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# Notarial practice of will declaration in civil transactions in the countries of the European Union

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## Abstract

The aim of the article was to consider the peculiarities of the notarial practice of declaring will in civil transactions in the countries of the European Union EU, in view of the further adaptation of positive practices in Ukraine. The main methodological tools used in the research were the methods of observation and comparison. The conducted research showed that the European Regulation regulating the matter established the legal basis for the use of electronic trust services in notarial practice. The use of qualified electronic signatures and seals, electronic time stamps and authentication in this area gives confidence in a higher level of document security. The use of electronic ID and electronic trust services also simplifies time-consuming formalities in notarial practice. It was found that integrated video conferencing systems, business process workflows and electronic legal signature systems are becoming mandatory components of the digitization of notarial practice. Gaya, a European program for electronic identification, can be an example for the implementation of conditions for the current notarial practice of declaration of will in civil transactions in Ukraine.

**Keywords:** qualified signature; digital administration; cryptographic key; digital power of attorney; civil transactions in the EU.

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## Práctica notarial de declaración de testamento en transacciones civiles de los países de la Unión Europea

### Resumen

El objetivo del artículo fue considerar las peculiaridades de la práctica notarial de declarar voluntad en las transacciones civiles de los países de la Unión Europea UE, en vista de la mayor adaptación de las prácticas positivas en Ucrania. Las principales herramientas metodológicas empleadas en la investigación fueron los métodos de observación y comparación. La investigación realizada mostró que el Reglamento europeo que regula la materia estableció la base legal para el uso de servicios electrónicos de confianza en la práctica notarial. El uso de firmas y sellos electrónicos calificados, sellos de tiempo electrónicos y autenticación en esta área da confianza en un mayor nivel de seguridad de los documentos. El uso de la identificación electrónica ID y los servicios electrónicos de confianza también simplifican los largos trámites formales en la práctica notarial. Se descubrió que los sistemas de videoconferencia integrados, los flujos de trabajo de procesos comerciales y los sistemas de firma electrónica legal se están convirtiendo en componentes obligatorios de la digitalización de la práctica notarial. Gaya, programa europeo para la identificación electrónica, puede ser un ejemplo para la implementación de las condiciones para la práctica notarial actual de declaración de voluntad en transacciones civiles en Ucrania.

**Palabras clave:** firma calificada; administración digital; clave criptográfica; poder notarial digital; transacciones civiles en la UE.

### Introduction

The expression of will of every person is recognized as one of the important rights. The protection of self-expression is essential both from an international and a national perspective (Kudeikina and Palkova, 2020). The world community is increasingly engaging into numerous investment projects, and experiences migration processes. Family ties and other circumstances affect the definition of a notary as a necessary tool for documenting acts in the legal international circulation (Samsin *et al.*, 2021).

Any legal agreement is a form of expression of the free initiative of the parties to enter into civil law relations. It reflects the freedom of the parties to determine the type of legal agreement they will enter into and the content of such a transaction (Živkowska and Pržeska, 2018). A legal agreement in the European civil law tradition is an important tool. It helps the subjects of

law to intentionally change their legal position or that of other persons. An authentic legal agreement is supposed to mean written evidence, form and drafting procedure. Their sanctioning is regulated by law through a special official empowered to draft them (Widyantoro *et al.*, 2022).

Civil law notarial services include signature certification and execution of documents, inheritance and testamentary procedures. They can also include residential and commercial agreements, business and marriage contracts, divorce, conclusion of other contracts, powers of attorney, etc. Notaries public present the agreement impartially, taking responsibility for its content, proving its authenticity and giving it civil law evidentiary value. The agreement must be provided with legal certainty by concluding it with a civil-law notary. The notary works with civil law agreements, where the use of traditional signatures and seals on paper is mandatory for most countries. A written certificate in the form of a genuine deed executed by a notary has undeniable evidentiary value both in form and substance (Junyu, 2020).

Global crises caused by COVID-19 and military conflicts, among other things, have affected almost all industries in European countries, including the notarial practice. The procedure for notarial acts had to be adapted to the latest socio-political conditions. The requirement of physical presence at the notary created a direct barrier to the expression of will in view of the travel restrictions (Biemans, 2021). The European countries had to urgently search for a reliable solution for secure remote carrying out of transactions. As a result, the COVID-19 pandemic has pushed countries to expand the use of electronic identification (Pöhn *et al.*, 2021).

The introduction of ICTs, such as the remote certification of agreements, the use of programming languages into the notarial practice became a logical innovation that meets the current needs of society (Lila-Barska, 2021). The electronic signature has begun to expand the potential available to notaries when executing notarial documents, making it possible to sign them virtually (Tabone, 2021). The use of a qualified electronic signature as the most reliable method of electronic signature of documents was the response to the current challenges in the EU countries (Schwalm and Alamillo-Domingo, 2021).

