 45; About Electronic Identification and Trust Services, Law No. 124, May 5, 2022 (Republic of Moldova), URL: [https://www.legis.md/cautare/getResults?doc\\_id=131642&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131642&lang=ro)

<p><b>3. What is the functionality of the system (how much information is entered)?</b></p>	<p>Each of the subsystems has its own volume of data that must be entered into them. These lists are determined by separate ordinances of the Federal Ministry of Justice and Consumer Protection<sup>104</sup> (see attachments).</p>	<p><b>No (no information).</b><sup>105</sup></p>	<p>You can make requests to 16 national registers (which are also kept electronically), keep the record of the notary's diary and a personal calendar of users, draw up contracts and sign them by EDS, keep records of the services provided, draw up invoices and payment orders for the payment of state duty.<sup>106</sup></p>	<p>You can enter: notary register number, date of notarial act, amount of notary's fee, etc.<sup>107</sup></p>	<p>"MPower" includes the following main functional circuits: a document circuit that provides accounting functions: (a) incoming documents to AIS "MPower"; (b) AIS MPower technological documents; (c) AIS MPower source documents; the circuit of administration and monitoring, management of backup copies; technical support and service, etc.<sup>108</sup></p>
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<sup>104</sup> See, for example, About the notary directory and the mailbox, Ordinance, March 4, 2019, HYPERLINK "<https://www.gesetze-im-internet.de/notvpv/BJNR018700019.html>".

<sup>105</sup> Supra 20.

<sup>106</sup> Supra.

<sup>107</sup> Law on the Notary Office of the Republic of Lithuania, September 15, 1992, No. I-2882, <https://www.global-regulation.com/law/lithuania/12512033/law-on-the-notary-office.html>, Appendix 2

<sup>108</sup> Resolution of the Republic of Moldova, paragraph 12

<p><b>4. Is remote work with the system possible?</b></p>	<p><b>Yes</b> . Options for fully remote notary work (outside the office)<sup>109</sup> as well as a hybrid format are available.<sup>110</sup></p>	<p><b>No (no information).</b> <sup>111</sup></p>	<p><b>Yes.</b> Fully remote notary work options (outside the office) are available.<sup>112</sup></p>	<p><b>No (no information).</b> <sup>113</sup></p>	<p><b>No (no information).</b> <sup>114</sup></p>
<p><b>5. How is personal data protected?</b></p>	<p>Each notary is connected to the electronic archive through a specially protected network. All documents are encrypted, they can only be deciphered by the notary and his assistants.<sup>115</sup></p>	<p>MICEN is a secure server: thanks to encryption, only the notary who performs the notarial act can access the documents. Security solutions such as REAL Network, REAL Key, Id.Not or notarial digital identification are applied.<sup>116</sup></p>	<p>The server is completely self-sufficient: E-notari does not use third-party systems and is included in the electronic government system. The digital ID and signature system used by notaries for entry is also developed by the government.<sup>117</sup></p>	<p>The purposes and cases of use of personal data are outlined in detail.<sup>118</sup></p>	<p>AIS "MPower" has a number of security mechanisms at its disposal: firewall; antivirus/antispa m; intrusion detection system; secure communication (data transfer) between web servers and users, which guarantees secure exchange of confidential information; systematic backup of stored data; an audit event registration tool, due to which</p>

<sup>109</sup> Notarial Certificate Act, August 28, 1969, No. 271, <https://www.gesetze-im-internet.de/beurkg/BJNR015130969.html> (hereinafter BeurkG), §16a

<sup>110</sup> BeurkG, § 16e

<sup>111</sup> Supra 20.

<sup>112</sup> Robin Leo, Estonia's fully remote e-notary service - the first public e-notary service of its kind in Europe - e-Estonia / E-ESTONIA, <https://e-estonia.com/estonias-fully-remote-e-notary-service-1st-state-e-service-of-its-kind-in-europe/>

<sup>113</sup> Supra 20.

<sup>114</sup> Supra 20.

<sup>115</sup> BNotO, § 61

<sup>116</sup> See Annex on encryption in France.

<sup>117</sup> Katrin Sepp, Legal Advisor of the Estonian Chamber of Notaries, Fully remote e-notary service in Estonia - the first public e-service of its kind in Europe - e-Estonia / e-Estonia, HYPERLINK "<https://e-estonia.com/estonias-fully-remote-e-notary-service-1st-state-e-service-of-its-kind-in-europe/>"

<sup>118</sup> E-Notary, Data Protection Policy / Notary Chamber of the Republic of Lithuania, HYPERLINK "[https://www.enotaras.lt/assets/documents/pl\\_lnr\\_2021\\_07\\_16.pdf](https://www.enotaras.lt/assets/documents/pl_lnr_2021_07_16.pdf)"

					all actions performed by users, regardless of whether they are successful or not (for example, attempted but failed connections), are tracked and recorded in the MPower AIS journals. <sup>119</sup>
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All the countries analyzed by us have their own system of ensuring digital notary record keeping. In most of them, system management is mandatory for remote actions. At the same time, there are no signs of a complete transition to digital record keeping as the main tool for replacing paper registers.<sup>120</sup> The creation and operation of such systems is usually governed by secondary legislation, such as ordinances of the Federal Ministry of Justice and Consumer Protection (in Germany)<sup>121</sup> or Government Regulations (in Moldova).<sup>122</sup>

To preserve the integrity and confidentiality of the entered data, each country provides security systems such as two-factor authentication, systematic backup, limited data access, data encryption, use of EDS for login, etc.

We conclude that it is expedient to introduce an electronic notary's office management system with the possibility of remote access and work with the system, taking into account the following factors:

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<sup>119</sup> Resolution of the Republic of Moldova, paragraph 50

<sup>120</sup> Granting such a transition the status of a strategic priority will be specified in the Ministries of Justice of the respective countries at later stages of the project.

<sup>121</sup> See, e.g., On the Notarial Directory and the Mailbox, Ordinance of 4 March 2019 (Federal Republic of Germany), <https://www.gesetze-im-internet.de/notvpv/BJNR018700019.html>; BNotO, § 78n.

<sup>122</sup> Regulations on the procedure for maintaining the Register of Representative Powers based on an electronic signature, Resolution No. 375 of June 10, 2020 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=121919&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121919&lang=ro) (hereinafter - Resolution of the Republic of Moldova), paragraphs 36, 45; On electronic identification and trust services, Law No. 124 of May 5, 2022 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=131642&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131642&lang=ro).

- The automation of internal notary activities in the states we analyzed is a long-term practice (for example, the French MICEN has been in use since 1990), which has proven its effectiveness.

- Automation reduces paper work and allows changes to be made to the system remotely.

- Risks associated with the storage of personal data can be reduced by encrypting data and limiting access to them, using additional validators.

**RECOMMENDATION II. Introduce remote notary services, the security of which will be ensured by additional technical validators.**

Creating a secure system of remote notary services for citizens who do not have the opportunity to physically certify documents requires the implementation of technologies while minimizing the risks of cyber fraud. Accordingly, the notary must resolve the following basic issues before the notarization:

1. Identity: checking whether a person is who they say they are.

2. Competency: checking whether the person understands what they are doing, including the nature of the transaction, the content of the document being signed, and the consequences of the transaction.

3. Voluntariness of the act: checking for the presence of pressure, coercion or threats against the person.

Therefore, risks can be organized according to several model situations:

1. Cyber Hacking: Theft, forgery, or illegal access to an electronic signature by breaching cybersecurity measures, breaking into a system, or gaining access to files containing security keys.
2. Abuse: abuse of access to confidential information by employees of state authorities.
3. Fraud: Creating or altering official documents for the purpose of deception or gain.
4. Coercion: Blackmailing or coercing a person to sign a document through threats or physical violence.
5. Transfer of data for access: unlawful voluntary provision of keys, logins and passwords for access to another person.
6. Mistake: a material error in understanding the consequences of an action or document.
7. Disability: mental illness or other incapacity.

Before directly analyzing individual fraud risks and setting out recommendations for their minimization or elimination, it is important to note that none of the listed risks or their combination should be a determinative factor in the implementation of the electronic notary system. Statistical data on Ukrainians with difficult access to obtaining notary services in the "traditional" format (in particular, citizens who are abroad or in the zone of active hostilities) indicated in the creation of the system, as well as the positive experience of foreign countries, indicate the possibility of accepting these risks subject to the use of additional validators

(technological mechanisms or procedures used to verify and confirm the person applying for a notary service, such as electronic signature, BankID, requiring an additional signature of a close relative, etc.).

**Cyber hacking.** The first risk to look out for is cyber hacking. This risk was especially widespread during the period of registration raiding in 2016-2021, when real estate and corporate rights were illegally acquired through fraudulent registration in state registers. An example of cyber hacking is the criminal scheme that was exposed in September 2019. In that case, former employees of the state executive service deleted information about encumbrances using stolen electronic signature keys.<sup>123</sup> Key theft was carried out using phishing emails with a virus.<sup>124</sup> At the same time, access to the registry was carried out from the forest using mobile Internet and SIM cards were used only once. During the several years of the scheme's existence, several thousand operations were carried out to cancel encumbrances.<sup>125</sup>

The situation with cyber-hacking was largely resolved after the introduction of multi-factor authentication (a security mechanism that uses two elements to verify identity when logging into a program)<sup>126</sup> for access to government registries, in particular, integration with the Google service. Hacking a personal computer and phone for two-factor authentication has become very unlikely. The foreign practice of using the digital notary system confirms the improbability of cyber hacking. According to the information we requested from the representatives of the Notary Chamber of Estonia and the Council of Sworn Notaries of Latvia, no similar cases were recorded in these countries.<sup>127</sup> Therefore, it is possible to consider accepting the risks of cyber-hacking due to their improbability, provided that a strengthened protection system of additional validators is implemented.

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<sup>123</sup> Official web portal of the National Police of Ukraine, Law enforcement officers detained the organizers of a large-scale scheme of re-registration of seized property, September 26, 2019, <https://www.npu.gov.ua/news/pravookhorontsi-zatrimali-organizatoriv-masshtabnoi-skhemi-perereestratsii-areshtovanogo-Mayna>.

<sup>124</sup> Supra.

<sup>125</sup> Supra.

<sup>126</sup> White paper, Roadmap for preventing registration raiding and ensuring compliance with land concentration restrictions in Ukraine, Office of Effective Regulation, 2021, <https://brdo.com.ua/en/news/yak-efektyvno-zapobigty-revestratsijnomu-rejderstvu-u-zemelnij-sferi-brdo-prezentuvav-dorozhnyu-kartu/>.

<sup>127</sup> Response to the request for information of the Estonian Chamber of Notaries dated August 19, 2024; Response to the information request of the Council of Sworn Notaries of the Republic of Latvia dated September 2, 2024.



**Abuse.** In 2021, there was a case of generating a fake electronic signature for an e-petition signing. Back then, the system checked and let through an e-signature with the name "Biden Joe",<sup>128</sup> which was most likely done to compromise the petition.<sup>129</sup> One of the first cases related to the forgery of electronic signatures occurred in 2016 against the former member of the National Agency on Corruption Prevention (the NACP), Ruslan Ryaboshapka.<sup>130</sup> In relation to these cases, the most justified assumption is that unauthorized creation and certification of electronic digital signatures were carried out by the institutions authorized to do so, rather than hacking of the systems used for submitting electronic declarations and petitions.

Data transfer can also be carried out through the direct exchange of information by employees for financial or personal gain. Such a change of information is possible if the employee has access to automated systems,<sup>131</sup> which creates a risk of leakage or change of data in electronic notarial registers or electronic offices of recipients or service providers.<sup>132</sup> In addition, brute force<sup>133</sup> (crude selection of logins and passwords to gain access to automated systems) and phishing (distribution of fake links with the aim of causing the victim to download a virus or collect confidential information) are used to steal or change personal information.<sup>134</sup> However, given the trend of strengthening cyber security in the field of

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<sup>128</sup> Flyonts, V., Bieden Joe or what is happening with the petitions, Ukrainian Pravda, June 19, 2021, <https://www.pravda.com.ua/columns/2021/06/19/7297814/>.

<sup>129</sup> Interfax-Ukraine, Signing a petition on the president's website by the user "Joe Biden" was a planned hacker attack, Interfax -Ukraine, June 25, 2021, <https://interfax.com.ua/news/telecom/752229.html>.

<sup>130</sup> Korchak, N., Head of the National Agency for the Prevention of Corruption 2016-2018, Facebook, August 22, 2016, [https://www.facebook.com/korchaknatalya/posts/318459921821071?ref=embed\\_post](https://www.facebook.com/korchaknatalya/posts/318459921821071?ref=embed_post).

<sup>131</sup> See, for example, the Automated System of the State Register of Real Property Rights, automated banking systems, automated postal systems, etc.

<sup>132</sup> See, for example, Desnyan District Court of Chernihiv, Verdict of October 27, 2021 No. 750/9923/21, [https://verdictum.ligazakon.net/document/100627219?utm\\_source=biz.ligazakon.net&utm\\_medium=news&utm\\_content=bizpress01&ga=2.230728857.768829923.1719940516-81328545.1714110217#\\_gl=1\\*7gkrsz\\*\\_gcl\\_au\\*NjE3OTYwNDIzLjE3MTQxMTAyMTY](https://verdictum.ligazakon.net/document/100627219?utm_source=biz.ligazakon.net&utm_medium=news&utm_content=bizpress01&ga=2.230728857.768829923.1719940516-81328545.1714110217#_gl=1*7gkrsz*_gcl_au*NjE3OTYwNDIzLjE3MTQxMTAyMTY); Primorsky District Court of Odesa, Verdict No. 522/18402/21 dated October 8, 2021, [https://verdictum.ligazakon.net/document/100257670?utm\\_source=biz.ligazakon.net&utm\\_medium=news&utm\\_content=bizpress01&ga=2.230728857.768829923.1719940516-81328545.1714110217#\\_gl=1\\*7gkrsz\\*\\_gcl\\_au\\*NjE3OTYwNDIzLjE3MTQxMTAyMTY](https://verdictum.ligazakon.net/document/100257670?utm_source=biz.ligazakon.net&utm_medium=news&utm_content=bizpress01&ga=2.230728857.768829923.1719940516-81328545.1714110217#_gl=1*7gkrsz*_gcl_au*NjE3OTYwNDIzLjE3MTQxMTAyMTY).

<sup>133</sup> Vynogradivsky District Court of Zakarpattia Oblast, Verdict of July 27, 2023 No. 299/2999/23, <https://verdictum.ligazakon.net/document/112460765?q=%22%D0%B1%D1%80%D1%83%D1%82%D1%84%D0%BE%D1%80%D1%81%22>.

<sup>134</sup> Balashova, L., Appendix for 19 million Ukrainians. Fraudsters fake "Diya" to travel abroad, extract bank data and defraud stores. How not to get hooked?, Forbes.ua., dated November 5, 2023,

providing digital public services and the absence of mass abuses by civil servants, this issue does not hold back the implementation of electronic notary. This is confirmed by the practice of other countries: in Estonia, thanks to the high level of security of the system, only one case of abuse of powers by a notary was recorded in nine years of using the e-notary system.<sup>135</sup> The urgent need for remote execution of notarial acts during martial law poses similar risks.

Although there is concern in society about the leakage of data (e.g. name, personal identification number, phone number, e-mail address, etc.), for example, from Diia,<sup>136</sup> the use of the above-described schemes for such purposes is unlikely due to the fact that there are legal services for obtaining information about a natural person, such as Opendatabot.<sup>137</sup> Also, databases of Ukrainian banks and information about logins and passwords of their users have already been put up for sale in the DarkNet, which indicates a lower probability of using such a resource-consuming method of fraud as hacking "Diia" or other state systems precisely for the purpose of stealing personal information.<sup>138</sup>

The greater risk lies in insufficient information protection due to the multi-stage process involved in delivering an electronic service, which opens opportunities for attackers to access data at various stages. Consequently, there have been cases where fraudsters gained access to applications by illegally obtaining the victim's SIM card and compromising their access to BankID.<sup>139</sup> One of the root causes was non-compliance with the identity verification procedure when granting access to account management by employees of financial institutions and mobile operators. Such situations occurred due to the simultaneous abuse of two vulnerabilities of the "chain" of the electronic service.<sup>140</sup> Currently, the application has an additional safeguard - biometric verification, which significantly reduces repeated abuses

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<https://forbes.ua/innovations/dodadok-na-19-mln-shakhrai-pidroblyayut-diyu-dlya-otrimannya-paroliv-vid-kartok-ta-viizdu-za-kordon-yak-ne-potrapiti-na-gachok-02112023-17007>.

<sup>135</sup>Response to the request for information from the Estonian Chamber of Notaries dated August 19, 2024.

<sup>136</sup>Antonyuk, D., Hacking "Actions". Did the data really leak from the state portal and how could it threaten you - a detailed analysis, Forbes.ua, dated January 28, 2022, <https://forbes.ua/inside/diya-zliv-26012022-3389>.

<sup>137</sup>Verification of a natural person of Ukraine, Opendatabot, <https://opendatabot.ua/open/check-person>.

<sup>138</sup>Staji, D., Scam with Privatbank. Who and how trades in databases in Ukraine, DSnews.ua, dated February 17, 2021, <https://www.dsnews.ua/ukr/economics/afera-s-privatbankom-kto-i-kak-torguet-v-ukraine-bazami-dannyh-17022021-415920>.

<sup>139</sup>Refaghi, I., A digital identity was stolen from a Lviv woman and loans were taken in her name: she learned about it from "Diya", FOCUS, dated January 11, 2022, <https://focus.ua/uk/digital/502805-u-lvovyaniki-ukrali-cifrovuuu-lichnost-i-nabrali-na-ee-imya-kreditov-ona-uznala-ob-etom-ot-diya?fbclid=IwAR3hoQzxTVF4m9Ni4kNsHvRq3kGbT97Da5yzyvWJHawfpBJMOvAf1DiMUEM>.

<sup>140</sup> Supra.

of the shortcomings of the BankID system or the possession of a SIM card.<sup>141</sup> Accordingly, when applying similar safeguards, the risks of low information security are reduced enough to consider their acceptance, even in the presence of multi-stage service provision.

**Fraud.** The rapid development of artificial intelligence (AI) technologies is creating new types of fraud, such as deepfakes. Using AI to create fake videos of top managers, deepfake videos of top managers of various companies allows you to mislead and profit financially from unsuspecting victims. There are cases of generating fake photos of passports and driver's licenses for identity verification, which are used to deceive identity systems in the processes of opening bank accounts, obtaining loans, and registering on online platforms.<sup>142</sup>

Currently, it is difficult to assess the extent of the threat of active use of AI for such frauds, since we are witnessing the initial stage of the use of these technical means. However, the presence of an additional safeguard, for example, in the form of an additional person or service that will confirm the identity of the recipient of services, as well as modern methods of protection against unauthorized access to the electronic account (for example, the biometric verification mentioned above) should reduce cases of this type of fraud to a minimum. Accordingly, acceptance of this risk should be considered for the above-described purposes of introducing remote services.

**Coercion.** The risk of possible coercion, when a person is remotely forced to sign a document against their will, applies not only to remote electronic signatures, but also to any form of notarization, including off-line one. Accordingly, by abandoning the implementation of digital notary, this risk will not be eliminated. The reduction or increase of such situations when transitioning to a system of digital services can only be assessed through a separate criminological study. However, it can be argued that the risks of coercion are relevant for a small number of situations, and the goals of fighting crime, which are assigned to law enforcement agencies, must be achieved in other ways (for example, by introducing additional safeguards).

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<sup>141</sup>For example, this procedure is part of identification using Action.Signature. See The official website of the Consulate General of Ukraine in Milan. Electronic identification using Diia.Signature, dated April 18, 2024, <https://milan.mfa.gov.ua/diia>.

<sup>142</sup>Kaminsky, B., Fraudsters Use AI-Generated Documents to Verify Cryptowallets, SPEKA.media, Feb. 6, 2024, <https://speka.media/saxrayi-vikoristovuyut-zgenerovani-si-dokumenti-dlya-verikaciyi-kriptogamanciv-p2x107>.

In times of war, the risk of coercion can also take on a new form. For example, the Russian military can force a person to sign a document remotely or via a web camera.<sup>143</sup> However, the electronic protections that should be an integral part of the video call system (such as detecting the noise of other people in the room, determining the physical location of the person, etc.), combined with the ability of the notary to check the person, talk to him and ask additional questions for control procedure are sufficient to significantly mitigate this type of risk.

**Data transfer for access.** The next risk is the voluntary transfer of powers, that is, their unofficial transfer to a person who does not have the authority to act within the notary system. Reducing the risk of signing a document by such a person can be done by implementing a method of additional confirmation of the person in the form of a video call, by asking clarifying questions and comparing the person's image with the one available in the digital archive. Approval of such an identity verification procedure will provide an opportunity to accept the risk of transfer of authority.

**Situations of error and failure.** Notarial certification at circumstances in which a person does not understand the meaning and consequences of his actions is also unlikely due to the complexity of using digital ID equipment and programs. A person suffering from a serious mental illness will probably not be able to perform the actions necessary for notarization (authorization in the system or affixing electronic signatures). A notary public involved in the transaction will also be able to detect manifest incapacity by talking to the person or by checking the relevant state registries for the person's legal capacity, in particular by analyzing information regarding the limitation of legal capacity or the judicial determination of the person as incompetent.<sup>144</sup>

Separately, it is important to emphasize the possibility of using other, in addition to those already mentioned, preventive security measures. eIDAS - the European Union

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<sup>143</sup>Currently, cases of coercion by the Russian occupation forces have already been documented, which gives reason to believe that similar situations may occur during digital notarization. *See, for example*, the Main Directorate of Intelligence, Russians put pressure on Ukrainian ZANP workers to force them to sign contracts with Rosatom, ArmiyaInform Information Agency, December 17, 2023, <https://armyinform.com.ua/2023/12/17/rosianyany-tysnut-na-ukrayinskyh-praczivnykiv-zaes-aby-zmusyty-pidpysaty-kontrakty-z-rosatomom-gur/>.

<sup>144</sup>Data in the Unified Register of Court Decisions are anonymized, but another court system is available at the link "Status of the case" on the website of the Judiciary <https://court.gov.ua/fair/> allows you to de-anonymize data from the Unified Register of Court Decisions with the help of a search by case number. Also, other initiatives to create a centralized database of disability decisions are being discussed.

regulation on electronic identification and trust services for electronic transactions within the EU internal market can be a helpful tool for determining such measures.<sup>145</sup>

The purpose of this regulation is to make remote authentication, electronic archiving, video conferencing and electronic identification more predictable, standardized and secure processes through the use of specific security measures.<sup>146</sup>

The regulation also mentions electronic seals - electronic data that are added by the creator of the electronic seal to other electronic data and are used to determine the origin and check the integrity of the related electronic data.<sup>147</sup>

Unlike an electronic signature, an electronic seal does not entail the signatory's obligations regarding the content of the document, except for the guarantee of authenticity and origin of its data.<sup>148</sup>

Another potential measure is the implementation of website authentication certificates, which are electronic certificates that prove that a website is trustworthy.<sup>149</sup> They are needed to ensure the security of user data, confirm site ownership, prevent criminals from creating a fake version of the site, and ensure user trust.<sup>150</sup>

The regulation also describes digital data exchange services that allow users to securely send data electronically.<sup>151</sup> They provide confirmation of the sending and delivery of the document and protect against the risk of loss, theft, damage or unauthorized change of the contents of the documents.<sup>152</sup>

Taking into account all the above-mentioned risks associated with remote notarization, it is possible to conclude that modern security measures and supervision of the online certification process are necessary. We recommend considering the following solutions:

1. Implementation of two-factor or multi-factor authentication of notarization process participants.

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<sup>145</sup> On electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, Regulation (EC) of the European Parliament and of the Council of July 23, 2014 No. 910/2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2014.257.01.0073.01.ENG>.

<sup>146</sup>Supra.

<sup>147</sup>Supra.

<sup>148</sup>Supra.

<sup>149</sup>Supra.

<sup>150</sup>Supra.

<sup>151</sup>Supra.

<sup>152</sup>Supra.

2.Implementation of the possibility of preliminary determination by the signatory of an additional person to confirm legal capacity and identification of the person applying to the notary for the purpose of performing a notarial act or transaction.<sup>153</sup>

3.Implementation of additional identity checks through biometric verification.

4.Implementation of a system of video calls with encryption and a system of noise recognition and determination of physical location of a person during a video call.

5.Use of website authentication certificates.

6.Involvement of digital data exchange services.

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<sup>153</sup> A similar procedure has already been implemented in the banking sector in the USA, in the state of California. Banks report suspicious transactions to the elderly customer's contact person. See CalMatters, California Lawmakers Seek to Strengthen Fraud Protection for Seniors, 2024, <https://calmatters.org/digital-democracy/2024/06/california-senior-fraud-scam/>

### **RECOMMENDATION III. Justification of the need to introduce certification through a web camera, as opposed to automated notary services**

Considering the challenges caused by the state of war and the need for digitization of services, including notarial services, there are two main options for their implementation in modern conditions: the use of video communication for notarial actions and full automation of processes. By automation, we mean a range of services (services) that, according to the law, are performed by a notary public, but due to automation, they could be performed by software without human intervention (for example, registration of a sole proprietorship through "Diia").<sup>154</sup>

However, automated digital checks that would make it impossible for a person to perform notarial acts under the influence of error, fraud or blackmail are difficult and in some cases almost impossible to implement.<sup>155</sup>

Among the Ukrainian notary community, there may be concern about the possible replacement of the notary profession by automated digital tools. This assumption is based on the fact that a similar concern is already observed among notaries in France.<sup>156</sup>

The option of notarization through a webcam does not change the role of notaries in society, does not provoke radical changes in the approach to the person of the notary and his role in the provision of public services, and also does not create unnecessary risks associated with insufficient experience in the functioning of automated solutions.

Given the above reasons, authenticated and encrypted video calls are a more practical option in our reality.

As remote performance of notarial acts, we understand the entire process of providing notarial services to the client using video communication technologies sufficient to identify a person and establish the validity of his declaration of will.

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<sup>154</sup>State services online "Diia" , Opening of the IE, <https://diia.gov.ua/services/revestraciya-fop> . (This service was introduced on May 1, 2021. With the introduction of the automated opening of the IE in Diya, 58 paper fields for entering data were transformed into 10 electronic fields. At the same time, the Ministry of Justice receives a complete information picture from all the necessary fields, because the data can be checked through other information registers automatically).

<sup>155</sup>See [Section 2](#).

<sup>156</sup>Khoroshenyuk, O., Savchenko, V., Andrukhov, O., Babichev, A., and Bortniak, V. (2023). Notarial practice of declaring a will in civil transactions in the countries of the European Union. Political issues, Volume 41: No. 76.

Experience of other countries demonstrates the methods of implementing an effective procedure for certifying documents through video communication. For example, in Germany, a special video communication platform has been implemented with the functionality of identity verification, generation and confirmation of a document by qualified electronic signature, documentation of online actions and scanning of an information carrier, the operation and security of which is separately regulated by the Law on Notarization.<sup>157</sup> The use of this tamper-resistant and reliable platform created by the German Federal Chamber of Notaries is mandatory for video authentication.<sup>158</sup> The notary is responsible for verifying the identities of the parties using legally regulated electronic documents for identity verification. Also, the participants of the online certification process can be physically located outside of Germany.<sup>159</sup>

In addition, from July 1, 2022, the Ordinance on the maintenance of notarial records and directories requires notaries to make an electronic copy of all new notarial acts and store them in an electronic collection immediately after entering them into the register of deeds. This is done by creating a PDF/A file from the scanned paper form of the act.<sup>160</sup> Archiving is carried out in the central electronic archive of documents of the Federal Notary Chamber.<sup>161</sup> To ensure confidentiality, each notary is connected to the archive through a secure network, and all documents are stored in encrypted form, accessible only to the notary and staff. The storage of a paper act is terminated after 30 years, while the storage in the archive of notarial acts is required for 100 years. This requirement is an additional security guarantee for service recipients.<sup>162</sup>

Estonian legislation provides for online transactions by prior agreement with a notary in a place convenient for the client (in video conference mode) or in five foreign representative offices of Estonia using special equipment and a method of remote authentication, similar to

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<sup>157</sup> Koos, S., The Digitization of Notarial Tasks - A Comparative Review and Prospects of "CyberNotary" in Indonesia and Germany". Indonesian Journal of Socio-Legal Studies: Volume 2: Number 2, 2023, Article 1, <https://scholarhub.ui.ac.id/ijsls/vol2/iss2/1>

<sup>158</sup>Supra.

<sup>159</sup>Supra.

<sup>160</sup>Supra.

<sup>161</sup>Supra.

<sup>162</sup>Supra.



the system in Germany.<sup>163</sup> It is also possible to carry out a remote certification from another comfortable place for the person, if the notary has no doubts about the identity of the client or his legal capacity.<sup>164</sup> During remote notarization, the document is read aloud, displayed on the screen, after which a digital signature is placed on it. A video call can be partially or completely recorded.<sup>165</sup>

The Estonian e-notary system is multifunctional and allows for remote authentication, virtual certification of documents and invoicing for services.<sup>166</sup> In addition, the system allows you to request data from 16 different registers, such as the matrimonial property register, the Estonian Central Securities Register, etc.<sup>167</sup> Notaries are obliged to register and store all documents derived from the remote certification procedure in digital archives.<sup>168</sup> Also, making a notarial deed requires entering additional information about it into the system: information about the participants of the certificate, data from the documents used to identify the participants, the amount paid to the notary, the amount of the notary fee, the type of certificate, etc.<sup>169</sup> In view of the above, the system simplifies the interaction between the client and the notary due to the absence of the need to submit paper documents and provides access to all data and documents necessary for the notary in digital format.<sup>170</sup> Due to the convenience and high security of the system, 95% of notaries in Estonia can provide notarization services via webcam, and 30% of all notarizations are conducted remotely.<sup>171</sup>

Despite the difficulties in implementing this system, even such a conservative country as France has implemented digitalization and provides the possibility of notarization through a webcam instead of the classic offline format.<sup>172</sup> Thus, in December 2020, David Ambrosiano, president of the High Council of French Notaries, presented the possibility of issuing an

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<sup>163</sup> Response to the request for information from the Estonian Chamber of Notaries dated August 19, 2024.

<sup>164</sup> Supra.

<sup>165</sup> Supra.

<sup>166</sup> Supra.

<sup>167</sup> Supra.

<sup>168</sup> Supra.

<sup>169</sup> Supra.

<sup>170</sup> Supra.

<sup>171</sup> Supra.

<sup>172</sup> Bonnefous, Electronic real act ( EC A ) : integral ingredient new the world of Notaries, 2023, <https://www.bonnefous.com/en/blog/the-electronic-authentic-act-eaa-part-and-parcel-with-the-new-world-of-notaries/>.

electronic power of attorney as a response to the challenges of the pandemic, mirroring the initiative that was first introduced in Estonia.<sup>173</sup> In France, an additional security guarantee is the legally mandatory entry of an electronically certified deed into the Central Electronic Register of Notaries of France MICEN (Minutier central électronique des notaires de France).<sup>174</sup> Without entry in the register, the act executed electronically will not be considered authentic.<sup>175</sup> MICEN is a secure server designed for the centralized storage of notarial acts on a national scale.<sup>176</sup> Thanks to such storage, only the notary who executes the deed can have access to it.<sup>177</sup>

The Republic of Lithuania, which also has a separate system for performing remote notarial acts, introduces a precautionary measure in the context of remote notarial acts.<sup>178</sup> In particular, the law gives the notary the right, at his own discretion, to refuse to perform a notarization remotely, even if all the technical conditions stipulated by the law are met.<sup>179</sup> This refusal is justified by the notary's duty to protect the legal interests of the person who requires the performance of a notarial act, or to ensure the proper implementation of the provisions of the law.<sup>180</sup> Refusal to perform a remote notarial act is not subject to appeal.<sup>181</sup> All notarial acts are registered in a single notarial register, which contains the legally prescribed information about the performed notarial act (the list is almost identical to that established by Estonian legislation).<sup>182</sup> Also, in Lithuania, notaries are in contact with other state registers and exchange data with them in accordance with the procedure established by law.<sup>183</sup>

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<sup>173</sup> Estonia Introduces Fully Remote e-Notary Service – First Government e-Service of Its Kind in Europe, e-Estonia Magazine, 17 Nov. 2021, <https://e-estonia.com/estonias-fully-remote-e-notary-service-1st-state-e-service-of-its-kind-in-europe/>.

<sup>174</sup> Bonnefous, The Electronic Authentic Act (ECA): An Integral Part of the New Notary World, 2023, <https://www.bonnefous.com/en/blog/the-electronic-authentic-act-eaa-part-and-parcel-with-the-new-world-of-notaries/>.

<sup>175</sup> Supra.

<sup>176</sup> Supra.

<sup>177</sup> Supra.

<sup>178</sup> Response to the request for information from the Ministry of Justice of the Republic of Lithuania dated August 22, 2024.

<sup>179</sup> Supra.

<sup>180</sup> Supra.

<sup>181</sup> Supra.

<sup>182</sup> Supra.

<sup>183</sup> Supra.

Latvia, like the previously described countries, also has an electronic notary system <sup>184</sup>, which is divided into:

1. The internal information system of notaries (NIS), which includes the register of notarial acts and certificates, as well as the register of inheritance. It allows notaries to draw up and register documents, as well as exchange information with other state registries.<sup>185</sup>

2. Public portal (Latvijas Notars), which provides clients with the opportunity to perform notarial acts, consult with a notary online (via video conference) and receive other online services, such as affixing an apostille or verification of powers of attorney (any notarial act can be performed by meeting with a notary online).<sup>186</sup>

At the same time, there is a legal requirement to enter certain information into the system, regardless of whether the notary works with the client in person or remotely. To receive services, the client must have a valid Smart ID or electronic signature and an identity document. 79% of notaries offer online certification services.<sup>187</sup>

The above-mentioned practices of other countries do not cover another element of the future video communication system for notarial acts. This element is validators, which will ensure sufficient recognition of the person through obtaining the relevant evidence. Such evidence can be testimony of specially appointed persons or personal knowledge of the client by the notary. Similar practices are already provided for in the US draft law establishing standards for security.<sup>188</sup>

Ukrainian lawyers, analyzing foreign experience and its success, also recognized the need to introduce a notary certificate through a web camera for Ukrainian citizens. In March 2023, a group of Ukrainian scholars published a comparative study of digital notarial certificates entitled "Notarial practice of wills in civil transactions in the countries of the

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<sup>184</sup> Response to the information request of the Council of Sworn Notaries of the Republic of Latvia dated September 2, 2024.

<sup>185</sup> Supra.

<sup>186</sup> Supra.

<sup>187</sup> Supra .

<sup>188</sup> On the Secure Notarial Certificate, Bill, February 28, 2023 No. HR1059 (United States of America), <https://www.congress.gov/bill/118th-congress/house-bill/1059?q=%7B%22search%22%3A%5B%22notarization%22%5D%7D&s=2&r=1>, section 4 (b) (2).

European Union.”<sup>189</sup> The study provides an example the Belgian and Dutch practice of remote issuance of power of attorney and the system of digital signatures in the EU.<sup>190</sup> But they also noted concerns about the stability of the notary profession in an environment of booming digitalization, citing a survey conducted in France in 2018. According to the results of the survey, 72% of French notaries answered that they feel a threat to the existence of their activity due to insufficient familiarization with the system and popularization of the necessary skills, fear of losing the monopoly, simplification of the role of the notary and replacement of the notary profession by other professions.<sup>191</sup> The study proposes to improve the domestic notary practice by borrowing from the EU practice such tools as remote notarial certification of powers of attorney and certification with the help of a web camera.<sup>192</sup>

Therefore, the possibility of introducing automated remote notary services, i.e., services without the participation of a notary, should be postponed until experience is gained in implementing similar practices. It can be considered after the introduction of remote notary services with certification of a person's signature after authentication through a web camera and the corresponding accumulation of experience in the use of the electronic notary system and other remote services. In particular, for the successful application of the system, it is necessary to focus on the successful experience of foreign countries.

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<sup>189</sup> Khoroshenyuk, O., Savchenko, V., Andrukhov, O., Babichev, A., and Bortniak, V. (2023). Notarial practice of declaring a will in civil transactions in the countries of the European Union. *Political issues*, Volume 41: No. 76, Art. 76-99.

<sup>190</sup> *Supra*.

<sup>191</sup> *Supra*.

<sup>192</sup> *Supra*.

#### **RECOMMENDATION IV. Introduce the possibility of remote provision of a wide range of notarial actions.**

The need for the introduction of remote notary services was repeatedly mentioned in this study. However, for their practical implementation, it is necessary to first determine which remote services should be introduced, what should be the exceptions from the list of such services, and whether there are any reasons for limiting this list.

From our comparative analysis of the legislation<sup>193</sup> of France, Germany, Lithuania and Estonia, it can be seen that the remote performance of notarial acts has been implemented in each of these countries.<sup>194</sup> Estonia allows all notarial acts (with the exception of confirmation of marriage or divorce) to be performed remotely.<sup>195</sup> In Lithuania, it is allowed to perform all actions remotely, except for notarizing wills and accepting them for storage and certifying the fact that a natural person is alive and in a certain place.<sup>196</sup> In France, the possibility of remote certification extends to, for example, remuneration contracts, powers of attorney, preliminary sales contracts and financial accounts.<sup>197</sup> Since 2023, remote certification of the conclusion of a divorce agreement by mutual consent has become possible in France,<sup>198</sup> while in Estonia this act is the only exception to notarial acts that can be performed remotely.<sup>199</sup> Given the lack of information on fraud cases, we speculate that the above differences are caused by differences in the legal doctrines of the above countries, according to which, for example, France has a more simplified divorce procedure, while Estonia may consider this an unacceptable incentive to increase the number of divorces.