In some countries, such as Ukraine, notarial acts required transformation because of the introduction of martial law (Karmaza, 2022). This situation made it necessary to simplify the documentary procedure for performing notarial acts. It is a forced measure and must be accompanied by the temporary introduction of certain changes to legislative acts.

In view of the foregoing, the aim of the article is to review and identify a successful adaptive notarial practice of declaring will in civil transactions of the EU countries. The aim involved the following research objectives: 1) summarize the main features of modern legislative regulation of the notarial

practice of declaring will in civil transactions of the EU countries; 2) reveal the state of application of digital technologies in the notarial procedure of declaring will in civil transactions in a number of EU countries with the aim of possible implementation of relevant innovations to the legal regulation of notarial practice of declaring will in civil transactions in Ukraine.

## 1. Literature review

The choice of the research topic correlates with the modern vectors of the research conducted by the scholars in different states. The work of Tabone (2021) was the main tool and background for this study. The study was focused on the analysis of the implementation of electronic identification and trust services for electronic transactions in the notarial practice of a number of European countries. The work emphasized the fact that there are advantages and obstacles to the introduction of electronic signatures when performing notarial acts in the analysed countries.

The result of the work was also the analysis of notarial documents that can be signed electronically. The work of Jia and Li (2022) had an influence on the author's position on the topic under research as well. The authors conducted a comprehensive analysis of electronic signature technology. Attention was paid to problematic issues that arise during the intensified use of electronic seals and the achievement of the goal of copyright protection on digital media. Attention was also focused on the fact that improved electronic signature technology can increase the security of signing electronic contracts.

The findings of Determann (2021) as a result of comparing the advantages and disadvantages of electronic signatures and documents were taken into account during the study. The main approaches to legislation and their potential impact on public and individual interests were the main focus in the work. Attention was paid to the description and comparison of the current legislation on electronic signatures in key jurisdictions of different countries, to the study of the consequences of international differences. Special attention should be paid to the findings of Biemans (2021) on the possibility of remote authentication.

The issues of the justification and proportionality of the requirement of physical presence when drawing up wills at notaries and the impact of this necessity on the restriction of freedom of services were raised. The article by Pöhn *et al.* (2021) on the introduction of self-sovereign identity (SSI), which can strengthen the privacy of citizens and provide the necessary identification, is worthy of note. In turn, Schwalm and Alamillo-Domingo (2021) examine the revised eIDAS Regulation in their article. It is concluded that the further success of eIDAS depends on the development of common solutions, standardization will be key to ensure consistency at the EU level.

The studies by Apalkova (2021) and Lila-Barska (2021) used in the article emphasize the role of the introduction of digital technologies in the notary system of Ukraine. The authors focused on the need for the gradual introduction of new forms and technologies into notarial activity in order to guarantee comprehensive assistance to participants in civil law relations. Certain problematic aspects of the procedure for the introduction and functioning of electronic notarial services in Ukraine were outlined.

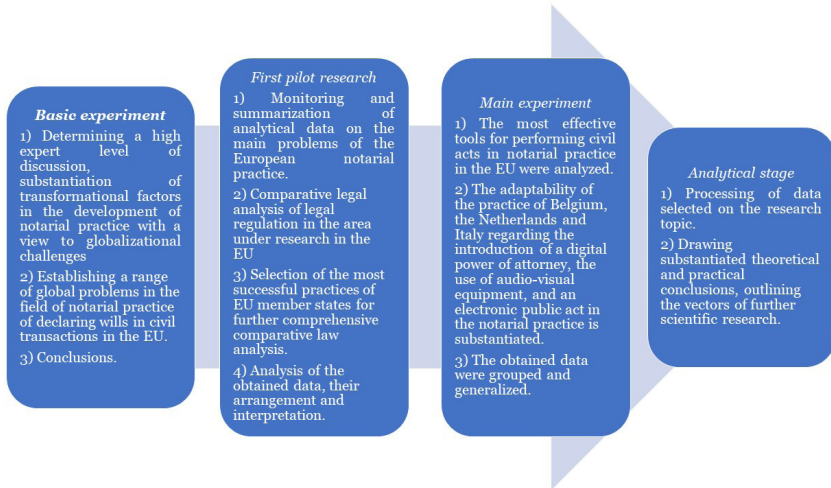
The study by Humaira and Latumeten (2022) was used in shaping the author's position. It emphasizes the legal expediency of the adopted legislative acts in the Netherlands and Belgium regarding the performance of notarial acts during the COVID-19 pandemic. The authors made a detailed analysis of the possibility of making a notarial act without physical presence or doing it virtually. The introduction of notarial digital power of attorney was also analysed.

The research of Karmaza (2022) analysed the features of the protection of the rights and freedoms of citizens in the civil process (notarial process) during the martial law. The author outlined such relevant vectors as objectivity, subjectivity, implementation in practice. The need to improve legislative norms, in particular, to expand the procedural capabilities of notaries with the help of legal norms during the martial law, was noted.

An active study of the issues selected in the article confirms the need to pay special attention to the notarial practice of declaring will in civil transactions. The diversity of studies in this field is also stated. Therefore, it is urgent to conduct research according to new research criteria, taking into account the latest comparative law studies.

## **2. Methods**

The research results were obtained through the use of a set of practical and methodological tools applied at each stage of the research. The research design is shown in Figure 1.



**Figure 1. Research design. Source: own elaboration.**

The research objectives were fulfilled through the use of well-chosen methodological tools. Observation and comparison were the main practical methods. The observation method was applied to determine the state, directions and prospects of further research, as well as legislative developments in the field of legal regulation of digitalization of notarial practice in the European Union. The comparative method also occupied a special place, which was used in the course of the comparative analysis of current national legal norms in the field of notarial practice of declaring will in civil transactions in the EU member states.

The indicated practical methodological tools enabled to qualitatively compare practical realities with the legislation systems and scientific developments of the EU member states, as well as to identify positive legislative practices, which are appropriate for adoption in Ukraine.

The method of theoretical generalization was used to identify the features of the theoretical foundations of the strategic implementation of electronic declaration of will in the notarial practice, and even for a comprehensive description of the transformational processes of the notarial system and its digitalization in the European countries; abstract logical – to substantiate the foundations of the system of legal regulation of notarial services, as well as to analyse conceptual and methodological approaches of strategic management of the development of such services; statistical, graphic analysis, grouping – to assess the state and results of the introduction of innovative information technologies in the field of notarial services,

to assess the characteristics of the innovative development of certifying transactions.

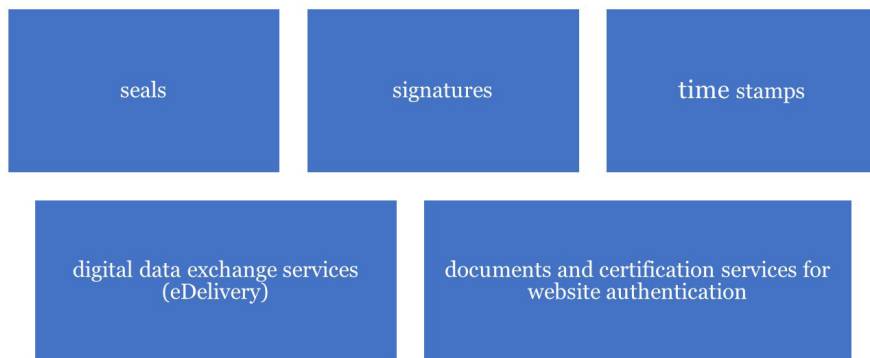
Analysis, synthesis, deduction, induction – to substantiate conceptual provisions and improve the mechanism of implementation of notarial electronic services; economic and statistical methods – for statistical analysis of the development of notarial electronic services, the stages of the introduction of innovations and their effectiveness; methods of expert evaluation – to assess the degree of achievement of balanced development of notarial electronic digital services in the context of modern transformations; structural logical analysis – to justify methodological approaches regarding transformation models in the era of digitization of notarial services and social realities.

The historical method was applied when studying the genesis of the development of legislation, which regulates the foundations of effective implementation of notarial electronic services. The doctrinal approach enabled identifying gaps in the current national legislation in the area under research in the EU countries. The dogmatic method was applied for drawing conclusions in accordance with the aim of the study.

The method of analogy made it possible to draw a conclusion about the need to reform the Ukrainian legal field and to emphasize promising novelties of EU legislation with due regard to the experience of the EU member states. Normative semantic technique, logical methods and the method of legal modelling were used when formulating proposals of a legislative nature.