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<sup>193</sup>See [RECOMMENDATION III. Justification of the need to introduce certification through a web camera, as opposed to automated notary services](#)

<sup>194</sup> On actions performed by notaries, Decree No. 71-941 of November 26, 1971 (French Republic), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000511476>; On the Notary, Law No. 192-0 of September 19, 1992 (Republic of Lithuania), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>; About notary, Regulation, dated June 19, 2009 No. 23 (Republic of Estonia), <https://www.riigiteataja.ee/akt/108032024003>.

<sup>195</sup>Response to the request for information from the Estonian Chamber of Notaries dated August 19, 2024.

<sup>196</sup>Response to the request for information from the Ministry of Justice of the Republic of Lithuania dated August 22, 2024.

<sup>197</sup>Khoroshenyuk, O., Savchenko, V., Andrukhov, O., Babichev, A., and Bortniak, V. (2023). Notarial practice of declaring a will in civil transactions in the countries of the European Union. Political issues, Volume 41: No. 76, Art. 76-99.

<sup>198</sup>Dalloz News, e-DCM tool now required to electronically sign divorce papers by mutual consent, dated October 2, 2023, <https://www.dalloz-actualite.fr/flash/signature-electronique-des-actes-de-divorce-par-consentement-mutuel-passera-desormais-imperati#:~:text=Depuis%20la%20loi%20du%202023,civ>.

<sup>199</sup>About notary, Regulation, dated June 19, 2009 No. 23 (Republic of Estonia), <https://www.riigiteataja.ee/akt/108032024003>.

Under the context and practice of Ukraine, there are currently no provisions in legal policy or doctrine that impose restrictions or exceptions on notarial services. Provided that security is ensured through the use of necessary validators, all notarial services can be conducted remotely, with the notary participating via video link. If there are any caveats we have not considered, the benefits of enabling remote notary services during wartime are likely to outweigh them.

Selection of appropriate validators for notarial actions depends on the significance of the risks associated with each notarial act. This significance is influenced by several factors, such as the likelihood of certain negative outcomes, the maximum and/or expected adverse consequence, the effectiveness and feasibility of controlling these consequences, the qualitative characteristics of the notarial act and its impact, the parties' perception of the notarial actions, and the cost-effectiveness of implementing validators relative to potential benefits.<sup>200</sup> Based on these criteria, notarial acts can be categorized into standard notarial acts and those with an elevated level of risk. Accordingly, validators of varying complexity will be applied to each group.

<b>Degree of riskiness</b>	<b>Types of notarial acts</b>	<b>List of validators</b>
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<sup>200</sup> IEC 31010:2019, Risk management — Risk assessment techniques (2nd ed. 2019), [HYPERLINK "https://www.iso.org/standard/72140.html":// HYPERLINK](https://www.iso.org/standard/72140.html)

<p>Common actions (with a low degree of risk)</p>	<ol style="list-style-type: none"> <li>1) Issue duplicates of notarial documents kept in the notary's files;</li> <li>2) Certify the authenticity of copies of documents and extracts from them;</li> <li>3) Certify the authenticity of the signature on the documents;</li> <li>4) Certify the accuracy of the translation of documents;</li> <li>5) Attest to the fact that the person is the executor of the will;</li> <li>6) Certify the time of presentation of documents;</li> <li>7) Transfer statements of individuals and legal entities to other individuals and legal entities;</li> <li>8) Execute executive orders.</li> </ol>	<ul style="list-style-type: none"> <li>- Photo fixation of the person for unambiguous recognition and identification of the document;</li> <li>- Continuous recording of video communication in real time (in case of interruptions - repetition of the notarial action);</li> <li>- Presentation of an identification document through video communication in real time;</li> <li>- Checking the document for signs of damage, forgery and compliance.</li> </ul>
<p>With an increased degree of risk</p>	<ol style="list-style-type: none"> <li>1) Certify deeds (contracts, wills, powers of attorney, requirements for notarization of deeds, etc.);</li> <li>2) Testify to the fact of the physical person's stay in a certain place;</li> <li>3) Accept money and securities for deposit;</li> <li>4) Take measures to protect inherited property;</li> <li>5) Issue certificates of the right to inheritance;</li> <li>6) Issue certificates of ownership of a share in joint property of spouses (former spouses);</li> <li>7) Issue certificates on the purchase of property from auctions;</li> <li>8) Impose and remove the ban on alienation of immovable property;</li> <li>9) Impose a ban on the embezzlement of monetary sums.</li> </ol>	<ul style="list-style-type: none"> <li>- Additional validators for notarial actions 1, 3, 8, 9, 10: sending an email to confirm the initiation of the transaction by the recipient;</li> <li>- postponement of registration for 7 working</li> </ul>

		<p>days after receiving a positive response;<sup>201</sup></p> <ul style="list-style-type: none"> <li>- Additional validators for notarial acts 3, 7, 8, 9: requirement of an additional signature of a close relative;</li> <li>- Additional validators for notarial actions 1, 2, 5: mandatory and additional questions for verifying the identity and validity of the declaration of will.</li> </ul>
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<sup>201</sup> See SB 278: Elder Abuse: Emergency Financial Outreach Program, [HYPERLINK "https://digitaldemocracy.calmatters.org/bills/ca\\_202320240sb278?\\_gl=1\\*1ob1ger\\*\\_gcl\\_au\\*ODI30TQ2MTEwLjE3MjYwNTkyNjU.\\*\\_ga\\*MTI2ODEyOTE5MC4xNzI2MDU5MjY1\\*\\_ga\\_5TKXNLE5NK\\*MTcyNjIxMDk4Mi4zLjAuMTcyNjIxMDk4Mi42MC4wLjA.\\*\\_ga\\_DX0K9PCWYH\\*MTcyNjA5MjYwOS4yLjAuMTcyNjA5MzQ3Mi4wLjAuMA.\\*\\_ga\\_GNY4L81DZE\\*MTcyNjA5MjYxMC4yLjEuMTcyNjA5MzQ3Mi4wLjAuMA"](https://digitaldemocracy.calmatters.org/bills/ca_202320240sb278?_gl=1*1ob1ger*_gcl_au*ODI30TQ2MTEwLjE3MjYwNTkyNjU.*_ga*MTI2ODEyOTE5MC4xNzI2MDU5MjY1*_ga_5TKXNLE5NK*MTcyNjIxMDk4Mi4zLjAuMTcyNjIxMDk4Mi42MC4wLjA.*_ga_DX0K9PCWYH*MTcyNjA5MjYwOS4yLjAuMTcyNjA5MzQ3Mi4wLjAuMA.*_ga_GNY4L81DZE*MTcyNjA5MjYxMC4yLjEuMTcyNjA5MzQ3Mi4wLjAuMA).. One of the goals of this bill of the state of California is to prevent fraud against elderly people in the banking sector. For this, it is proposed to add a 3-day period for "significant" transactions, and the possibility (obligation) of appointing an additional trusted person.



## **Annex № 1. Analysis of the types of permitted remote services French Republic**

### *1) Certificate of transactions.*

A notary who prepares an electronic deed uses a system of processing and transmitting information approved by the High Council of Notaries and guarantees the integrity and confidentiality of the content of the deed. Information communication systems implemented by notaries must be compatible with the systems of other notaries and organizations to which they must transfer data;

The deed must be signed by a notary using a qualified electronic signature. Such a signature is affixed by a notary immediately after drawing up the deed (only then is it considered executed). A notarial deed drawn up on an electronic medium is entered for its preservation in the central record book after its registration by a notary. The notary who keeps the record of it gets exclusive access to it.

### *2) Conclusion of a divorce agreement by mutual consent.*

As of July 25, 2023, the National Bar Council (CNB) and the Superior Council of Notaries (CSN) have included a new amendment to the joint statute governing the relationship between lawyers and notaries in the context of divorce by mutual consent dated December 23, 2020. This amendment requires the use of the e-DCM tool developed by the CNB to draw up any deed that contains an electronically signed mutual consent divorce agreement.

This initiative aims to censor the circumvention policy of certain lawyers who, in particular avoid taxes. Now, if a lawyer does not use the e-DCM tool, he will be exposed to the fact that the notary will refuse him to submit the agreement.<sup>202</sup>

## **Federal Republic of Germany**

The possibility of notarization of certain transactions through video communication is provided for by the Law on Notarial Certification:

- 1) creation of a limited liability company (GmbH or UG);
- 2) power of attorney to create a limited liability company (GmbH or UG);
- 3) unanimous decisions of the shareholders of the GmbH or UG, for example, changes

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<sup>202</sup> Dalloz News, The e-DCM tool is now required for the electronic signature of divorce documents by mutual consent, dated 12 July 2024, <https://www.dalloz-actualite.fr/flash/signature-electronique-des-actes-de-divorce-par-consentment-mutuel-passera-desormais-imperati#:~:text=Depuis%20la%20loi%20du%202023,civ>.

to the articles of association, capital measures;

- 4) all applications for registration in the register of companies;
- 5) all applications for registration in the cooperative register;
- 6) all applications for registration in the commercial register;
- 7) all applications for registration in the register of companies;
- 8) all applications for registration in the register of associations;

9) certification of a qualified electronic signature (a qualified electronic signature can be certified only if it was recognized in the presence of a notary public or with the help of a video communication system managed by the Federal Chamber of Notaries) in accordance with § 78p of the Federal Notary Rules).

### **Republic of Lithuania**

The following notarial actions can be performed remotely (using video communication):<sup>203</sup>

- 1) issuance of a certificate of the right to inheritance;
- 2) issuance of a certificate of ownership of part of the joint property of the spouses;
- 3) certification of the authenticity of extracts from documents and extracts from them;
- 4) certification of the authenticity of the signature on the documents;
- 5) approval of the time of submission of documents;
- 6) transfer of the application of one natural or legal entity to other natural or legal entities;
- 7) accepting sums of money on a deposit account;
- 8) acceptance of maritime protests;
- 9) protesting bills and checks;
- 10) execution of executive inscriptions for notarized transactions that give rise to monetary obligations, as well as for protested or non-protestable promissory notes and

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<sup>203</sup> On Notaries, Law of 15 September 1992 No. 192-0 (Republic of Lithuania), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>, Article 26(1).

checks;

11) execution of executive orders on forced collection of debt at the request of the mortgage (collateral) creditor;

12) drawing up or approving documents regarding the authenticity of the information submitted to the register of legal entities, and confirmation that the legal entity can be registered in connection with the performance of duties established by legislation or the founding deed, and the circumstances provided for in the register of legal entities . laws or constitutive documents have arisen;

13) confirmation of the compliance of the constituent documents of legal entities with the requirements of the law;

14) confirmation of documents with a certificate (apostille) in accordance with the procedure established by the Government of the Republic of Lithuania.

The following notarial actions are not performed remotely:<sup>204</sup>

- 1) testament certificate;
- 2) confirmation that a natural person is alive and is in a certain territory;
- 3) acceptance of wills and personal documents equated to official wills.

### **Estonia**

With the help of a remote certificate (except for foreign representative offices), it is possible to perform all types of notarial actions, with the exception of the certificate of marriage and dissolution of marriage.<sup>205</sup>

In foreign representative offices, the following acts can be performed with the help of a remote certificate:

- 1) certify agreements with shares of a limited liability company;
- 2) certify the power of attorney;

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<sup>204</sup> On Notaries, Law of 15 September 1992 No. 192-0 (Republic of Lithuania), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>, Article 28(1).

<sup>205</sup> On notaries, Regulation of 19 June 2009 No. 23 (Republic of Estonia), <https://www.riigiteataja.ee/akt/108032024003>, § 12 1 (7).

- 3) submit applications for the conclusion and dissolution of marriage;
- 4) submit applications related to inheritance;
- 5) cancellation and assignment of property rights and commercial pledges.

### **Conclusion**

From the above, we can see that all the countries analyzed by us allow remote (using a web camera) certification of various transactions, registration actions (such as registration of legal entities of various organizational and legal forms). Lithuania has the most extensive list of notary services that can be performed remotely. Comparing it with the similar list given in Art. 34 of the Law of Ukraine "On Notaries", we can conclude that the following notarial actions provided for in it can be performed remotely: certification of deeds (contracts, wills, powers of attorney, requirements for notarization of deeds, etc.); <sup>206</sup>issuance of a certificate of ownership of a share in joint property of a spouse (former spouse) on the basis of a joint application or in the event of the death of one of the spouses; <sup>207</sup>execute writs of execution, <sup>208</sup>bills of exchange protests, <sup>209</sup>maritime protests.<sup>210</sup>

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<sup>206</sup>Law of Ukraine "On Notary Publicity", paragraph 1 of part 1 of article 34.

<sup>207</sup> The Law of Ukraine "On Notaries" , paragraph 4 of part 1 of article 34.

<sup>208</sup> Law of Ukraine "On Notary Publicity" , paragraph 19 of part 1 of article 34.

<sup>209</sup> Law of Ukraine "On Notary Publicity" , paragraph 20 of part 1 of article 34.

<sup>210</sup> Law of Ukraine "On Notary Publicity" , clause 21, part 1, article 34.

## **Annex № 2. Research presented in the form of a compilation of data, world experience and main trends in the digitization of the notary**

### **1) French Republic**

The issue of providing notary services in electronic form in the French Republic is regulated by:

– Decree No. 71-941 of November 26, 1971 on documents drawn up by notaries (Décret n°71-941 du 26 novembre 1971 relatif aux actes établis par les notaires <sup>211</sup>);

– Decree No. 2017-1416 of September 28, 2017 on electronic signature (Décret n° 2017-1416 du 28 septembre 2017 relatif à la signature électronique <sup>212</sup>);

- Civilian Code (Code civil <sup>213</sup>).

Decree No. 71-941 of November 26 , 1971 about documents drawn up by notaries regulates issues regarding performance of notarial actions in electronic form. In particular, this Decree provides that:

1)the notary who prepares the electronic deed uses the information processing and transmission system approved by the High Council of Notaries and guarantees the integrity and confidentiality of the content of the deed. Information communication systems implemented by notaries must be compatible with the systems of other notaries and organizations to which they must transfer data (Article 16);

2)the deed must be signed by a notary using a qualified electronic signature in accordance with the requirements of Decree No. 2017-1416 of September 28, 2017 on electronic signatures. Such a signature is affixed by a notary immediately after drawing up the deed, if necessary, after drawing up the appendices to the act.

For their signature, parties and witnesses must use a process that allows for an image of their handwritten signature to be affixed to the notarial deed visible on the screen.

If a handwritten entry of the person must be made, the notary states that this entry is made in compliance with the conditions stipulated by the second part of Article 1174 of the Civil Code (Article 17);

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<sup>211</sup> On acts drawn up by notaries, Decree of November 26, 1971 No. 71-941 (French Republic), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000511476>.

<sup>212</sup> On Electronic Signature, Decree of September 28, 2017 No. 2017-1416 (French Republic), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000035676246>.

<sup>213</sup>Civil Code (French Republic), [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070721/2024-05-31](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/2024-05-31).

3)the signed notary can draw up a power of attorney on an electronic medium, if one or more parties to this deed are not present in front of him.

The exchange of information necessary for drawing up the deed and obtaining the consent of the party or parties to the deed who are not present by the notary is carried out using a system of processing, communication and transmission of information that guarantees the identification of the parties, the integrity and confidentiality of the content and is approved by the High Council of Notaries.

The notary who signed the document collects, simultaneously with their consent, the electronic signature of one or another person using the qualified electronic signature procedure that meets the requirements of Decree No. 2017-1416 of September 28, 2017 on electronic signature.

The deed is considered committed after the appropriate notary has affixed his qualified electronic signature (Article 20-1);

4)in the case of drawing up an act on an electronic medium, the attached documents are inextricably linked to the act to which they refer. The notary's electronic signature at the end of the deed also applies to its annexes (Article 22);

5)notaries keep the record of the list of all documents they certify on paper or electronic media. The list is updated daily. It contains the date, nature, type of the document, the names of the parties, the medium on which it was created, and all other information provided by laws and regulations (Article 23). If the list is stored on an electronic medium, it is signed by the head of the notarial chamber or his representative using the qualified electronic signature process, as defined by the already mentioned decree of March 30, 2001 (Article 25);

6)a document created on an electronic medium must be stored in conditions that allow preserving its integrity and readability.

All information about the document from the time it was created, such as data that allows it to be identified, to define its properties, and to ensure that it can be tracked, must also be stored.

A notarial deed drawn up on an electronic medium is entered for its preservation in the central record book after its registration by a notary. The notary who keeps the record of it gets exclusive access to it.

The Central Book of Protocols is created and maintained by the High Council of Notaries.

The preservation process should allow the notary to record information after the deed has been concluded, without changing previous data (Article 28);

7) marks made on the original drawn up on an electronic medium shall be made in the file associated with the original transaction signed by the notary with his/her qualified electronic signature (Article 30);

8) a notary can issue a paper copy of an electronic document. A notary who receives an authentic copy of a power of attorney from another notary using electronic means, in order to ensure the fulfillment of the second part of Article 933 of the Civil Code <sup>214</sup>, may issue an authentic copy on paper sealed with a seal and signature (Article 36);

9) a notary can make an electronic copy of a document drawn up on paper, using scanned copies under conditions that ensure its identical reproduction.

The notary, who issues a copy on an electronic medium, specifies the date and affixes his qualified electronic signature. An authentic copy also includes a seal. A note is made on the created copy that it corresponds to the original (Article 37).

Article 1 of Decree No. 2017-1416 of September 28, 2017 on electronic signature establishes that the reliability of the electronic signature process is assumed until the contrary is proven, if this process implements a qualified electronic signature.

Qualified electronic signature - an improved electronic signature in accordance with Article 26 of the said Regulation, created using a tool for creating a qualified electronic signature that meets the requirements of Article 29 of the said Regulation, based on a qualified electronic signature certificate that meets the requirements of Article 28 of this Regulation.

According to Article 1366 of the French Civil Code, an email has the same evidentiary value as a letter on paper, provided that the person from whom it originates can be properly identified and that it is created and stored in conditions that can guarantee its integrity.

The representative of the Correz Interdepartmental Notary Chamber, Stephanie Swiklinski, describes the drafting of a notarial deed in electronic form as follows: "Nothing changes. It is created using document editing software. Then the documents that are

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<sup>214</sup>Article 933 of the French Civil Code: "...If the donee is of legal age, the acceptance must be made by him or on his behalf by a person on the basis of his power of attorney, who gives the authority to accept the donation made, or the general authority to accept donations that would be or could be would do This power of attorney must be given to a notary; and a copy must be added to the protocol of donation, to the protocol of reception, which will be drawn up by a separate act."

attached to the act are scanned. The act and documents digitized in this way form an act for signing. During signing, the notary reads the contract and its annexes on the screen. Therefore, customers can monitor this process in real time.