### 3. Results

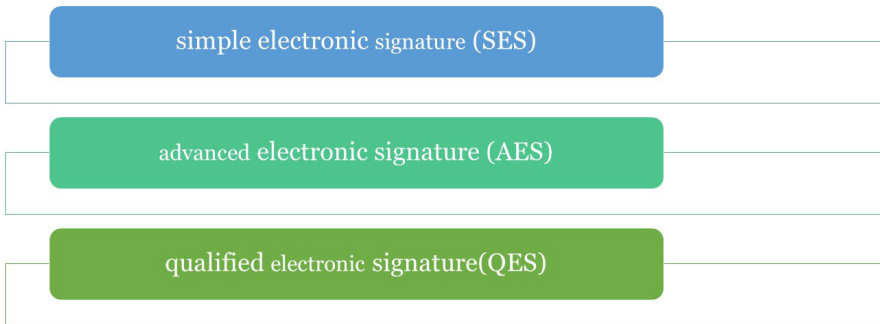
The European Regulation – eIDAS – (European Parliament, 2014) considers variable tools for conducting electronic transactions (Figure 2).



**Figure 2. The main grounds for electronic identification according to Regulation (EU) No. 910/2014.**



At the same time, the relevant requirements increasingly included a qualified component. The eIDAS Regulation is directly applicable in all EU member states without the need for implementation at the national level. For example, the panorama of electronic signatures is extremely diverse. The eIDAS Regulation identifies three main types of electronic signature (Figure 3).



**Figure 3. Types of electronic signature according to Regulation (EU) No. 910/2014**

A simple electronic signature is considered the weakest type of signature in the IT sphere, as it does not require the use of means capable of guaranteeing the authenticity and integrity of the signed document. The evidentiary value of a document with a simple electronic signature can only be determined by a judge. Examples of SES can be an ATM PIN, scanned signature from paper in an e-mail, a mailbox username/password combination, etc.

Advanced electronic signature (AES) can be defined as a process, a private agreement between the parties. The person who signed can be clearly identified after signing. It guarantees the invariability of the document, the legal force and the possibility of remote signing. Unlike QES, AES does not guarantee the transfer of the burden of proof. Besides, the identification of the signer must be confirmed by AES supplier or delegate to make AES valid.

Qualified electronic signature (QES) is the most reliable type of signature from a legal perspective. It is the result of IT procedure that guarantees the authenticity and integrity, as well as the transfer of the burden of proof (by the applicant). Qualified electronic signature is based on a certificate issued by a qualified trust services provider (QTSP). It is created with a safe device such as token, smart card, and has double authentication.

The eIDAS Regulation guarantees that people and businesses can use their own national electronic identification schemes (EID) to access public services available online in other EU countries. The Regulations (European Parliament, 2014) also contributes to the creation of a European domestic market for trust services. This guarantees that they will work across borders and have the same legal status as their traditional paper equivalents. On June 3, 2021, the European Commission adopted a proposal for amendments to the eIDAS Regulation (European Parliament, 2021).

It proposes a digital identification framework with European digital identification wallets. This provides safe and easy access to different services, both public and private. The wallet maintains privacy by its design, enabling users to fully control personal data, including attributes of persons that can be disclosed through a wallet. Besides, the wallet should be certified with high security. The National Court or the EU Court of Justice cannot reject the signature (or document) on the grounds that it is electronic. However, the court should still check the formalities of execution in accordance with the EU legislation or national legislation regarding a specific document. The formalities of execution may mean that certain documents (wills) are not subject to electronic execution in some EU legal systems.

Electronic seal means electronic data that is bound with other electronic data to ensure their origin and integrity. Advanced electronic seal is uniquely related to the seal creator capable of identifying the seal creator. It is bound to the data to which it relates, so that any change of data can be detected. A qualified electronic seal (QES) means an improved electronic seal created using a device to create a qualified electronic seal. It is based on a qualified certificate for electronic seal. Electronic time stamp (eTimestamp) bounds an electronic document to a certain time, providing evidence that the document existed at that time.

Website authentication certificates (WAC) are electronic certificates that prove that the website is trustful and reliable. They guarantee that the website is related to the person to whom the certificate is issued. They also help to avoid data phishing. Delivery digital data exchange service enables the user to send the data electronically. It provides confirmation of the departure and delivery of the document and protects against the risk of loss, theft, damage or unauthorized change.

Identification of subjects is necessary for real estate contracts, easement agreements or lease agreements with a duration of more than nine years, etc. It is regulated by qualified services supplier, such as Gaya (Gayadeed, 2022). This is an application that helps companies and professionals to safely sign agreements from anywhere in the world. This is provided through the built-in video conferencing system, work processes and legally enshrined electronic signature systems. Gaya was selected in the first open eSSIF-LAB project, which is funded by the EU. It is aimed at

widespread implementation of self-sovereign identity (SSI) as a next-generation solution of digital identification. This leads to faster and more secure electronic transactions on the Internet and in real life. The use of this programme can help reduce the time and cost of an environmentally friendly way using only a personal computer and a mobile phone.

Built-in video conferencing system contributes to a full privacy and prevents personal data leakage. An important legal aspect is Gaya compatibility with electronic identification, authentication and signature governed by eIDAS. The result is the legal force of agreements signed with this platform.

Notaries play an important role in the Member States of the European Union because of their tasks and responsibilities, where the legal order is based on Latin civil law. Ireland is the only jurisdiction of EU common law. The notaries are to draw up private agreements and counsel the parties. When drawing up official documents, the notary is responsible for the legality of these documents and for appropriate advice. The task includes informing the parties about the meaning and consequences of the obligations they take on to ensure compliance with the notary acts. The Council of the Notariats of the European Union (CNUE) is the main European organization, which represents 22 national notarial chambers and more than 45,000 notaries (CNUE, 2021).

CNUE and its member notaries already have considerable experience in the field of electronic communications. This applies to the national level, where electronic communications are common, as well as to the cross-border context through different CNUE IT projects. The EU Member States are actively introducing communication systems between notaries, public administration departments and clients through electronic channels.

CNUE studies the potential impact of citizens' and enterprises' digital wallets that bound their national digital identification on the work of notaries. CNUE also considers it necessary to be extremely vigilant in terms of application and exceptions. The Council of the Notariats of the European Union ensures that the eIDAS regulation does not touch the formal national requirements for legal acts.

One of the first advantages of introducing a remote digital signature at a notary for certain documents is the possibility of doing business with clients in difficult situations. Another important advantage is speeding up the signing process when the parties are far from each other. In general, the improved remote digital signature provides a better customer experience by simplifying restrictive administrative procedures. The digital signature also makes the daily life of notaries much easier, enabling them to focus more on their core activity. For example, France has enshrined the permission to sign certified documents electronically in law since 2000. Certain notarial

documents can be signed digitally and remotely, provided that the digital signature is certified in accordance with eIDAS.

In addition to eIDAS, the Civil Code of France is the main legal instrument governing electronic signatures in France. This also applies to the assessment and certification of IT products, devices and systems used to create electronic signatures. According to French law, only QES has the presumption of reliability. This means that an electronic signature shall be considered reliable unless the party contesting the signature proves that the signature is not reliable. Unqualified electronic signatures (SES and AES) remain admissible in court if the party which tries to enter the signature can prove that the signature is reliable.

A signature is considered reliable if it clearly identifies the person who created it. It is also necessary to store it appropriately to ensure integrity. A reliable signer identification process meets the said conditions. The Civil Code of France provides that an electronic document has the same evidentiary value as a paper document, given that the reliability conditions are met. The use of electronic signatures in electronic contracts in France is growing, especially in the field of electronic commerce. The National Cybersecurity Agency of France (ANSSI) issues qualified certificates for electronic signatures in France.

Certificate-based digital signatures, such as Qualified Electronic Signatures (QES), are mainly reserved for certain regulated activities, such as notarial services, where the evidentiary value of the signature is of great importance. Remote digital signing at a notary applies to fee agreements, powers of attorney, preliminary sales contracts, private affairs and financial accounts. French law does not single out any documents or agreements that cannot be signed or executed electronically. It may, however, be necessary to sign a number of documents by a wet signature.

These include documents that create or transfer rights to immovable property related to family and inheritance law (for example, marriage certificates, wills, deeds, etc.). They can also include documents related to personal and real guarantees. The cases where documents are provided by persons acting for trade, business or professional purposes are exceptions.

France uses the central portal – [service-public.fr](https://service-public.fr) – to access more than 900 services for electronic identification purposes. The single sign-on (SSO) solution is called FranceConnect and is used by OpenID Connect. Documentation, as well as several repositories are available online. FranceConnect enables users to connect from existing verified accounts, such as LaPoste or Mobile Connect, to these services. The digitization of notarial services does not have universal support in France: 72% of surveyed notaries believe that these innovations pose a certain threat to their activity (PriceHubble, 2021). They concern, among other things,

about the lack of familiarity, popularization of skills, standardization, fear of loss of monopoly, simplification of the notary's role, and replacement of notarial skills by other professions.

The eIDAS Regulation was implemented in Italy as Legislative Decree no. 82/2005, also known as the Digital Administration Code (DAC) (Consuleze Intermediazioni & Partecipazioni, 2005). Italy has officially announced two eID schemes: Carta d'Identità Elettronica (CIE) and Sistema Pubblico di Identità Digitale (SPID). Both options are available in the public sector. Authentication is possible through a username and password, as well as multiple options for one-time passwords, smart cards, or hardware security modules.

An electronic document (including a contract) signed by means of SES, AES and QES complies with the written form requirement, and acquires full evidential force. SES can be used for any other documents. The SES ability to meet the written form requirement and its evidentiary value may be assessed by a judge during the trial in terms of its security, integrity and inviolability. DAC (Consuleze Intermediazioni & Partecipazioni, 2005) also provides a definition of 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).