If there is no need to make changes, the notary confirms the contents of the deed and annexes with his "REAL" key. This is an encrypted computer key that contains the notary's identification and signature. The document then appears on a tablet, and it is on this medium that the parties sign with a qualified electronic signature.

What are the advantages of an electronic act?

Obviously, the legal fidelity is maintained and the notary's know-how is present. Only the transaction support changes. In particular, the advantages are that it is possible to save space by avoiding paper archives. There is always a guarantee of document safety. It saves time, as transactions are faster and can be carried out remotely (this is the last step). A video conferencing system for signing documents is being developed. It is possible to gain in data availability, as access to acts is facilitated by a virtual library.<sup>215</sup>

## **2) Federal Republic of Germany**

The issues of providing notary services in electronic form in the Federal Republic of Germany are regulated by the following documents:

- Law on notarial certification (Beurkundungsgesetz) <sup>216</sup>;
- Federal notarial regulations (Bundesnotarordnung) <sup>217</sup>;
- Law on the promotion of electronic administration (E-Government-Gesetz) <sup>218</sup>.

In Germany, online notarial actions can be performed through the official portal of the Federal Chamber of Notaries. <sup>219</sup>This ensures that online notarial actions will meet the highest

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<sup>215</sup>Correz Interdepartmental Notary Chamber, Creuse, Upper Vienna (2024). About the electronic authentic act, <https://www.chambre-interdep-19-23-87.notaires.fr/informations-juridiques/215/L-acte-devient-electronique-mais-reste-authentique.html>.

<sup>216</sup> On notarial certificates, Act of 28 August 1969 (Federal Republic of Germany), No. 1513, <https://www.gesetze-im-internet.de/beurkg/BJNR015130969.html>.

<sup>217</sup> On the Federal Notary Statute, Law No. 303-1 of 13 February 1937 (Federal Republic of Germany), <https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html>.

<sup>218</sup>On e-Government, Act of 25 July 2013 (Federal Republic of Germany), No. 2749, <https://www.gesetze-im-internet.de>.

<sup>219</sup>The official website of the Federal Notary Chamber of Germany, <https://online.notar.de/>.



data protection and security requirements, as the confidentiality of your data is guaranteed in the same way as during an on-site visit to a notary <sup>220</sup>.

If you start the online procedure through the [online.notar.de portal](https://online.notar.de), a list of responsible notaries will be automatically created based on your information, from which you can freely choose. One "click" is enough to select a notary public. Of course, you can also choose a familiar notary from the list of responsible notaries.

In addition, you can contact a notary you trust by phone to receive an invitation to a notarial procedure online. Then the notary can, assuming responsibility, invite you to a meeting via video conference.

In Germany, the legislator allowed the following notarial acts to be performed online:

- creation of a limited liability company (GmbH or UG);
- power of attorney to create a limited liability company (GmbH or UG);
- unanimous decisions of the shareholders of the GmbH or UG, e.g. changes to the articles of association, capital measures;
- all applications for registration in the register of companies;
- all applications for registration in the cooperative register;
- all applications for registration in the commercial register;
- all applications for registration in the register of companies;
- all applications for registration in the register of associations.

The possibility of notarization via video communication is provided for by the Law on Notarization. This Law establishes the following requirements for such a notary certificate:

1) **admissibility** (§ 16a of subsection 3 of section 2).

The will can be notarized by means of a video communication system managed by the Federal Chamber of Notaries in accordance with § 78p of the Federal Notary Code, within the limits provided by law.

A notary must refuse notarization by means of video communication if he cannot guarantee the performance of his official duties in this way, in particular, if he cannot be sure of the identity of the client, or if he has doubts about the necessary legal capacity or legal capacity of one of the involved parties;

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<sup>220</sup> Information from the portal of the Federal Chamber of Notaries, <https://online.notar.de/hilfe-faq/allgemeines/offizielles-portal-fuer-online-notartermine>.

**2) recording of the electronic protocol (§ 16b subsection 3 of section 2).**

In the case of notarial certification of the declaration of will by means of video communication, an electronic record of the proceedings must be made.

The electronic protocol is formed as an electronic document.

The place of review is the place where the electronic protocol is kept. In the electronic protocol it should be stated that the consideration of the case was conducted with the help of video communication. At the end of the electronic protocol, the names of the persons who sign it are indicated. The surname of the notary must be accompanied by his position.

The electronic protocol must contain qualified electronic signatures, which replace the signatures provided for by this law. Such signatures must be based on a certificate that can be verified over time. Involved parties must independently create qualified electronic signatures. The notary must create a qualified electronic signature independently.

The electronic protocol is sent electronically to the parties involved for review upon request prior to approval;

**3) confirmation of the client's identity through video communication (§ 16c of subsection 3 of section 2).**

If the notarization is carried out via video link, the notary must verify the client's identity using a passport photo sent to him electronically and using one of the following evidence or means:

a) electronic proof of identity in accordance with § 18 of the Identity Card Act (Personalausweisgesetzes<sup>221</sup>), in accordance with § 12 of the eID-Card Act (eID-Karte-Gesetz<sup>222</sup>) or in accordance with paragraph 5 § 78 of the Residence Act (Aufenthaltsgesetz<sup>223</sup>), which has "high" level of trust within the meaning of Article 8(2)(c) of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EU<sup>224</sup>, or

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<sup>221</sup>On identity cards, Law of 18 June 2009 No. 1346 (Federal Republic of Germany), <https://www.gesetze-im-internet.de>.

<sup>222</sup>On electronic identity card, Act of 21 June 2019 No. 846 (Federal Republic of Germany), <https://www.gesetze-im-internet.de>.

<sup>223</sup> No. 162 of 25 February 2008 (Federal Republic of Germany), [https://www.gesetze-im-internet.de/aufenthg\\_2004/BJNR195010004.html](https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html).

<sup>224</sup>On electronic identification and trust services, Regulation (EU) No. 910/2014 of July 23, 2014 (European Union), <https://eur-lex.Europe.eu/eli/reg/2014/910/oj>.

b) an electronic means of identification issued by another member state of the European Union or another state party to the Agreement on the European Economic Area, and that

– recognized for cross-border authentication purposes in accordance with Article 6 of Regulation (EU) No. 910/2014 and

- was notified at the "high" level within the meaning of Article 8( 2)( c) of Regulation (EU) No. 910/2014.

The passport photograph, which must be sent to the notary with the consent of the person concerned, must contain the name, surname, date of birth, country of issue, type of document, validity period and data necessary to authenticate the document from an electronic medium for the storage and processing of an identity card, passport or electronic residence permit issued by the Federal Republic of Germany or an official identity card or passport from another country with which the requirements for passport and identity card are fulfilled in the country. If the person involved is known to the notary, electronic transmission of the passport photo is not required;

**4)confirmation of permission for representation by electronic protocol (§ 16d of subsection 3 of section 2).**

Submitted powers of attorney and confirmation of the authority of the legal representative must be attached to the electronic record in the form of a certified copy in electronic form;

**5)mixed certificate (§ 16e, subsection 3, section 2).**

If the certification is performed with a part of the participants who are physically present at the notary, and with the other part of the participants - by means of video communication, in addition to the electronic protocol with the participants physically present at the notary, it is necessary to draw up a protocol with the latter with a content similar to the protocol that is drawn up for the participants , who are present by means of video communication. This should be noted in the physical and electronic protocol.

Both protocols must be kept together.

Among the notarial acts performed by notaries of the Federal Republic of Germany in accordance with the Notarial Certification Act, there is such a notarial act as certification of a qualified electronic signature (§ 40a, subsection 2, section 3). Such a qualified electronic signature can only be authenticated if it was created in the presence of a notary or by means

of a video communication system managed by the Federal Chamber of Notaries in accordance with § 78p of the Federal Notary Rules. Certification can be conducted via video link only if permitted by law.

A notary must refuse to certify a qualified electronic signature recognized by means of video communication if he cannot ensure that he fulfills his official duties in this way, in particular, if he cannot properly verify the identity of the client.

In Germany, the electronic notary system operates:

**1) central register of guardianship (Zentrales Vorsorgeregister).**

The Federal Chamber of Notaries, as the registering authority, maintains an automated electronic registry of powers of attorney for health care, care orders, living wills, and objections to spousal representation pursuant to § 1358 of the Civil Code.

Information from the register is provided to courts and doctors at their request. Doctors may request information only to the extent necessary to make a decision about urgent treatment;

**2) central register of wills (Zentralen Testamentsregisters).**

The central register of wills contains information on the storage of documents relating to inheritance.

Documents relevant to succession are wills, succession agreements and all documents with statements that may affect succession, including termination agreements, disinheritance statements, inheritance and waiver agreements, marriage and civil partnership agreements, as well as choice of law;

**3) electronic archive of documents (Elektronisches Urkundenarchiv).**

The Federal Notary Chamber as a document archive body ensures the functioning of the central electronic archive, which enables notaries to manage an electronic collection of documents, a register of documents (an electronic register of notarial certificates and other notarial acts) and a depository directory (an archive of electronic documents);

**4) electronic storage of notarial documents (Elektronischer Notariatsaktenspeicher).**

The Federal Chamber of Notaries manages a central electronic repository of documents, which allows notaries to electronically manage their documentation and directories that are not stored in the archive of electronic documents, as well as store other data (electronic archive of notarial documents);

**5) directory of notaries (Notarverzeichnis).**

Each notary chamber enters into the notary directory information about the notaries who are part of it and about the notary managers appointed in their district.

The notarial directory is intended to inform authorities and courts, persons who apply to the court, and other parties involved in legal transactions, about the appointed notaries and notarial administrators, as well as about the responsibility for the preservation of notarial files and directories. In addition, it serves to fulfill the tasks of notary chambers and the Federal Chamber of Notaries. Anyone can view the directory for free;

**6) special electronic notary boxes** (Besonderes elektronisches Notarpostfach).

The Federal Chamber of Notaries establishes a personal electronic box for each notary in the directory of notaries (special electronic notary box).

The Federal Chamber of Notaries must ensure that access to the notary's special electronic mailbox is only possible through a secure procedure with two independent security measures. The Federal Chamber of Notaries can grant different access rights for notaries and other persons.

If a written form is required for submitting an application in accordance with the Federal Notarial Rules or a normative legal act issued on their basis, the application can also be submitted through a special electronic notary box if the applicant and recipient have it. If the document is drawn up by a natural person, it must be certified by a qualified electronic signature of the person or signed by him and sent independently. A special electronic box of the authority is equated to a special electronic notary box (§ 64c of the Federal Notarial Rules);

**7) a video communication system that allows you to document actions that are carried out using video communication** (Videokommunikationssystem für Urkundstätigkeiten);

The Federal Chamber of Notaries operates a video communication system that allows notaries to document via video communication in accordance with the Notarial Certification Act.

The functioning of the video communication system also includes, in particular: the technical design of video communication between notaries and involved persons; technical implementation of electronic identity verification; scanning the electronic device and processing information in accordance with the Law on notarial certificates; creating a qualified electronic signature and adding it to an electronic document.

The video communication system may contain additional functions that are used to start, prepare, execute or complete the document flow.

### **3) Republic of Lithuania**

The issue of providing notary services in electronic form in the Republic of Lithuania is regulated by the Law on the Notary of the Republic of Lithuania <sup>225</sup>.

Citizens of the Republic of Lithuania and foreigners who have a residence permit in Lithuania, as well as legal entities, have the opportunity to obtain notary services remotely without visiting a notary office <sup>226</sup>.

The ability to perform remote notarial acts came into effect on July 1, 2021. By September 1, 2023, more than 40,000 notarial acts were performed remotely. Clients most frequently turn to notaries for remote verification of real estate transfers, mortgages, pledges, and authorizations via the eNotaras electronic system.

The portal of the eNotaras information system <sup>227</sup> is intended for existing and future clients of notaries. After authorization through the e-Government Portal, a person can order notarial services provided at the notary's office or remotely, receive information about the progress of service provision, receive and send messages to notaries, order the transfer of inheritance from one notary office to another.

The possibility for a notary to perform remote notarial acts is provided for in Article 28(1) of the Law on Notaries of the Republic of Lithuania. However, the following notarial actions cannot be conducted remotely:

- 1) confirmation of the will;
- 2) confirmation that the individual is alive and is in a specific territory;
- 3) acceptance of wills and acts equivalent to official wills.

Notarial actions can be performed remotely if the following conditions are met:

- 1) compliance with the requirements of normative legal acts regulating the identification of a person is ensured when verifying their identity. An individual requesting the remote execution of a notarial act must confirm their identity by accessing the eNotaras

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<sup>225</sup> On Notary, Law of January 12, 1992 No. 192-0, (Republic of Lithuania), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>.

<sup>226</sup> Website of the notary office located in Vilnius, <https://nb34.lt/notaras-nuotoliu>.

<sup>227</sup> The official portal of the eNotaras information system, <https://www.enotaras.lt/>.

external portal via the e-Government Portal. The notary then verifies the person's identity through the resident registry and during a live video broadcast in real time;

2) it is possible to remotely clarify the content and subsequent notarial actions, as well as verify the person's intent. This means that explaining the meaning and consequences of performing a notarial act, and determining the client's will, will take place during a real-time video broadcast. Therefore, any individual wishing to perform a notarial act remotely must have the necessary technical means (video, audio, internet connection) to enable remote communication with the notary;

3) the individual wishing to perform a notarial act must have a qualified electronic signature. Electronic notarial documents can be signed using a qualified mobile electronic signature, a qualified electronic signature on a chip card (such as an ID card issued to a citizen of the Republic of Lithuania), or USB drives with a qualified Smart-ID.

If a person requests to perform a notarial act remotely, the notary makes a decision on the method of performing the notarial act. In order to ensure the protection of a person's legal interests or the implementation of provisions regulating the performance of notarial acts, the notary refuses to perform notarial acts remotely and invites the person to the notary's office.

Lithuanian legislation provides for the possibility of conducting:

1) remote notarial acts – when all participants in the notarial act are not physically present in the notary's office during the execution of the notarial act, and communication with the notary and each other is carried out via electronic means;

2) mixed notarial acts – when some participants of the notarial act are not physically present in the notary's office, while others are, and communication with the notary and the participants is facilitated via electronic means, but those present in the office communicate with the notary in person.

For the convenience of clients and to further enhance the efficiency of notarial work, the Chamber of Notaries of Lithuania has introduced a new feature in the eNotaras system. This functionality allows clients to streamline the process of finding a notary. After logging into the eNotaras system and creating an account, clients can select their preferred notary or notary office, request notarial services, and receive them either by visiting the notary office in person or securely via remote communication. The new feature also notifies notaries when a client is seeking a service.

Clients connected to the eNotaras system can choose any notary office for remote service. In this case, the system algorithm will select one of the notaries who work throughout the territory of Lithuania for the client.

One of the Vilnius notary offices describes the stages of remote service as follows <sup>228</sup>:

1. Ordering a notary service that is provided electronically;
2. Submission of documents and information necessary to perform a notarial act;
3. Agreeing on the time of a remote meeting with a notary;
4. Remote meeting with a notary;
5. Signing the document with a qualified electronic signature of the client;
6. Notarization of the specific document;
7. Transfer of the document and/or information about the notarial act to the registers;
8. Sending a notarized electronic document and bill for the service to the client.

### **3. Republic of Estonia**

The issue of remote execution of notarial acts in the Republic of Estonia is regulated by the Notary Rules (Notariaadimäärustik) <sup>229</sup>.

As of February 1, 2020, Estonia introduced remote certification, allowing notarial acts to be performed via video communication between a notary and a client. This method of certification is considered equivalent to certification carried out in the physical presence of a notary.

Remote certification is an available, but not mandatory, method of notarization. The decision on whether a particular notarial act can be performed remotely is at the discretion of the notary.

With the consent of the notary public, notarial acts can be performed via remote certification at a location convenient for the client (for example, at home) or at one of Estonia's five foreign representative offices in Helsinki, Brussels, Stockholm, Riga, or London.

With the use of remote certification (except in foreign representative offices), all types of notarial acts can be performed, except for the certification of marriage and its dissolution.

In foreign representative offices, with the help of a remote certificate, notaries can perform the following actions:

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<sup>228</sup> Website of the notary office located in Vilnius, <https://nb34.lt/notaras-nuotoliu>.

<sup>229</sup> On notarial regulations, dated June 19, 2009 No. 23 (Republic of Estonia), <https://www.riigiteataja.ee/akt/108032024003>.



- Certify agreements involving shares of a limited liability company;
- Certify powers of attorney;
- Submit applications for marriage and dissolution of marriage;
- Submit applications related to inheritance;
- Cancel and assign property rights and commercial pledges.

To perform a notarial act using remote certification and receive related advice, you must either contact any notary office directly or initiate the process through the self-service portal of the Notary Chamber at the web address: [iseteenindus.notar.ee](http://iseteenindus.notar.ee). You can enter the portal or sign a document using the ID, digi-ID, mobile-ID, Smart-ID or digi-ID card of an e-resident of the Republic of Estonia.

If the action is to be performed by remote certification at a foreign representative office of Estonia, on the self-service portal you can choose one of the five representative offices offered and specify the desired time for the service in the request. Based on the data entered in the request, the self-service portal offers a choice of time slots that are also suitable for the notary and the foreign representative office. The proposed time options are displayed according to the time zone of the foreign representative office.

After agreeing a time for remote certification:

- 24 hours before the start of remote certification, the message "The start of a remotely certified contract is approaching" appears in "My transactions" column;
- the user can confirm that he's ready for remote certification to the notary by clicking the "I am ready for electronic digital certification" button (the corresponding opportunity occurs approximately 15 minutes before the start of the negotiated agreement);
- to participate in an agreement with a remote identification carried out in a foreign representative office, it is necessary to appear at the foreign representative office, where an employee of the foreign representative office will establish the identity of the participant. Then, using a computer located in a foreign representative office, you need to enter the self-service portal;
- when entering the self-service portal, the user can view his pending services.

At the time agreed with the client, the notary initiates the execution of the action. By video link, he familiarizes the participants with the deed to be certified. Participants also have the opportunity to communicate with the notary and ask him questions.

With remote certification, the notarial document is read to the participants via video link, displayed on the screen for review, and electronic signatures are placed on it. The notary can record the video call partially or in full.

If individuals are present for the notarization of a document both in person at the notary's office and via video communication, the notary must arrange the process in a way that allows all parties to communicate freely with each other and with the notary through the video connection.

An embassy representative scans the photo ID provided for the identification of the individual at the foreign mission, submits it to the notary, and stores it in digital format.

When initiating a notarial act via video communication, the following should be considered:

- When the notarial document is being reviewed, the client's screen will display the document itself, not the notary, allowing the content to be read.
- After reviewing the document, the notary sends it to the parties for their signatures.
- The document can only be signed using the remote signature functionality. To do this, the parties must click the "Sign" button and then add their signature.

Once all participants have signed the document, the notary signs it as well, completing the remote notarization process. The finalized document is then made available to the participants via the self-service portal <sup>230</sup>.

The registers used by the notary when performing notarial acts are shown in Figure 1 <sup>231</sup>.

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<sup>230</sup> Official website of Notarite Koda, <https://www.notar.ee/ru/teabekeskus/kaugtoestus>.

<sup>231</sup> Estonia's fully remote e-notary service is the first public e-notary service of its kind in Europe, e-Estonia Magazine, November 17, 2021, <https://e-estonia.com/estonias-fully-remote-e-notary-service -1st-state-e-service-of-its-kind-in-europe/>.

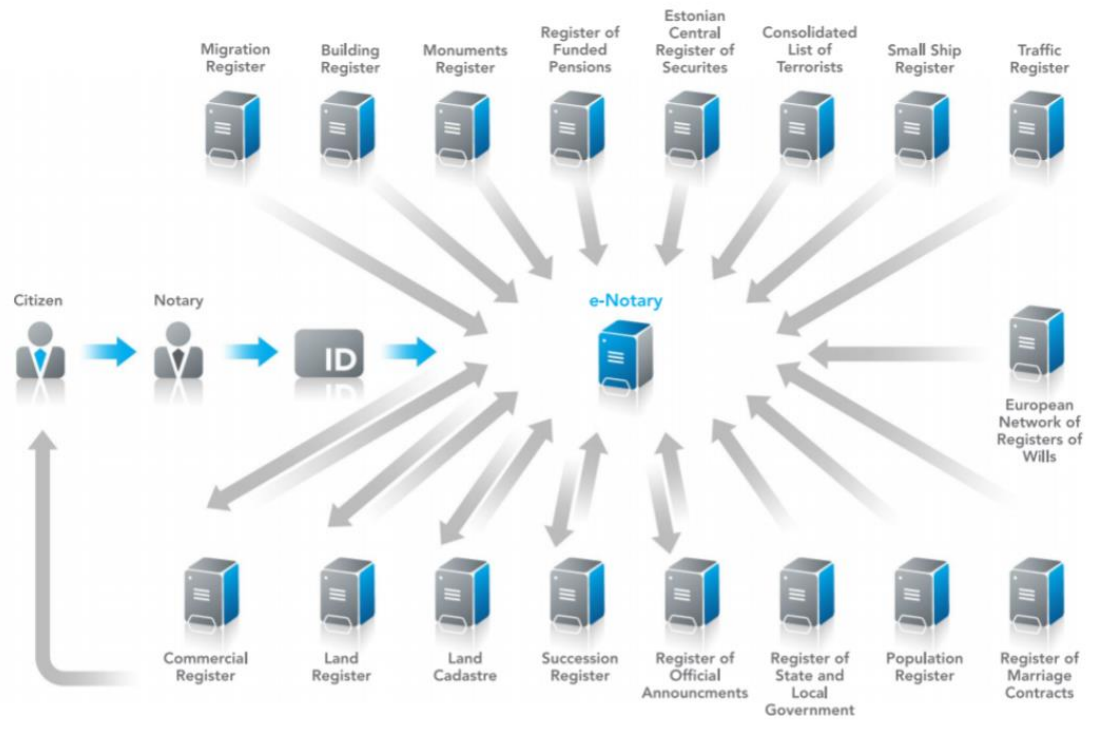


Figure 1

### **Annex №3. Analysis of the automation of notary services in France, Germany, Moldova, Lithuania, Latvia, Estonia**

#### **1) French Republic**

Automated:

##### **1. Conclusion of a divorce agreement by mutual consent.**

As of July 25, 2023, the National Bar Council (CNB) and the Superior Council of Notaries (CSN) introduced a new amendment to the joint statute governing the relationship between lawyers and notaries in cases of divorce by mutual consent, originally dated December 23, 2020. This amendment mandates the use of the e-DCM tool, developed by the CNB, for drafting any deed that contains a mutually agreed divorce agreement signed electronically.

This initiative aims to curb tax evasion practices employed by some lawyers. Now, if a lawyer fails to use the e-DCM tool, they risk the notary refusing to accept the submission of the divorce agreement.

##### **2. Establishment of the Individual Enterprise.**

This service is provided through a One-Stop Shop.

To access it, you need to visit the website [procedures.inpi.fr](https://procedures.inpi.fr), enter the required information, and submit the supporting documents. The website will then redirect you to the FranceConnect+ app.

FranceConnect+ can be used not only for online procedures related to opening a Private Enterprise (PE), but also for handling confidential personal data, such as changing bank details, submitting identity documents to receive compensation, or opening a bank account. FranceConnect+ is the government's solution for simplifying access to online services and procedures. It allows users to access over 1,400 services with a single account and password.

##### *How FranceConnect works*

On a site that features a FranceConnect button, instead of creating a new account and remembering an additional password, you can log in using one of the six options provided by FranceConnect, utilizing an existing account you have already created:

- <https://www.impots.gouv.fr/accueil>,
- <https://www.ameli.fr/>,
- <https://www.lapostegroupe.com/en/news/identite-numerique-local-services->

supporting-digital-development,

- <https://www.msa.fr/lfp>,

- <https://www.yris.eu/en/>

*Algorithm for using FranceConnect:*

1. When choosing a service, click on the "Log in with FranceConnect" button;
2. Choose a known account among the available ones. The user can use: account impots.gouv.fr, ameli.fr, La Poste Digital Identity, msa.fr and Yris;
3. FranceConnect redirects to a login page to enter your credentials;
4. FranceConnect confirms that the connection is established. All you have to do is click a button to access your account and continue the process.

*FranceConnect+ access instructions:*

1. Go to the online service;
2. Connect to FranceConnect+;
3. Select your account;
4. Sign in with your mobile;
5. Confirm your identity;
6. Check to continue the process.

*Requirements for an individual using FranceConnect+:*

- be older than 15 years;
- be registered in the national directory of identification data of natural persons (NDIFO) INSEE;
- have a digital ID in the ID list available on FranceConnect+.

## **2) Federal Republic of Germany**

On the website <https://www.elrv.info/>, the Federal Chamber of Notaries provides information on electronic legal transactions. It highlights XNotar as the standard for electronic legal processes within notary offices. XNotar is a web-based software consisting of the following modules: Commercial Register, Land Registry, Other Applications, Certificate of Infringement, and eNoVA. Starting May 15, 2024, additional modules will be introduced for money laundering prevention, including TraPaRe (Transparency Register Inspection Interface), the GwG Reporting Portal, and the GWG Examination Tool.

XNotar can be used to perform the following actions:

- Registration and processing of commercial register and land registry procedures, as well as procedures related to FamFG processes and certificates of presence;
- Recording relevant documents and applying electronic certification with a qualified electronic signature;
- Delivery of documents to courts via the beN system;
- Digitization of notifications for expert commissions using eNoVa;
- Automated verification of the Transparency Register;
- Access to the Anti-Money Laundering and Counter-Terrorist Financing (AMLA) Reporting Portal;
- AMLA audit tool.<sup>232</sup>;

The program is constantly being improved as the notary chamber is digitized and additional modules are integrated.

### **3) Republic of Moldova**

#### **1. Issuance of powers of attorney.**

Powers of attorney do not require notarization<sup>233</sup> due to additional financial costs and delays associated with the service.

To address these issues, Moldova introduced the Automated Information System "Register of Representative Powers Based on Electronic Signature (MPower)" (AIS "MPower"), which allows the granting of representative powers without the need for notarization, as permitted by legislation.<sup>234</sup>

The purpose of creating AIS "MPower" is to provide individuals and legal entities under

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<sup>232</sup> The official website of the platform developed by NotarNet GmbH, a subsidiary of the German Federal Chamber of Notaries <https://notarnet.de/produkte/xnotar>.

<sup>233</sup> Civil Code, Law No. 1107 of June 6, 2002 (Republic of Moldova), Article 336, [https://www.legis.md/cautare/getResults?doc\\_id=122982&lang=ro](https://www.legis.md/cautare/getResults?doc_id=122982&lang=ro).

<sup>234</sup> Automated information system "Register of representative powers based on electronic signature (MPower)", <https://mpower.gov.md/>.

public or private law with an effective, reliable and modern mechanism for issuing, validating and revoking representative powers based on an electronic signature.<sup>235</sup>

**Legal regulation:**

- Law No. 91/2014 on electronic signature and electronic document (Lege Nr. 91 din 27-06-2014 privind semnătura electronică și documentul electroni)<sup>236</sup>;

- Resolution dated June 10, 2020 No. 375 "On Approval of the Concept of the Automated Information System "Register of Representative Powers Based on Electronic Signature" (MPower) and Regulations on the Procedure for Maintaining the Register of Representative Powers Based on Electronic Signature"<sup>237</sup> approved the following:

- Concept of the Automated Information System "Register of Representative Powers Based on Electronic Signature" (MPower);

- Regulations on the procedure for maintaining the Register of Representative Powers based on an electronic signature.

**Algorithm for Power of Attorney Revocation**

To issue a power of attorney, MPass authentication is required. After authentication, select the role you need, whether you are extending or verifying your authority. To create a power of attorney, click the "New Power of Attorney" button. Choose the representation service, for example, a certificate of no criminal record. Then, enter the IDNP of the person you want to authorize. Select the desired validity period of the power of attorney. Next, choose either the "Save as Draft" or "Authorize" option. If you select the latter, you will be redirected to MSign, where you will need to choose a signing tool. Sign and wait for the signature verification. Return to the page and check the validity of the power of attorney.

Select "Revoke." All details of the revocation process and the result of this action will

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<sup>235</sup> The official website of the Agency for Land Relations and Cadastre of Republic of Moldova, <https://www.ipcbi.gov.md/ro/content/mpower>.

<sup>236</sup> On electronic signature and electronic document, regulating the legal status of electronic signatures and documents in the Republic of Moldova, Law No. 91 of June 27, 2014 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=112497&lang=ro](https://www.legis.md/cautare/getResults?doc_id=112497&lang=ro).

<sup>237</sup> On the approval of the Concept of the Automated Information System "Register of Powers of Attorney for Representation Based on Electronic Signature" (MPower) and Regulations on the Procedure for Maintaining the Register of Powers of Attorney for Representation Based on Electronic Signature, Resolution No. 375 of June 10, 2020 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=121919&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121919&lang=ro).

appear. Place your electronic signature, and the power of attorney will be canceled.<sup>238</sup> MPower also applies to services such as providing information in the real estate cadastre (services by request online via PDSE). MPower is used at the stage of creating a power of attorney for submitting an application and collecting information (extracts, certificates, etc.) from the real estate cadastre.<sup>239</sup>

#### **4) Republic of Lithuania**

*Services provided through the following registers are automated:*

- Register of natural persons (The procedure for submitting the corresponding request is described in the manual: [https://www.registrucentras.lt/bylos/dokumentai/gr/RC\\_Savitarnos\\_GR\\_instrukcija.pdf](https://www.registrucentras.lt/bylos/dokumentai/gr/RC_Savitarnos_GR_instrukcija.pdf)) ;

- Real estate register;
- Register of place of residence;
- Register of powers of attorney;
- Register of contracts and restrictions of rights.

*Through the Real Estate Register you can get the following services (instead of contacting a notary):*

- to submit an application for the registration of legal facts about the classification of a residential building, apartment or other real estate as family property and/or about the joint joint ownership of spouses;
- prepare and sign a contract of lease, use, sublease, or preliminary purchase agreement and submit an application for registration of legal facts about the concluded or terminated lease, use, sublease, or preliminary purchase agreement.

*The following services can be obtained through the Register of Contracts and Restrictions of Rights:*

- remove the pledge and/or mortgage from registration;
- conclude a pledge agreement;

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<sup>238</sup> Online-magazine "Locals": *Now Moldovan Citizens Abroad Can Issue a Power of Attorney Online: The Electronic Governance Agency Has Launched the "MPower" Service*, dated November 26, 2020, <https://locals.md/2020/usluga-mpower/>.

<sup>239</sup> Official Website of the State Geocadastre of Moldova: <https://www.ipcbi.gov.md/ro/content/mpower>.



- change the mortgage deed;
- inform about the execution of the pledge transaction;
- notify about the changed mortgage transaction;
- notify about the concluded property contract that is not subject to registration (purchase agreement with the right of redemption; purchase and sale agreement with installments; leasing contract; property lease agreement that is not subject to registration; property use contract that is not subject to registration);
  - notify about the amended contract regarding things that are not subject to registration;
  - notify about the desire to use the right of redemption;
  - notify the refusal of the desire to exercise the right of redemption.

A power of attorney is not subject to notarization if it was created by an individual using information technologies and issued by registering it in the Register of Powers of Attorney.<sup>240</sup>

It is possible to automatically obtain a power of attorney (for FDs and SEs) for:

- receiving correspondence (in particular, sent money and postal parcels);
- receiving wages and other payments related to labor activity: pensions, cash benefits, scholarships;
- state and administrative services.<sup>241</sup>

The service can be used by:

- natural persons who are registered in the Population Register of the Republic of Lithuania and have a document verifying their identity (foreigners who have received e-residency or who entered using means of electronic identification recognized by the Republic of Lithuania<sup>242</sup> and citizens of the Republic of Lithuania)<sup>243</sup>;
- Legal entities.

*The following services can be obtained through the Register of Powers of Attorney:*

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<sup>240</sup> Civil Code, Act of 9 July 2001 No. 74-2262, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687/asr>, Article 2.138.

<sup>241</sup> Ibid, article 2.139.

<sup>242</sup> The official website of the self-service portal of the State Enterprise "Center of Registers" of the Republic of Lithuania, <https://www.registrucentras.lt/savitarna/#uzs>.

<sup>243</sup> Ibid.

- create and register in the Register of Powers of Attorneys of individuals and legal entities, for which a notary certificate is not required;
- prepare and submit an application for cancellation or refusal of the signed power of attorney;
- view orders that are being prepared, but not entered in the Register of orders;
- view powers of attorney created electronically in the Register of Powers of Attorney, where you are listed as a proxy or an authorized person:
  - order and receive extracts from the Register of Powers;
  - view the history of available authorizations and the list of messages.

In the self-service system of the Registry Center, you can create in electronic form legal entities of the following organizational and legal forms: an individual enterprise, a limited liability company, a branch of a closed joint-stock company, an association, a public institution, a charitable foundation, a branch of a foreign legal entity.

In electronic form, documents can be submitted directly to the head of the Register through the self-service system of clients of the Register Center under the following conditions:

- the founder has a qualified electronic signature;
- the founder of an individual enterprise is a natural person;
- documents are prepared in accordance with the approved standard forms (regulations, articles of association, founding act or founding agreement);
- the use of the short name of the state "Lithuania" in the name of the legal entity is not foreseen;
- the presence of a contract for the use of the premises signed by the owners for registration of the location, if the premises are not the personal property of the founder;
- shares of a closed joint-stock company are paid for with a cash contribution;
- the goals and spheres of activity of the association, public institution or charitable foundation correspond to the classification of the goals of activity and directions of activity of public legal entities;
- the charitable foundation does not manage intangible assets.

When creating a closed joint-stock company, you can open an accumulation account and form authorized capital only electronically at Luminor, Citadele, Swedbank, SEB, Šiaulių banka, Urbo banka or Kredito unia. When submitting an application for registration of a closed joint-stock company in the self-service system, you must:

- submit an electronic application to the bank;
- sign a savings account agreement prepared by a bank employee with a qualified electronic signature;
- after notification by the bank of the electronic services system of the Registry Center about the concluded contract and the funds transferred to the savings account for the formation of the authorized capital, to continue the registration of the enterprise.

Currently, it is possible to use a qualified electronic signature issued by:

- State company "Registry Center" (additional information about the electronic signature of the Registry Center can be found on the website <http://www.elektroninis.lt>);
- mobile operators - Bitė, Telia, Tele2 and Teledema.

You can use the service through the web page of the self-service system of the Registration Center ( <https://www.registrucentras.lt/savitarna/> ), the [igaliojimai.lt](http://igaliojimai.lt) page or order the service on the electronic and public services portal Elektroniniai vartai ([https://www.epaslaugos .lt/portal/login](https://www.epaslaugos.lt/portal/login) ).

The institution addressed by the authorized representative will be able to check the fact and content of the power of attorney registered in the Power of Attorney Register free of charge by means of a public search at the link: <https://igaliojimai.registrucentras.lt/viesa> . The search is carried out by the identification code of the power of attorney and the personal code of the authorized person.

Powers of attorney created with the help of information technologies are registered in the Register of Powers of Attorney from January 1, 2014.

## **5) Republic of Latvia**

### **1. Apostille of Documents**

In the Republic of Latvia, the legalization of documents with an apostille is conducted

exclusively in electronic form. If an apostille was issued after July 1, 2019, it can be verified through the register maintained by the Board of Sworn Notaries of Latvia. To verify or retrieve the document, you simply need to enter the apostille number into the system.<sup>244</sup>

## 2. Registration of companies

### *Stages of registration:*<sup>245</sup>

The first stage is the preparation of all necessary documents, the selection of the company name, legal address, type of activity, selection of members, board of directors, distribution of shares and other components;

The second stage is the opening of a temporary bank account for the payment of the charter capital. The minimum amount of capital - 2,800 euros - must be transferred to a temporary bank account before submitting documents to the Register of Enterprises. You can pay 1,400 euros immediately, and 1,400 over the course of a year. It is also possible for individuals to open a company with a charter capital of 1 euro.

The third stage is the submission of documents to the Register of Enterprises. All documents for the Register of Enterprises are prepared in Latvian. The state fee for registration normally amounts to 150 euros and is processed within 3 working days. The cost of expedited registration is 450 euros and takes 1 working day. It is also necessary to pay for publication in "Latvijas Vēstnesis", the official publishing house of the Republic of Latvia.

Residents of Latvia and persons with a residence permit can submit documents electronically, which will reduce the state duty by 10%.

The fourth stage is obtaining a decision from the register of enterprises and opening a permanent bank account. Registration of legal entities and legal facts is carried out by state notaries of the Register of Enterprises.<sup>246</sup>

## 6) Estonia

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<sup>244</sup> The official website for providing the apostille service in the Republic of Latvia, <https://www.latvijasnotars.lv/apostille>.

<sup>245</sup> The official website for company registration in Latvia, <https://inlatplusinter.lv/eng/news/register-a-company-in-latvia/>.

<sup>246</sup> On the Register of Enterprises of the Republic of Latvia, Law of December 1, 1990, <https://likumi.lv/ta/id/72847-par-latvijas-republikas-uznemumu-registru>, Section 1.

## 1. Business registration (through the Electronic Business Register )<sup>247</sup>

Through it, you can register a new company, a self-employed person, a non-profit organization, and a state or local authority.

A prerequisite for electronic registration is that all related parties can sign the application prepared on the portal with a digital signature using an Estonian means of authentication: identity card (including e-resident card), Smart-ID or Mobile-ID. If you wish, you can reserve a business name on the portal before the company is established. An individual or legal entity can reserve a brand name for six months, and one person can only have one brand name reservation at a time.

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<sup>247</sup> Official website of the Electronic Business Register, <https://www.rik.ee/et/e-ariregister/e-ariregistri-portaal>.