DS enables the signer with the private key and the recipient with the public key to confirm and verify the origin and integrity of the electronic document. The electronic signature authentication involves certifying by a notary that the signature was made in front of a notary. A necessary condition is a preliminary assessment of the signer identity, the validity of the used electronic certificate (if available) and the fact that the signed document does not contradict the law.

A number of acts in Italy must be performed by a notary in the presence of all parties otherwise they would be null and void. Law no. 110/2010 was an attempt to partially solve the problem of physical presence by creating an electronic public act (atto pubblico informatico) (Normattiva the Portal of Current Law, 2010). An electronic public act enables creating a document that can be signed with a digital signature (DS).

Completed electronic public documents have the same legal force as documents signed on paper. For example, documents related to extraordinary corporate agreements (mergers and acquisitions, transfers of existing enterprises) can be issued as an electronic public act. Notarial law requires the notary to physically see and appear in front of the party using the DS. In this case, the notarial authentication services can be provided in different places (with different notaries) to limit the need for movement and crowding of people. From a practical perspective, this means that an electronic public act can be signed using DS in front of a notary public at Location 1.

It must then be sent (by email) to Location 2, where the other party can further sign it using DS. In this case, the second notary public completes the case. Some notarial documents are still signed with wet ink. They are sent to state administration departments electronically after certification by a notary public. In Italy, there were 280,532 notarial contracts, for example, on the purchase and sale of real estate and any other exchange of property and equipment for a fee in Q4 of 2021 (+0.5% compared to the previous quarter and +14.4% annualized) (Istat, 2022). Such a number of contracts indicates the need for further development of the procedure for electronic recording of notarized agreements.

The current European trend is the widespread use of authentic digital power of attorney. The electronic signature is used to sign not the notarial act itself (for example, the purchase agreement or the founders' agreement), but the authentic power of attorney. This document is used by the involved party to issue a notary power of attorney, for example, to a notary public, to sign the actual act on their behalf.

The use of an authentic power of attorney remotely is a new and great leap in the digitization of the notarial services. For example, a relevant initiative was enshrined in the legislation of Belgium, which contained various provisions on justice in the context of combating the spread of the COVID-19. The draft law amends the current Law on Notary of 16 March 1803 (JUSTEL, 1803) and provides for the possibility of issuing electronic powers of attorney. Additional conditions shall apply when issuing such a power of attorney remotely.

All parties involved must appear before the notary via video conference, the parties must identify themselves and sign the power of attorney electronically. Besides, issuing a digital power of attorney via video conference is free of charge for the parties involved. In this case, the notary signs the act with his/her electronic identity card. By the way, Belgium was one of the first countries to implement electronic identification (eID). At first, eID was originally based on an ID card, and later evolved into a federal authentication service. A relevant private mobile solution is supported in addition to the state eCard. It is bound with smartphones and SIM cards using security features. The programme is available for iOS, Android and Huawei. Belgium provides more than 800 services through its central portal [belgium.be](https://belgium.be).

Drafting a will by a notary requires personal contact between the notary (and/or witnesses), on the one hand, and the testator, on the other. This means that the will cannot be executed by proxy. In the Netherlands, the physical presence requirement has been temporarily replaced with remote notarization and/or remote testimony using audio-video technologies (Overheid.nl, 2020). The notary must be able to establish the testator's identity and communicate with the testator using audio-video technical

means. He/she must add to the notarial act that it is impossible for the testator to sign the deed, and indicate the way the testator appeared before him/her.

The notary must verify the testator's legal capacity and must establish that the will constitutes the testator's final wishes. The testator may lack of mental capacity to declare the will, or the undue influence of third parties makes the notarized will objectionable or even invalid. This also means that the testator must not be influenced (coerced) by a third person in the same room. This notarial act should be used only if any other options are absolutely impossible. The Dutch law prescribes that a notary public certifying notarial acts can only be a notary public appointed in the Netherlands in accordance with the law of the Netherlands.

On October 01, 2021, the Portuguese Chamber of Notaries held a seminar on future challenges of digital identification in notarial practice and experiences of the Member States (CNUE, 2021). The notaries in 22 Member States learned about different experiences of digital identification in Europe at this event. The European Notarial Network (ENN) held a meeting in Paris on May 3, 2022. The ENN meeting was aimed at discussing and finding solutions to the problems the European notaries face when solving cross-border issues.

An important task of the meeting was to identify and implement actions to support Ukrainian notaries and Ukrainians in need of legal support, such as war refugees. CNUE and ENN are working to create a network of notaries for Ukraine that can be mobilized to respond to specific requests. A number of practical tools are also being developed. This includes bilingual forms to help minors, the addition of "Ukraine" pages to CNUE information sites, and frequently asked questions guide for notaries.

The current legislation of Ukraine provides that a legal transaction is an act of a person with a purpose of acquiring, changing or terminating civil rights and obligations. The Civil Code of Ukraine stipulates that a legal transaction executed in writing shall be notarized only in cases established by law or by agreement of the parties (Verkhovna Rada of Ukraine, 2003). The legal transaction shall be notarized by a notary public or another official who is entitled to perform the notarial act by law. Notarization involves certification on a document containing the text of the legal transaction (Verkhovna Rada of Ukraine, 1993).

Only the agreement that meets the general requirements established by the legislation of Ukraine shall be notarized. The content of the agreement shall not contradict the Civil Code (Verkhovna Rada of Ukraine, 2003), other civil law acts and moral principles of society. The person who commits the legal transaction must have the necessary civil capacity, and the agreement itself must be executed in the form prescribed by law. The

procedure established by law regulates the performance of notarial acts using a qualified electronic signature, seal or other means of electronic identification (Verkhovna Rada of Ukraine, 2017). Despite the mentioned opportunities, the wide use of digital signatures in notarial services is procedurally limited, because it is not allowed to perform a notarial act in the absence of persons (Verkhovna Rada of Ukraine, 1993).

The introduction of the Diia signature (remote digital signature) makes the use of an electronic signature much easier and more convenient in Ukraine. The traditional process of obtaining an electronic signature involves collecting the necessary documents. It is followed by the registration in one of the certification centres, visiting the certification centre and, finally, creating an electronic signature with the help of the centre's employees.

This takes less than ten minutes on the user's smartphone in Diia application. Besides, Diia provides an e-signature generation service and a convenient way to use it through a facial recognition instead of conventional passwords when signing electronic documents. Validation and authentication are mandatory. As of November 2021, the ease of use of this service has resulted in 6 million generated signatures and 327,000 transactions with a 97% success rate (E-Governance Academy, 2021).

The Diia signature is used for public and private services, e-commerce, banking and financial services. The Diia signature can be used for government services, online banking, and electronic document management services. One part of the key is stored on the user's phone, and the other — in a special secure cloud storage.

In 2022, notaries who are on the official list approved by the Ministry of Justice of Ukraine can perform registration acts in view of a full-scale Russian invasion. The Notary Chamber of Ukraine (NCU) has created a register of notaries of Ukraine who continue to work and provide services in the wartime. The NPU was also involved in the creation of a chatbot to search for notaries in Telegram.

During martial law and within one month from the date of its termination or cancellation, notarial acts in Ukraine shall be performed with due regard to the relevant features (Cabinet of ministers of Ukraine, 2022). For example, during martial law, the term for accepting an inheritance or refusing to accept is suspended. The range of authorized officials who can certify wills and powers of attorney, which are equivalent to notarized documents, has also been expanded. Uncompleted notarial acts at the request of a person related to the aggressor state are terminated. This does not apply to particular cases regarding, for example, certification of a testament of a prisoner of war.



As of June 23, 2022, 34 (5%) state notary offices and 103 (2%) private notary offices were damaged (National Council for the Recovery of Ukraine from the Consequences of War, 2022). A total of 80 (12%) public notary offices and 316 (6%) private notary offices are located in the temporarily occupied territory. Accordingly, communication with them has been lost. Notaries provide their services in Ukraine offline under these conditions, archive files are stored on paper. A comparison of the number of certified transactions (real estate contracts) for QII 2021 (Ministry of Justice of Ukraine, 2021) and 2022 (Ministry of Justice of Ukraine, 2022) in Ukraine shows that the number of certified transactions (real estate contracts) decreased 6.5 times in the corresponding periods (Table 1).

**Table 1. Analysis of indicators of notarized transactions in Ukraine for QII 2021 and QII 2022.**

<b>Item No.</b>	<b>Indicator</b>	<b>Total transactions (real estate contracts) certified by public and private notaries for Q II 2021</b>	<b>Total transactions (real estate contracts) certified by public and private notaries for Q II 2022</b>
<b>1</b>	<b>Real estate alienation agreements (except for land plots, as well as land shares</b>	<b>125,206</b>	<b>18,152</b>
1.1	Sales contracts	85,388	10,681
1.2	Contracts of barter	744	61
1.3	Deeds of gift	31,865	5,997
1.4	Life care contract	485	174
1.5	Donation agreement	27	4
1.6	Rental contracts	8	0
1.7	Other real estate alienation agreements	6,689	1,235
<b>2</b>	<b>Land plot alienation agreements (including agricultural land plots), as well as land shares</b>	<b>87,544</b>	<b>14,296</b>
2.1	Sales contracts	70,388	11,060
2.2	Contracts of barter	1,419	37
2.3	Deeds of gift	15,574	3,155

2.4	Other land plot alienation agreements (including land shares)	163	44
3	<b>Total notarisied transactions (real estate contracts)</b>	<b>212,750</b>	<b>32,448</b>

Source: own creation.