## **Annex № 4 . Analysis of the features of the functioning of the electronic notary system in Germany, Moldova, Estonia, Lithuania, Latvia.**

### **1. Germany**

#### **1. *Is there an electronic system?***

*Yes, the system exists.*<sup>248</sup>

#### **Legal regulation:**

1. The Law on the Reorganization of the Storage of Notarial Documents and the Creation of an Electronic Archive of Documents in the Federal Chamber of Notaries of June 1, 2017 (Bulletin of Federal Laws 2017/I, Article 1396 et seq.)

Contains the legal basis for creating and maintaining an archive of electronic documents. It is stipulated that the archive of electronic documents should ensure the maintenance of the index of documents, the index of responsible storage and the collection of electronic documents.

#### 2. Federal Notary Law (BNotO).<sup>249</sup>

The creation and technical operation of the Archive of Electronic Documents are the responsibility of the Federal Chamber of Notaries, as part of its role in indirect state administration. The Federal Chamber of Notaries provides the technical infrastructure necessary for the Archive's functioning and ensures the long-term, reliable storage of documents. However, it does not have access to the documents stored in the Archive of Electronic Documents.

#### 3. Ordinance on maintaining notarial files and registers (NotAktVV)

It contains the main provisions regarding the cases and registers to be kept by notaries. The ordinance, among other things, specifies which entries must be made in the register of documents and the register of responsible storage and which documents must be stored in the electronic document flow. Only notaries and their employees have access to documents stored in the electronic archive of documents. In order to get an extract from the register, you need to contact a notary.

A further stage of expansion, a kind of document archive 2.0, is already being considered. This would include an "information zone" in which authorized persons, for

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<sup>248</sup> The Federal Notarial Code, Act of February 13, 1937, No. 303-1 (Federal Republic of Germany), <https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html>.

<sup>249</sup> The Federal Notarial Code, Act of February 13, 1937, No. 303-1 (Federal Republic of Germany), <https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html>.

example in courts, were given access to documents. This could eliminate the need to send and possibly re-store documents already existing in the electronic document archive to the courts.

*In Germany, the electronic notary system includes:*

1) the central pension register (Zentrales Vorsorgeregister).

The Federal Chamber of Notaries, as the registering authority, maintains an automated electronic registry for powers of attorney related to health care, care orders, wills, and objections to spousal representation in accordance with § 1358 of the Civil Code.

Information from this registry is made available to courts and doctors upon request. Doctors may request information only to the extent necessary to make decisions regarding urgent medical treatment.

The Federal Notary Chamber automatically creates a user account for notaries and notary administrators once the responsible state notary chamber records the individual's official activity in the notary register for the first time. After this registration, the Federal Chamber of Notaries sends the login credentials by mail to the office address listed in the notary register.

The notary can make changes to the register or notify about cancellation of registration. This is especially relevant if address data or surnames have changed. Notaries and notary administrators can find detailed information on registration of changes by third parties and revocation by a third party. If the revocation affects only one of several registered trustees (authorized representatives or proposed guardians), it is advisable to apply for a partial revocation. It is also possible to register the patient's wishes, and there is also the possibility of registering the spouse's objection.

The Federal Notary Chamber must keep the record of the documents related to the individual registration procedure or information for five years. The storage period begins with the end of the calendar year in which the last order on this issue was issued or the issue was resolved. After the expiration of the storage period, the documents are subject to destruction.

2) central register of wills (Zentralen Testamentsregister).

The central register of wills contains information on the storage of documents relating to inheritance.

Documents related to inheritance are wills, inheritance contracts and all documents with statements that may affect inheritance, in particular regarding the termination of

contracts, declarations of disinheritance, agreements on disinheritance, marriage contracts and civil partnership contracts.

According to paragraph 1 of Article 78f of the Federal Notary Law, the Central Register of Wills may be inspected by notaries and courts in the course of their duties.

In addition, in accordance with Article 15 of the General Data Protection Regulation, anyone can request information on whether and which data is being processed by the Central Register of Wills.

In probate proceedings, a registry query can be used to search for documents.

The request is carried out exclusively in electronic form and only by such officials as notaries and judges, indicating the control number. This requires the consent of the testator during his lifetime.

3) electronic archive of documents (Elektronisches Urkundenarchiv).

The Federal Notary Chamber as a document archive body ensures the functioning of the central electronic archive, which enables notaries to manage an electronic collection of documents, a register of documents (an electronic register of notarial certificates and other notarial acts) and a depository directory (an archive of electronic documents).

From 2022, notaries will keep their documents not only in paper form, but also in electronic form. For this purpose, the Federal Chamber of Notaries maintains an "archive of electronic documents". This allows for reliable storage of documents for 100 years. All new documents are translated by the notary into an electronic version, signed with a qualified electronic signature and encrypted and stored in the "electronic collection of documents". Paper documents can be destroyed after a transition period of 30 years.

## ***2. Data protection, data security and privacy in the German digital notary system.<sup>250</sup>***

In order to protect and ensure the security and confidentiality of data stored and to be stored in the archive of electronic documents, related data transmission and electronic communication, the Federal Chamber of Notaries shall ensure, in particular, that:

- registration for the archive of electronic documents is carried out using at least two independent means of security, with the help of which the key stored on the cryptographic hardware component must be used to access the collection of electronic documents;

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<sup>250</sup> Supra.



- data stored in the Archive of electronic documents are available during the storage periods specified by the Regulation;

- in the case of changes to entries in the register of documents or in the storage register, the content and date of the change remain available;

- in the event that documents from the collection of electronic documents must be deleted before the expiration of the storage period:

- a) documents are immediately blocked and deleted 150 days after the issuance of the deletion order and

- b) the fact of deletion and its date remain traceable,

- the reliability of people participating in the technical operation of the electronic document archive is guaranteed, especially if they have the opportunity to read the data stored in the document register.

The Federal Chamber of Notaries must create and implement a functional concept and a security concept. In addition, it should define separate technical and organizational measures, which, based on the current state of the art, ensure the following:

- data protection;

- data security;

- preservation of integrity, authenticity, accessibility, legibility and confidentiality;

- fulfillment of the requirements of the Regulations.

The functional concept and the security concept and its implementation must be regularly checked by the Federal Chamber of Notaries.

The Federal Chamber of Notaries manages a central electronic repository of documents, which allows notaries to electronically manage their documentation and directories that are not stored in the archive of electronic documents, as well as store other data (electronic repository of notarial documents);

Each notary chamber enters information into the notary directory about the notaries under its jurisdiction and the notary managers appointed in their district.

The notary directory is designed to inform authorities, courts, individuals involved in legal proceedings, and other parties engaged in legal transactions about the appointed notaries and notarial administrators, as well as about the responsibility for the preservation of notarial records and documents. Additionally, the directory supports the fulfillment of

tasks assigned to the notary chambers and the Federal Chamber of Notaries. The directory is publicly accessible and can be viewed for free.

The legal status is regulated by the ordinance of the Ministry.

The Federal Chamber of Notaries establishes a personal electronic box for each notary entered in the directory of notaries (special electronic notary box).

The Federal Chamber of Notaries must ensure that access to the notary's special electronic mailbox is only possible through a secure procedure with two independent security measures. The Federal Chamber of Notaries can grant different access rights for notaries and other persons.

If a written form is required for submitting an application in accordance with the Federal Notarial Rules or a normative legal act issued on their basis, the application can also be submitted through a special electronic notary box if the applicant and recipient have it. If the document is drawn up by a natural person, it must be certified by a qualified electronic signature of the person or signed by him and sent independently. A special electronic box of the authority is equated to a special electronic notary box (§ 64c of the Federal Notarial Rules).

The legal status is regulated by the ordinance of the Ministry.

The Federal Notary Chamber must manage special electronic notary boxes *based on the "Online Services Computer Interface - OSCI" protocol standard* or a standard that will replace it in the future. The Federal Chamber of Notaries shall at all times ensure secure electronic communication of mailbox owners through the mailbox.

The Federal Chamber of Notaries ensures that the recipient of an electronic document sent from a special electronic mailbox of a notary public without a qualified electronic signature through a secure transmission channel can determine whether the message was sent by the owner of the mailbox himself.

The Federal Notary Chamber establishes a special electronic notary mailbox for each official function performed by a notary or a notary manager. This mailbox must be made available for activation immediately after the notary's official activity is entered into the notarial register, but it cannot be activated before the notary's official duties commence.

A special electronic notary box is activated by the owner of the box using a cryptographic key stored on a cryptographic hardware component.

The Federal Chamber of Notaries shall take appropriate technical and organizational measures to ensure that the cryptographic key intended for the activation of the owner of the mailbox can only be used by that owner.

Registration in the notary's special electronic box is carried out using at least two independent means of protection. Access data intended only for individuals may not be disclosed to others. When sending unqualified documents with an electronic signature over a secure transmission channel, the owner of the mailbox must log into his mailbox using a cryptographic key.

If the mailbox is not used within a certain period of time after registration, the Federal Chamber of Notaries should provide for the automatic removal of the person from the registration register by the system. When determining the time period, it is necessary to weigh the interests of data protection and the effort required for re-registration.

The Federal Chamber of Notaries operates a video communication system that allows notaries to document via video communication in accordance with the Notarial Certification Act.

The functioning of the video communication system includes, in particular, the following:

- Establishing the technical means for video communication between notaries and involved parties;
- Implementing the technical process for electronic identity verification;
- Reading electronic information mediums and processing them in accordance with the Law on Notarial Certificates;
- Creating a qualified electronic signature and adding it to an electronic document.

The video communication system may contain additional functions that serve to start, prepare, execute or complete the document flow.

Only the body responsible for storage (Federal Notary Chamber) has access to the register of documents, the register of responsible storage and electronic documents stored in the Archive of electronic documents. For this, the body of the document archive takes appropriate technical and organizational measures.

Accordingly, the Federal Chamber of Notaries maintains the following registers: electronic storage of notarial documents (§ 78k); directory of notaries (§ 78l); special electronic notary boxes (§ 78n) and operates a video communication system that allows the

documentation of actions carried out by means of video communication in accordance with sections 16a-16e and 40a of the Notarial Certificate Act (section 78p).

The list and scope of the data entered in each of the registers is determined by separate ordinances of the Federal Ministry of Justice and Consumer Protection.

### ***3) The amount of information entered and provided for by law.***

#### **Contents of the Central Pension Register<sup>251</sup>**

The Federal Notary Chamber ensures the entry of the following personal data into the Central Pension Register:

1. Data about the person issuing the power of attorney: surname, birth name, gender, date of birth, place of birth, address (street, house number, postal code, city), e-mail address.

2. Personal data of the authorized representative: surname, birth name, gender, date of birth, place of birth, address (street, house number, postal code, city), e-mail address.

3. Date of drawing up the power of attorney.

4. Place of storage of power of attorney.

5. Information on whether a power of attorney has been issued for:

a) property matters,

b) issues related to health care and whether the measures are clearly implemented in accordance with paragraph 1 of article 1, sentence 1 of section 1829 and paragraphs 1 and 4 of article 1832 of the Civil Code.

c) issues related to the determination of the place of residence and whether the measures in accordance with section 1831, paragraphs 1 and 4 of the Civil Code have been clearly implemented,

d) other personal matters.

6. Special orders or requests:

a) on relations between several authorized persons,

b) in case of appointment of a guardian by the court,

c) about the type and scope of medical assistance.

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<sup>251</sup> On the Central Pension Register, Ordinance No. 882 of 21 February 2005 (Federal Republic of Germany), <https://www.gesetze-im-internet.de/vregv/BJNR031800005.html>.

7. Objection to representation by the spouses in accordance with Section 1358 of the Civil Code with personal data of the objector in accordance with paragraph 1.

If the power of attorney was drawn up in publicly certified or notarized form, it may also include the list number of the document, the date of the document, as well as the name of the notary and the address of his office.

The record is made with an indication of the date.

*The following shall be included in the directory of notaries:*

1. The facts notified by the State Administration of Justice in accordance with numbers 1-5 of Article 67, paragraph 6, with an indication of the relevant date.

2. Surname and first name (names), as well as previous surnames, used by the notary or notary manager since his appointment.

3. Responsibility for saving files, with the exception of those provided for in Clause 1 of Section 45.

4. Official location, addresses of offices, as well as places and dates of external consultations.

5. Membership in the chamber.

6. The name of the notary's special e-mail box.

7. Telecommunication data provided by a notary or a notary administrator.

8. Language Proficiency of a Notary

The directory of notaries *may also contain* records of former notaries, notary administrators and other similar officials. Notaries that were responsible for making records under the section while the former officers were in office are responsible for the records of the former officers. About former officials, only the information necessary to search for documents certified by them should be entered.

*The central register of wills contains* information about the storage of documents related to inheritance.

*The following is entered in the Central Register of Wills:*

- Notarized wills;
- Handwritten wills in official storage;
- Notarized inheritance contracts;
- Other notarial documents that may affect inheritance include prenuptial agreements, choice of law, gift and inheritance waiver agreements, or notarial waivers and appeals

against death orders. But not the agreement on the relinquishment of the statutory share.

The following data are entered into the electronic archive of documents:

- date and place or places of certification or other official act;
- official;
- involved persons;
- the subject of the act;
- type of document.

## **2. Moldova**

### ***1) Is there an electronic system?***

*Yes, namely:*

- register of notaries (electronic notary register is planned to be developed);
- MPower is an automated information system "Register of representative powers based on electronic signature" (MPower), the purpose of which is to provide a safe, flexible and convenient mechanism for issuing representative powers to individuals and legal entities, with the possibility of checking the availability and validity of these powers.

### ***2) The amount of information entered and provided for by legislation.***

The register contains data about the authorized persons, the persons they represent, the object, the date of granting and the term of validity of the representative powers, as well as other information about the granting or revocation of the representative powers.

*Scope of information:*

Enter data about the person represented and the representative or service provider (legal entity): IDNO, state identification number (IDNP), first and last name, contact details (phone number, e-mail, etc.), representative/service provider.

Data on the legal entity will be available from the State Register of Population and, accordingly, the State Register of Legal Entities. Other specific data, if necessary, will be supplemented or taken from other state information systems.

The owner guarantees the preservation of the Register until the decision on its liquidation is made. In case of liquidation, the data and documents contained in it are transferred to the archive in accordance with the legislation.

Data in the Register are updated and promptly synchronized with data within state registers and information systems.

### 3. France

#### 1) *Is there an electronic system?*

Yes, namely:

- register of notaries<sup>252</sup>

- Authentic documents in electronic form must be transmitted, registered and stored at *MICEN (Minutier central électronique des notaires de France)*. MICEN is administered by the High Council of Notaries (Conseil Supérieur du Notariat, CSN) and is a secure server dedicated to the centralized storage of notarial acts on a national scale. With this electronic safe, only the signing notary can access the deed. Only they can view it or edit copies at any time.

Various security solutions are integrated to protect the confidentiality of certain information and preserve the integrity of documents, namely:

1. REAL Network: This is a dematerialized network accessible through authentication. Each notary must be personally identified with the REAL key. Access control that protects all business applications of this ecosystem (deed processing, accounting, etc.), as well as digital services such as the Central Electronic Record Book of the Notary (MICEN), which is a common and secure server.

2. REAL Key: it is analogous to a USB key that contains identification data and a notary's signature, it is personalized and protected by a code. It allows each notary to certify their actions with an electronic signature and seal.

3. Id.Not or notarial digital identification: this individual authentication system has been available to notaries by the Supreme Council of Notaries (CSN) since 2015. It provides access to a directory listing all civil servants practicing the profession of notary and guarantees their professionalism.

#### 2) *What is the amount of information to be entered and provided for by legislation (mandatory entry)*

Registration in MICEN is mandatory for authenticity (legality) of the act that is certified electronically (without this certification, the act will be considered not valid).

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<sup>252</sup> Notre Notaire, Find a notary in France to accompany me, French online notary search platform, [https://www.notre-notaire.fr/?gclid=Cj0KCCQjw-ai0BhDPArisAB6hmP4UWLDrwW2kjiwFDvmexhWtWu9GGmulV0cNsqeUY1r1Y2NVrAfeyoZYaApNIEALw\\_wcB](https://www.notre-notaire.fr/?gclid=Cj0KCCQjw-ai0BhDPArisAB6hmP4UWLDrwW2kjiwFDvmexhWtWu9GGmulV0cNsqeUY1r1Y2NVrAfeyoZYaApNIEALw_wcB).

#### **4. Estonia**

##### ***1) Is there an electronic system?***

*Yes, namely:*

- Electronic business register
- E-Notary is an electronic environment that helps notaries in their daily work and provides electronic communication between notaries and the state. In the electronic environment for notaries, users will be able to do everything they need to do their work, as well as request data from 16 different registers, such as: Register of matrimonial property, Official announcements, Central Securities Register of Estonia, State Register of Construction Works, Land Register, Register of traffic, Land cadastre, Register of heritage, Register of population, Register of pleasure vessels, Register of enterprises.

"E-notary" can be used by notaries and notary office employees (notary assistants, lawyers, secretaries, registrars, archivists). However, the accompanying self-service portal, which allows remote authentication for virtual participation in a notarial transaction, can be used by anyone if the notary believes that the transaction is possible through remote authentication.

By agreement with the notary, it is possible to perform operations through remote authentication from a location convenient for the client (such as at home) or at one of five foreign representative offices of Estonia: Helsinki, Stockholm, Brussels, Riga, and London. Through this method, all notarial acts can be carried out, except for the confirmation of marriage and the dissolution of marriage.

*The electronic notary allows to:*

- keep a notary's diary and a personal calendar of users;
- make requests to national registers; draw up contracts and sign them digitally;
- keep records of professional activities (professional activities and services);
- impose an apostille;
- draw up invoices and payment instructions for payment of state duty;
- transfer records to national registers;
- simplify the client's work with the notary: the client no longer needs to submit a large number of paper documents to the notary;
- provide the notary with access to the necessary information and documents;



- minimize copying, paperwork and printing for both notaries and registrars.

The Notary Chamber is the owner of the created electronic service, and the Center of Registers and Information Systems develops it, manages servers, provides user support, and trains users.

### **E-business registry capabilities**

The electronic business register is the official portal of the Estonian state, which contains data on all legal entities registered in Estonia. The registrar is the Registry Department of the Tartu District Court. In addition, information about entrepreneurs from other countries can also be obtained through the European Business Register.

The user can see legal related entities, change data, submit reports and documents to the register, as well as annual reports (reports can be signed only with an Estonian identity card, Smart-ID and mobile ID).

A prerequisite for e-registration is that all related parties can sign the application prepared on the portal using an Estonian authentication tool: identity card (including e-resident card), Smart IDs or mobile IDs.

In addition, on the portal of the electronic business register, you can familiarize yourself with prohibitions on conducting business and entrepreneurial activities, lists of members of political parties and creative associations, actual beneficiaries of legal entities and tax information.

### ***2) What is the amount of information to be entered and provided for by legislation (mandatory entry)***

The electronic business register includes: information about the company; data of non-profit organizations and foundations; information of state institutions; commercial pledge register data; procedural information and record changes; information about tax debt; data of political parties and their members; ban on conducting business for Estonians; information about associations and their members; data visualization tool.

## **5. Latvia**

### ***1) Is there an electronic system?***

*Yes, namely:*

- Electronic register of apostilles.
- Register of enterprises.

### *Electronic register of apostilles*

The Ministry of Foreign Affairs has created an Electronic Register of Apostilles, where you can check the fact of apostille certification by the Consular Department of the Ministry of Foreign Affairs by entering the number and date of issuance of the apostille. Both private individuals and foreign authorities can use the registry when they need to verify the authenticity of an apostille. In the Republic of Latvia, legalization of documents with an apostille is carried out *only in electronic form*. The apostille and the text of the legalized document are available [here](#).

From July 1, 2019, apostille certification of public documents will be carried out by sworn notaries.

### *Register of enterprises*

The Register of Enterprises of the Republic of Latvia is a legal entity operating under the supervision of the Ministry of Justice, and its activities are regulated by the Law on the Register of Enterprises of the Republic of Latvia, the Regulation on the Register of Enterprises, approved by the Cabinet of Ministers.

The Register of Enterprises of the Republic of Latvia registers companies, traders, their branches and representative offices and changes in the founding documents, as well as performs other activities provided for by law. Mass media, companies and foundations, commercial pledges, controlling interest, public-private partnership contracts and property contracts of spouses, political parties, arbitration bodies, trade unions, religious organizations and religious institutions, bankruptcy procedures are also registered in the Register of Enterprises.

State notaries of the register of business associations keep a register of legal entities (including political parties). Registration of legal entities and legal facts is carried out by state notaries of the Register of Enterprises.

## **6. Lithuania**

### ***1) Is there an electronic system?***

*Yes, eNotaras.*

The eNotaras information system is intended for existing and future clients of notaries. After authorization through the e-Government Portal, a person can order notarial services provided at the notary's office or remotely, receive information about the progress of service

provision, receive and send messages to notaries, order the transfer of inheritance from one notary office to another.

*Legal regulation:*

The possibility of a notary performing remote notarial acts is provided for in Article 28(1) of the Law on Notaries of the Republic of Lithuania.

- Order of the Minister of Justice of the Republic of Lithuania "Regarding approval of the procedure for filling out the electronic notarial register".
- Articles 37 and 44 of the Law on Notaries of the Republic of Lithuania

**2) What is the amount of information to be entered and provided for by legislation (mandatory entry)**

8. The following data are entered into the electronic notary register:

8.1. In the 1st column - the number of the notarial register from the beginning of the calendar year or the beginning of the notary's powers in this calendar year or from the date specified in the resolution of the Presidium of the Lithuanian Chamber of Notaries on electronic maintenance of the notarial register;

8.2. In column 2, enter the date of the notarial act or the provision of other notarial services. Next to each number of the notarial register is a date with year, month and day numbers. The date indicated in the notarial register must coincide with the date indicated in the confirmation record or notarial certificate;

8.3. In the 3rd column - the last name, first name and patronymic of the natural person, TIN or date of birth, name of the legal entity (written without abbreviations), code of the legal entity, last name, first name and patronymic, identification code or date of birth of the representative of the natural or entity. In this column, all persons to whom a notarial act was performed or another notarial service was provided, as well as other persons who participated in the performance of the notarial act (persons who signed for the person in respect of whom the notarial act was performed, witnesses who participated in the performance notarial act or other notarial service, translators) and surnames, identification numbers or dates of birth. The date of birth is indicated if the person does not have an identity document issued in the Republic of Lithuania, specified in the Law on Notaries of the Republic of Lithuania, with a personal code issued in the Republic of Lithuania;

8.4. in the 4th column - the name, series, number, date of issue and the name of the institution that issued the document certifying the identity of the natural person;

8.5. In column 5, when registering a notarial act, one copy of which is retained in the notary office, the content of the notarial act is briefly stated;

8.6. In column 6, the notary's fee for performing the notarial act or providing another notarial service is indicated.

8.7. in column 7 - the amount of the notary's remuneration for the preparation of drafts of deeds and the provision of technical services, when these notarial services are provided together with the performance of a notarial act by a notary;

8.8. In column 8 - the amount of compensation for the notary's expenses related to the verification of information that is essential for the performance of a notarial act and the protection of the legal interests of a person in the central banks of state registers;

8.9. in column 9 - the sum of funds collected by the notary for the services provided by state registers;

8.10. In column 10 - the total amount of compensation for the following notarial expenses: expenses related to the demand from third parties for information and documents necessary for the performance of a notarial act; for notary expenses related to documents forwarded at the client's request (postal, courier services); for the notary's expenses related to the public disclosure of information provided by the client or information necessary for the performance of a notarial act; notarial expenses for other notarial services performed at the request of the client, not related to the performance of a notarial act or the preparation of a draft deed, consultations and technical services; if necessary, for the services of an interpreter.

9. In the electronic notary register, the information specified in paragraphs 8.6-8.10 of this description can be entered in one column. In the case of printing out the notarial register in electronic form, the data given in paragraphs 8.6-8.10 of this description are given in separate columns.

10. The electronic notarial register does not register the signatures of the person to whom the notarial act or other notarial service was performed, and all other participants of the notarial act or other notarial service provided.

**DATA SHEET OF THE ELECTRONIC NOTARY REGISTER**

Notarial deed or other notary services Registration number	Performance of a notarial act or provision of other notary services date	Name, surname, personal identification number or date of birth of a natural person, name, code, representative name, surname, personal identification number or date of birth of a legal entity	A document confirming the identity of a natural person or representative of a legal entity	Content of a notarial act or other notarial service provided	The amount of the notary's fee for performing a notarial act or providing another notary service	Notary fee the amount for preparation of the transaction project or technical service	The amount of compensation for checking the registers	The size of the price of state register works	Amount of compensation(s) for other services performed by the notary at the client's request
1	2	3	4	5	6	7	8	9	10

Description of the procedure for filling in the electronically managed notary register  
Appendix 2

Figure No. 2. List of data entered into the electronic notarial register.

## **Annex № 5. Compilation of notary legislation (including electronic notary) of France, Germany and Lithuania**

### **1) France**

*Decree No. 71-941 of November 26, 1971 on documents drawn up by notaries.*

*Article 16.*

A notary who prepares an electronic deed uses a system of processing and transmitting information approved by the High Council of Notaries and guarantees the integrity and confidentiality of the content of the deed. Information communication systems implemented by notaries must be compatible with the systems of other notaries and organizations to which they must transfer data; the deed must be signed by a notary using a qualified electronic signature in accordance with the requirements of Decree No. 2017-1416 of September 28, 2017 on electronic signatures. Such a signature is affixed by a notary immediately after drawing up the deed, if necessary, after drawing up the appendices to the act.

For their signature, parties and witnesses must use a process that allows for an image of their handwritten signature to be affixed to the notarial deed visible on the screen.

*Article 17.*

If a deed must be signed by a participating individual, the notary ensures that the signature is made in accordance with the conditions outlined in the second part of Article 1174 of the Civil Code. Additionally, the notary who certifies the document may issue a power of attorney in electronic form if one or more parties to the deed are not physically present before the notary.

### **2) Germany**

Notarial Certification Act (*BeurkG*)

Article 8 When certifying statements of intent, a protocol on conducting a notarial act must be drawn up.

Article 10 (1). The notary must verify the identity of the participating parties.

Article 11 (1) BeurkG. If the notary is convinced that a party lacks the necessary legal capacity, the notarization must be refused. The notary is required to document any doubts regarding the party's legal capacity in the official protocol.

Article 13 (1). The protocol must be read aloud to the parties in the presence of the notary, approved by them, and signed on their own. If the protocol references maps, drawings, or illustrations, these should be presented to the parties for review instead of being read aloud. The protocol must indicate that this was done. Once the parties have signed the protocol, it is presumed that it has been read in the presence of the notary or, as required by subsection 1, that the relevant documents have been made available for the parties to review and approve.

The minutes shall also be made available to the parties for review upon request prior to approval.

#### Article 16a.

(1) Declarations of intent may be certified by means of the video communication system operated by the Federal Chamber of Notaries in accordance with § 78p of the Federal Notary Code, in accordance with the following provisions, if permitted by law.

(2) The notary refuses to certify by means of a video link if he cannot ensure the fulfillment of his official duties this way, in particular, if he cannot ensure the identity of the party in this way or if he has doubts about the necessary legal capacity or legal capacity parties.

#### Article 16b.

(1) When declarations of intent are certified by means of video communication, an electronic protocol on the performance of a notarial act must be drawn up. The provisions relating to the protocol shall apply in accordance with the electronic protocol, unless otherwise provided in paragraphs 2 to 5 and articles 16c to 16e.

(2) The electronic protocol is created as an electronic document.

(3) The place where the electronic protocol is recorded is considered the place of the meeting. The electronic protocol states that the meeting was held via video link. At the end of the electronic protocol, the names of the persons who sign it in accordance with paragraph 4 must be reproduced; the name of the notary must be indicated together with his official title.

(4) The electronic protocol must be provided with qualified electronic signatures, which replace the signatures provided for by this Law. These signatures must be based on a certificate that can be verified continuously.

The parties involved must create qualified electronic signatures themselves. The notary must create a qualified electronic signature himself; Article 33(3) of the Federal Law on Notaries shall apply accordingly.

(5) The electronic protocol must also be transmitted electronically to the involved parties upon request for review before approval.

Article 16c.

If the notarization is carried out via video link, the notary must verify the identity of the parties through an electronically sent photograph, along with one of the following forms of evidence or means:

1. Electronic proof of identity in accordance with Article 18 of the Law on personal identification cards, Article 12 of the Law on eID-card or Article 78 (5) of the Law on Residence, or

2. An electronic means of identification issued by another member state of the European Union or a state party to the Agreement on the European Economic Area, which:

a) is recognized for cross-border authentication purposes in accordance with Article 6 of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation), and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 23; 29.1.2016; L 155, p. 44); and

b) has been notified as having a "high" level of assurance as defined in Article 8(2)(c) of Regulation (EU) No. 910/2014.

The photograph to be submitted to the notary must, with the consent of the relevant party, be verified along with the name, surname, and date of birth retrieved from the electronic data storage and processing medium of an identity card, passport, or electronic residence permit issued by Germany, or from an official ID or passport of another country, as required to fulfill identification obligations in Germany. If the party is personally known to the notary, the electronic submission of the photograph is not required.

Article 16d. Powers of attorney and proof of authority of the legal representative must be attached to the electronic record as electronically certified copies.

Article 16e.

(1) If the notarization involves some participants being physically present with the notary and others participating via video communication, in addition to the electronic



protocol for the participants physically present, a protocol of the same content must be prepared in accordance with § 8 for the video participants. This must be explicitly noted in both the physical and electronic protocols.

(2) Both protocols must be kept together.

*Article 17 (1).*

The notary must ascertain the intentions of the parties, clarify the relevant facts, and inform them of the legal consequences of the agreement. Additionally, the notary must ensure that the parties' statements are clearly and unambiguously reflected in the protocol. In doing so, the notary must work to prevent errors and uncertainties, and ensure that inexperienced or unqualified participants are not placed at a disadvantage.

Article 40 (a). Certification of a qualified electronic signature

(1) A qualified electronic signature is certified only if it has been verified in the presence of a notary or through a video communication system operated by the Federal Chamber of Notaries, in accordance with Article 78p of the Federal Notary Act. Certification via video communication is permitted only in cases explicitly provided for by law.

(2) The certification note must identify the person to whom the qualified electronic signature belongs. The note must indicate whether the qualified electronic signature was certified in the presence of a notary in person or via video communication.

(3) When certifying a qualified electronic signature by means of video communication, verification of the signature in accordance with Article 39 a (3) is not required.

(5) The notary must refuse to certify a qualified electronic signature recognized via video communication if they are unable to ensure the proper fulfillment of their official duties, particularly if there is any uncertainty about the identity of the individual acknowledging the qualified electronic signature.

*Article 45 b (1).* The electronic protocol created in accordance with § 16 b remains under the control of a notary public. Electronic copies of this electronic document are not issued.

*Federal Notarial Code (BNotO)*

Section 78p.

(1) The Federal Chamber of Notaries shall ensure the operation of a video communication system that allows notaries to perform notarial acts via video communication in accordance with the provisions of sections 16a to 16e and 40a of the Notary Act.

(2) The functioning of the video communication system includes, in particular:

1. Technical provision of video communication between notaries and parties participating in the process,

2. Technical implementation of electronic identity verification in accordance with the first sentence of Section 16c of the Notary Law,

3. Reading of the electronic data storage and processing medium in accordance with the second sentence of Section 16c of the Notary Law, and

4. Creation of a qualified electronic signature and its application to an electronic document.

The video communication system may include additional functions that facilitate the initiation, preparation, execution, or completion of a notarial act.

(3) The Federal Ministry of Justice, in agreement with the Federal Ministry of the Internal Affairs and Local Self-Government, by issuing a resolution that does not require approval by the Bundesrat, determines more detailed provisions regarding:

1. Creation of a video communication system,

2. Technical functioning of the video communication system,

3. Data processing necessary for the functions of the video communication system,

4. Data security, and

5. Granting and revocation of technical access permissions.

*Civil Procedure Code (ZPO)*

*Section 415.*

(1) Protocols and documents drawn up in accordance with the form requirements by a public body within the scope of its official duties or by a person or organization entrusted with public trust within the scope of tasks defined for them (public documents) are complete evidence, provided that they refer to a statement made to a public body or official issuing the document.

(2) Evidence confirming a misrepresentation of the agreement is admissible.

*Civil Code (BGB)*

*Section 123 (1).*

A person who has been forced to make a statement of intent by fraud or wrongful coercion may withdraw his statement.

Section 892 (1).

In favor of a person acquiring a right to a land plot, or a right associated with the land, through a legal agreement, the contents of the land register are presumed to be accurate, unless an objection to its accuracy is registered or the acquirer was aware of any inaccuracy. If the owner's right is restricted in favor of a specific person with regard to the disposal of the right registered in the land register, such a restriction applies to the acquirer only if it is recorded in the land register or if the acquirer had knowledge of it.

*Commercial Code (HGB)*

Chapter 12.

(1) Applications for registration in the Commercial Register must be submitted in electronic form with an official certificate. The same form is required for a power of attorney to submit an application. In lieu of a power of attorney, a notary's certificate may be issued pursuant to Section 21, Subsection (3) of the Federal Regulations for Notaries. The party's successors must, as far as possible, prove their legal succession by providing public documents.

(2) Documents must be submitted in electronic form. If an original document, a simple copy, or a written form is required, an electronic record is sufficient. However, if a notarized document or a certified copy is required, the document must be submitted with a simple electronic certification, in accordance with Section 39a of the Notarial Records Act.

*Land Registry Act (GBO)*

Section 29 (1).

Registration is carried out only if the permission for registration or other statements necessary for registration are confirmed by public or officially certified documents. Any other prerequisites for registration, if not immediately evident to the land registry, must also be verified through public documents.

*Electronic Identification Card Act for citizens of the European Union and the European Economic Area (eIDKG)*

Chapter 1.

(1) Citizens of a European Union Member State or a Contracting Party to the Agreement on the European Economic Area, who are not considered German under Article 116(1) of the Basic Law (Grundgesetz), are entitled to receive an electronic identification (eID) card upon application.

(2) The eID card enables electronic identification and the transfer of data directly from the eID card to the electronic forms specified in sections 12 and 13.

#### Chapter 12.

(1) Cardholders may use their eID card for electronic identity verification with public or private sector authorities. This also applies when the cardholder is acting on behalf of another individual, business, or government entity. However, electronic identification is not permitted if the conditions outlined in Section 3a (1) of the Administrative Procedure Act (Verwaltungsverfahrensgesetz), Section 87a (1) first sentence of the German Tax Code (Abgabenordnung), or Section 36a (1) of the First Book of the Social Code (Erstes Buch Sozialgesetzbuch) are not met.

(2) Persons other than the card holder are not entitled to use the electronic identification function.

(3) Electronic identification is carried out by transmitting data from the eID card chip.

Section 18 (2), sentence 2, (3), (4) and (5) of the ID Act applies according to the details of the transfer of data.

*Law on residence, economic activity and integration of foreigners in the territory of the Federal Republic (AufenthG)*

Section 78 (1) 1.

Residence documents in accordance with Section 4 (1) of the second sentence of Clauses 2-4 are issued as separate documents with an electronic medium for data storage and processing. Upon request, temporary residence permits issued under the Agreement between the European Community and its Member States, on the one hand, and the Swiss Confederation, on the other hand, regarding the free movement of persons dated June 21, 1999 (OJL 114, 30.4.2002, p. 6), are also issued as documents with an electronic medium for data storage and processing.

### **3) Lithuania**

*Law of the Republic of Lithuania "On Notary"*

Article 28. Place of execution of notarial acts

Notarial actions can be performed by any notary, except in cases of inheritance of property.

Notarial acts are typically performed in the notary's office. However, notarial acts can be performed outside the notary's office premises if the individual involved cannot visit the

office due to significant reasons (such as illness, disability, or other circumstances), and requests the notary to visit their home, a medical facility, or another institution. This exception also applies when more than ten people are involved in the notarial act or when the act is performed in a formal setting.

For notarial acts performed remotely using information technologies (hereinafter referred to as the remote method), the official location is considered to be the notary's office. Additionally, a notary may remotely perform notarial acts for individuals who are abroad.

The location for the performance of notarial acts by consular officials of the Republic of Lithuania is governed by the Consular Statute of the Republic of Lithuania.

The location for the performance of notarial acts by headmen is determined by the Law of the Republic of Lithuania "On Local Self-Government".

Article 28<sup>1</sup>. Notarial actions performed remotely by notaries

Notaries can perform notarial acts remotely, with the exception of notarization of wills and notarial acts specified in clauses 7 and 8 of part 1 of article 26 of this Law.

Notaries perform notarial actions remotely in accordance with the same provisions regulating the activities of notaries, which are applied when performing them in accordance with the procedure established by part 2 of Article 28 of this Law.

If a person requests to perform a notarial act remotely, the notary decides in what way the notarial act will be performed. In order to ensure the protection of the legal interests of a person or to fulfill the provisions governing the performance of notarial acts, a notary may refuse to perform a notarial act remotely, even if it is possible to meet the conditions specified in paragraphs 4 and 5 of this article. In such a case, the notary informs the person that the notarial act requested by him can be performed in accordance with the procedure established by Part 2 of Article 28 of this Law. Refusal to perform a notarial act remotely is not subject to appeal.

Notaries can perform notarial actions remotely, if they ensure compliance with the requirements of legislative acts regulating the identification of a person when establishing his identity, can remotely explain the meaning and consequences of notarial actions and verify the will of a person, which is confirmed by a qualified electronic signature.

Notaries take measures to ensure the security and cybersecurity of electronic information they process. They use appropriate technical and organizational methods for processing personal data and establish the technical capabilities necessary for the secure

transfer of data to state registers and information systems. These measures are implemented through the common information technology platform provided by the Notary Chamber.

Article 28<sup>2</sup>. Notarial actions are performed in a mixed way by notaries

In cases where one participant of a notarial act performs it in the notary's office in accordance with the procedure established by part 2 of Article 28 of this law, and another participant performs the act remotely as outlined in Article 28<sup>1</sup> of this law (hereinafter referred to as the mixed method), the notary is obligated to ensure that all participants can freely communicate with the notary and each other. Additionally, the notary must provide an opportunity for all parties to sign the necessary documents in the shortest possible time.

When performing notarial actions in a mixed way, the physical location of the participants, the place and time of signing, approval and certification of notarial documents, the format and medium may not match.

In cases where the notarial act is carried out in a mixed manner, the notary keeps the individual documents of the deed signed by each participant, in accordance with the procedure established by the legislative acts regulating the accounting, management and storage of documents, and issues to the parties to the deed a notarized document without the signatures of the participants of the notarial act. Such a notarized document is issued in electronic form. The notary can also issue a paper copy of the electronic document of the certified deed.

Article 26. Notaries perform notarial acts

Notaries perform the following notarial actions:

- 1) approve transactions;
- 2) issue certificates of the right to inheritance;
- 3) issue certificates of ownership of a share of joint property of the spouses;
- 4) certify the authenticity of copies of documents and their extracts;
- 5) certify the authenticity of the signature in the documents;
- 7) testify to the fact that a natural person is alive and is in a certain area;
- 8) accept for safekeeping wills and personal wills equated to official wills;
- 9) certify the time of submission of documents;
- 10) transfer statements of one natural or legal entity to other natural or legal entities;
- 11) accept money on a deposit account;
- 12) sea protests are accepted;

13) protest bills and checks;

14) Perform executive inscriptions on notarized transactions that give rise to monetary obligations, as well as on probated or unprobated promissory notes and checks;

15) make executive records for the forced collection of debts at the request of the mortgage (collateral) creditor;

16) draw up or approve documents confirming the accuracy of the data submitted to the register of legal entities and certify that the legal entity is eligible for registration, as the obligations outlined in the law or founding agreement have been fulfilled and the circumstances specified by the law or founding documents have occurred.

17) certify compliance of constituent documents of legal entities with the requirements of legislation;

18) confirm documents with an apostille in accordance with the procedure established by the Government of the Republic of Lithuania;

19) perform other notarial actions provided for by law.

Article 44. Forms of notarial registers, certificates and certification inscriptions

Forms of registers for registration of notarial acts, notarial certificates, notarization inscriptions in deeds and documents are established by the Ministry of Justice of the Republic of Lithuania.

Article 37. Registration of notarial acts

Notarial actions are subject to registration in the notarial register.

The register must contain the following information about the registered notarial act:

1) notarial act number;

2) the date of execution of the notarial act;

3) name and place of residence or main office of a natural or legal person or their representative;

4) the content of the notarial act;

5) the amount of the fee charged;

6) signature of the person receiving the document.

The number of the notarial act is indicated in the document issued by the notary.

An entry in the register is proof that the notarial act has been executed.

## **Annex № 6. Public services in Ukraine that provide for remote verification of an individual**

Unlike notarial services, Ukraine offers a range of public services that can be provided remotely. Notably, in the banking sector, there is already a detailed procedure for offering services via video conference. This procedure includes the ability to verify the authenticity of documents received from individuals through video communication, ensuring secure and efficient service delivery without the need for in-person interactions.<sup>253</sup> For this, the bank must provide the following conditions:

1) the bank must take a photograph of the person:

the verification of which is carried out;

with your own identification document (pages/sides containing the photo of the owner);

2) the bank must carry out photo-fixation in such a way that the photo images make it possible to clearly recognize the person and the details of the identification document (including the photo and identification data contained on such a page/side of the identification document);

3) the bank must obtain the person's clear and unequivocal consent to conduct a video call before initiating the procedure (including the taking the person's photograph and/or a screenshot with their image and relevant documents presented). The recording of the video call must also include evidence of the person giving such consent;

4) the bank conducts video communication in real time without interruption. The video call must be repeated in full if it is interrupted for any reason.<sup>254</sup> During video verification, banks of Ukraine may receive a pension certificate from an individual as an additional document.<sup>255</sup>

Similarly to the banking sector, the PF introduced a procedure that determined the mechanism for determining by the territorial body of the PF the identity of the recipient of a pension, monthly lifetime stipend for a retired judge, and other social benefits by means of a video conference. The application for video identification is submitted through the web portal

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<sup>253</sup> Resolution of the NBU, clause 2(2).

<sup>254</sup> Resolution of the NBU, paragraph 3.

<sup>255</sup> Resolution of the NBU, paragraph 3.



or contact centers of the PF, with the possibility of adding identification documents.<sup>256</sup> Video identification is carried out at the time agreed with the recipient, using technical means, the list of which is available on the website of the fund.<sup>257</sup> The authorized employee ensures the quality and confidentiality of audiovisual information during identification, with mandatory video recording of the recipient and documents.<sup>258</sup> Before starting the procedure, the employee receives the consent of the recipient for video identification, which is recorded on video.<sup>259</sup> After video identification, the information is verified and stored, and the recipient is notified of the results within three business days.<sup>260</sup>

Digitization has also affected the Ukrainian judiciary. According to the decision of the High Council of Justice (HCJ), the Unified Judicial Information and Telecommunication System was created, which includes the "Electronic Cabinet", "Electronic Court" and video conferencing subsystems.<sup>261</sup> The video conferencing subsystem provides the possibility of conducting court hearings in video conference mode with video and audio recording, booking court hearing rooms, and submitting documents during the hearings. Participants can attend meetings remotely using their own technical means or the equipment provided by other courts, ensuring that information security and communication quality requirements are met. This requires prior registration in the Electronic Cabinet and verification of the technical suitability of the equipment. The minutes of the meeting are maintained electronically, signed with an electronic signature, and the technical recordings are automatically stored in a centralized file storage system. Participants have the option to obtain a copy of the meeting recording through the Electronic Cabinet or on an optical disc after paying the applicable court fee. Corresponding amendments regarding the use of electronic documents and the conduct of court hearings via videoconference have been made to the Procedural Codes (Civil Procedural Code, Economic Procedural Code, Code of Administrative Procedure).

In addition, the Unified Judicial Information and Telecommunication System provides for the possibility for citizens and legal entities to file claims, appeals, motions and other

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<sup>256</sup>PF Order, Clause 1 of Section II.

<sup>257</sup> PF Order, Clause 2 of Section II.

<sup>258</sup> PF Order, Clause 4 of Section II.

<sup>259</sup> PF Order, Clause 4 of Section III.

<sup>260</sup> PF Order, Clause 4 of Section III.

<sup>261</sup> Decision of the HCJ, paragraph 2.

procedural documents online using EDS. Also, participants in court proceedings have the opportunity to review case materials online, which ensures transparency of the process and convenience for the parties. The system provides automatic sending of messages and reminders about scheduled court sessions, deadlines for submitting documents, etc.

In recent years, a number of systemic shifts and digital transformations have taken place in health care. Basic legislative acts were adopted, in which eHealth and digital tools are defined as essential for the development of the field. The Government of Ukraine has approved a five-year concept for the development of electronic health care.<sup>262</sup> A road map has also been developed, according to which more than 120 digital projects are planned, designed to ensure the quality, safety and accessibility of medical services for patients. Today, the development of key systems and registers necessary for the field of health care continues. In particular, 13 information and communication systems and 45 registers are functioning.<sup>263</sup> eNealth, in particular, creates the possibility of providing medical services via video conference.

Starting from March 29, 2024, the digitization of civil status registrations, including marriage registration, was introduced. To use this service, users must log in or create an account on the Diia portal. After logging in, an online application is completed, allowing users to select a convenient date and location for the ceremony, choose the type of registration (official or solemn), and add optional services such as musical accompaniment. Once the application is filled out, one partner submits it, and the other partner receives a link via email and in their Diya account. The second partner then enters the required information, pays for the services, and signs the document using an electronic signature or the Diia.Signature service. After both partners complete the signing process, the application is automatically forwarded to the DRATS (Department of State Registration of Civil Status Acts) for review.

The status of the application can be tracked in the "Ordered services" section on the Diia portal, and notifications about the results will be sent via email or to the citizen's account.<sup>264</sup>

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<sup>262</sup> The Cabinet of Ministers of Ukraine, On the approval of the concept of the development of electronic health care, Order No. 1671 dated December 28, 2020, <https://zakon.rada.gov.ua/laws/show/1671-2020-%D1%80#Text> .

<sup>263</sup> The official website of E-health, <https://moz.gov.ua/uk/news/ehealth> .

<sup>264</sup> Application form for marriage, <https://diia.gov.ua/services/zayava-na-shlyub> .

## **Annex № 7. Issuance of powers of attorney without notarization using information technologies**

### **1) Republic of Moldova**

In accordance with the provisions of the Civil Code of the Republic of Moldova No. 1107/2002,<sup>265</sup> the granting of representative powers to receive certain documents on behalf of the representative is not subject to mandatory notarization.

The Government of Moldova believes that obtaining notarized powers of attorney for accessing public or private services on behalf of a representative leads to additional financial burdens and delays in service delivery.

To address these issues, Moldova has introduced the AIS "MPower".<sup>266</sup> This system allows for the granting of representative powers without requiring a notary certificate, as permitted by law. MPower eliminates the risks of signature forgery and reduces extra costs, streamlining the process for both representatives and service providers.

The purpose of creating AIS "MPower" is to provide individuals and legal entities with public or private law with an effective, reliable and modern mechanism for granting, validating and revoking representative powers based on an electronic signature.

The weekly online magazine Locals describes the benefit of introducing the service as follows: "For example, if you are abroad and need to collect a document from a Moldovan state institution, the traditional process would require finding someone in Moldova to act on your behalf through a power of attorney. This would typically involve locating a notary, paying for notary services, and sending the notarized power of attorney to Moldova.

MPower simplifies this process significantly. You simply log into the platform, select the type of power of attorney, enter the details of the person you wish to authorize, and sign the document electronically. The entire process takes just five minutes and can be done completely free of charge.

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<sup>265</sup> Civil Code, Law No. 1107 of June 6, 2002 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=122982&lang=ro](https://www.legis.md/cautare/getResults?doc_id=122982&lang=ro).

<sup>266</sup> The Automated Information System "Register of Representative Powers Based on Electronic Signature (MPower)," <https://mpower.gov.md/>.

If you have an electronic signature, you can use the MPower service to authorize someone to complete tasks on your behalf, such as collecting a criminal record certificate or receiving your postal parcels.

To create or receive a power of attorney in the online environment, you must perform the following steps:

1.MPass authentication is required for credential issuance. After you've authenticated, you need to select the role you want, whether you're escalating or verifying your credentials.

2.To create a power of attorney, click the "New power of attorney" button.

3.You choose a representation service, for example, a criminal record certificate.

4.After that, enter the details of the person (IDNP) you want to authorize.

5.Choose the required power of attorney validity period.

6.Then you need to choose the option to "save as draft" or "allow".

7.In the case of the second option, you will be redirected to MSign, where you will need to select a signature tool.

8.Sign and wait for signature verification.

9.Return to the page and check the validity period of the power of attorney.

To revoke a power of attorney:

1.Select "Cancel".

2.All the details of the withdrawal process and the result of this action will appear.

3.Put an electronic signature, and the power of attorney is canceled <sup>267</sup>. "

The functioning of AIS "MPower" is regulated, in particular, by the following regulatory acts:

- Law No. 91/2014 on electronic signature and electronic document <sup>268</sup>;
- Resolution dated June 10, 2020 No. 375 "On approval of the Concept of the Automated Information System "Register of Representative Powers Based on

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<sup>267</sup> Article in the Locals Internet magazine "Now citizens of Moldova who are abroad can make an online power of attorney: the Electronic Government Agency has launched the Mpower service ", <https://locals.md/2020/usluga-mpower/>.

<sup>268</sup> On electronic signature and electronic document, Law No. 91 of June 27, 2014 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=112497&lang=ro](https://www.legis.md/cautare/getResults?doc_id=112497&lang=ro).

Electronic Signature" (MPower) and Regulations on the Procedure for Maintaining the Register of Representative Powers Based on Electronic Signature" <sup>269</sup>.

## **2) Republic of Lithuania**

In accordance with Article 2.138 of the Civil Code of the Republic of Lithuania, <sup>270</sup>a power of attorney is not subject to notarization if it was created by a natural person using information technology and issued by registering it in the Register of Powers of Attorney.

A power of attorney for an individual to receive correspondence, as well as to receive wages and other payments related to work, pensions, benefits, scholarships, or state and administrative services, does not require notarization if it is created by an individual using information technologies and registered in the Register of Powers of Attorney, as stated in Article 2.139 of the Civil Code of the Republic of Lithuania.

The service can be used by an individual registered in the Population Register of the Republic of Lithuania, who has a valid identity document of the Republic of Lithuania, and who can confirm his identity using the electronic banking systems of Lithuanian banks, an electronic signature or another means of electronic communication that can be used for correct identification of a person <sup>271</sup>.

Powers of attorney for legal entities can also be issued without a notarial certificate using information technologies and by registration in the Register of Powers of Attorneys.

The duration of the power of attorney issued using information technologies is registered in the register at the time of its entry into the register (completion), except for cases when no remuneration was received for the registration of the power of attorney. A fee is charged for the registration of a power of attorney. Power of attorney can be revoked free of charge. The legality of the power of attorney is not checked. Institutions, bodies or persons who are presented with a power of attorney, created with the help of information

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<sup>269</sup> On the approval of the Concept of the automated information system "Register of powers of attorney for representation based on electronic signature" (MPower) and the Regulation on maintaining the Register of powers of attorney for representation based on electronic signature, Decree No. 375 of June 10, 2020 (Republic of Moldova), [https://www.legis.md/cautare/getResults?doc\\_id=121919&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121919&lang=ro).

<sup>270</sup> On approval, validity and implementation of the Civil Code, Law dated July 18, 2000 No. VIII-1864 (Republic of Lithuania), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687/asr>.

<sup>271</sup> Official website of the Information Registry Center, <https://info.registrucentras.lt/content/21176>.

technologies, decide whether the power of attorney meets the requirements for form and content established by legal acts <sup>272</sup>.

You can use the service through the web page of the self-service system of the Registration Center, <sup>273</sup> or order the service on the portal of electronic and public services.<sup>274</sup>

The institution to which the authorized representative applies will be able to check the fact and content of the power of attorney registered in the Register of Powers of Attorney, free of charge, with the help of a public search. <sup>275</sup> The search is carried out by the identification code of the power of attorney and the personal code of the authorized person.

The power of attorney is automatically removed from the record in the power of attorney register in the following cases:

- after the expiry of the power of attorney term, determined by the calendar date or years, months, weeks and days (only in the case of electronic power of attorney);

- after receiving data from the Register of Residents or the Register of Foreigners about the death of the principal or attorney;

- upon receiving information from the Register of Disabled Persons and Persons with Limited Legal Capacity about the incapacity/restriction of civil legal capacity of the principal or attorney;

- after receiving data from the Register of Legal Entities on the deregistration of the legal entity that issued the power of attorney, on the basis of this register, acquiring the legal status of "bankrupt", "liquidated" or "reorganized" legal entity that issued the power of attorney.

Powers of attorney created with the help of information technologies are registered in the Register of Powers of Attorney from January 1, 2014.

## **Annex № 8. Additional country practices (Singapore, Italy, Belgium)**

### **Singapore**

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<sup>272</sup> Web page of the self-service system of the Registration Center, <https://w2.registrucentras.lt/bnkap/igaliojimai.aspx>.

<sup>273</sup> Official website of the self-service system of the Registration Center, <https://www.registrucentras.lt/savitarna/>.

<sup>274</sup> The official website of the Portal of Electronic and Public Services, <https://www.epaslaugos.lt/portal/login>.

<sup>275</sup> The official website of the search engine of the Register of Powers of Attorney, <https://igaliojimai.registrucentras.lt/viesa>.

In Singapore, since October 1, 2019, notaries have been required to use the e-Register system to issue notarial certificates. All certificates are generated and retrieved through this system, which automatically assigns a serial number and a QR code to each certificate. Individuals or agencies receiving notarial certificates can verify the authenticity of the documents by searching the e-Register system.

The e-Register system also benefits notaries by eliminating the need for paper registers, providing a digital solution for storing, verifying, and reporting. It ensures complete storage of all records and related documents, allows for the review of all notarial activities, and provides a summary of all fees paid, streamlining the notarial process.

### **Italy**

Italy has officially announced the commencement of two electronic identification schemes: the Electronic Identification Card (CIE) (Carta d'Identità Elettronica, CIE) and the Public Digital Identification System (Sistema Pubblico di Identità Digitale, SPID).

An electronic document (including a contract) signed using a simple electronic signature (SES), advanced electronic signature (AES) and qualified electronic signature (QES) meets the requirements of written form and acquires full evidentiary force. SES can be used for any other documents. The ability of the SES to meet the requirements of the written form and its probative value can be evaluated by a judge during the trial in terms of its security, integrity and invulnerability. The DAC also provides a definition of a digital signature (DS). This is a special type of qualified electronic signature, which is based on a system of two cryptographic keys (public and private).

A digital signature (DS) allows a signer with a private key and a recipient with a public key to confirm and verify the origin and integrity of an electronic document. Authentication of an electronic signature includes confirmation by a notary public that the signature was made in his presence. A necessary condition is a preliminary assessment of the identity of the signatory, the validity of the used electronic certificate (if it is available) and the fact that the signed document does not contradict the law.

Some actions in Italy must be performed by a notary in the presence of all parties, otherwise they will be invalid. Law No. 110/2010 was an attempt to partially solve the problem of physical presence by creating an electronic public act. An electronic public act allows you to create a document that can be signed using a digital signature (DS).

Completed electronic public documents have the same legal force as documents signed on paper. For example, documents related to significant corporate agreements (mergers and acquisitions, transfer of existing companies) can be issued in the form of an electronic public act. Notary legislation requires a notary to physically see and appear before a party using a digital signature (DS). In this case, notarial authentication services can be provided in different locations (with different notaries) to limit the need for movement and crowding. From a practical point of view, this means that an electronic public deed can be signed using a digital signature (DS) in the presence of a notary on-site.

### **Belgium**

All participating parties must appear before the notary via video conference, the parties must identify themselves and sign the power of attorney electronically. In addition, issuing a digital power of attorney via video conference is free of charge for participants. In this case, the notary signs the act with his electronic identification card. By the way, Belgium was one of the first countries to introduce electronic identification (eID). Initially, eID was based on an identity card, and later evolved into a federal authentication service. A suitable private mobile solution is supported in addition to the government eCard. It is linked to smartphones and SIM cards using security features. The program is available for iOS, Android and Huawei. Belgium provides more than 800 services through its central portal [belgium.be](https://belgium.be).