Despite current difficult situation, Ukraine directs its efforts to the implementation of innovative solutions, in particular in the field of notarial services. This will help the country move to a digital economy, which correlates with the choice of most EU countries. Ukraine has started the introduction of the electronic notary — Nota. The first stage of the project is the creation of notarial documents with a QR code, which can be verified through the QR scanner in Diia application. Notaries can use the QR code to create the following documents: a power of attorney, a car rental agreement, a signature authenticity statement. Only those notaries who have access to the Unified State E-Notary System can create a document with a QR code.

The draft Ukraine's Recovery Plan (National Council for the Recovery of Ukraine from the Consequences of War, 2022) provides a special place to the development of the notarial services, which is a body of undisputed civil jurisdiction and preventive justice. Digitization of the notarial services involves the creation of the Unified State E-Notary System, the implementation of an electronic notarial document that is equally valid as a paper one.

It is very important to digitize the notary's paper archive and create an electronic notary archive. The Ukraine's Recovery Plan also provides for the registration of wills registered in Ukraine in foreign states (the EU Member States).

It is proposed to perform notarial acts without the use of special forms for notarial documents. A promising direction is the development of the technology for performing notarial actions remotely through communication means. Modernization of the notarial services involves optimization of the procedure for termination of notarial activity and its subsequent registration, creation and management of electronic registration/personal files of notaries (National Council for the Recovery of Ukraine from the Consequences of War, 2022). The introduction of an electronic certificate of the right to engage in notarial activity takes a special place in the modernization. Another innovation is planned: granting the right to private notaries to create notary offices/bureaus operating as a bar association.

#### 4. Discussion

It can be stated that the digitization of information was triggered by the evolution of technological developments. As a result, legal systems are also subject to such changes and must be studied in the light of digital law. Notarial practice requires the adaptation of traditional functions to current conditions in order to ensure adequate decisions without compromising legal certainty and fairness (Carrera, 2022).

But the researcher emphasizes that the resources provided at the current level of technological development are limited in terms of potential. Technology should associate with the professions used to provide innovative solutions to emerging challenges. In practical terms, the law-related professions need updating. Notaries must learn and research digital law (Carrera, 2022).

It turned out that many old laws do not provide for modern technologies. Therefore, they do not provide clear answers as to whether the form requirements can be met electronically. But the need for written evidence in the form of real acts is growing in connection with the increasing demands for legal certainty in various economic and social relations (Widyantoro *et al.*, 2022). Electronic records and signatures offer notaries many advantages over conventional paper document management. This includes speed, cost savings, convenience, easier search and analysis, cheaper archiving and retrieval, and automation of storage and disposal (Jia and Li, 2022).

It also includes additional options to protect authenticity, integrity, better evidence and identification, scalability options. According to researchers, electronic signatures can clearly indicate the true identities of both parties in electronic documents, ensuring the security of the document transfer process and non-failure. But many different form requirements apply in many cases and jurisdictions to particular transactions, documents and signatures (Determann, 2021). The researcher believes that the legal and political uncertainty hinders the adoption of electronic signature products and the global harmonization of current legislation.

It can be stated that the introduction of remote identification and remote notarization leaves the existing types of wills of a particular jurisdiction in their current form. At the same time, enshrining these possibilities in legislation preserves legal certainty (Biemans, 2021). According to the researcher, the introduction of audio-video technologies in the preparation of wills in the Netherlands appears to be a logical step forward in the 21<sup>st</sup> century.

Belgium has also implemented a digital power of attorney for a more simplified use of notarial services (Beuker *et al.*, 2019). The positive side of the COVID-19 pandemic for Belgium was also the acceleration of the main

digitization process in the field of notarial services, which will contribute to the sustainable recovery of this industry (Humaira and Latumeten, 2022).

It can be concluded that it is necessary to ensure the continuity of the protection of rights and freedoms in the civil process during martial law. This is why it is extremely important to improve the legislative norms of Ukraine in these conditions, in particular, regarding the expansion of the procedural capabilities of notaries (Karmaza, 2022).

It can be stated that the procedure for performing notarial acts in relation to transactions with the involvement of a foreign party is an urgent problem. Such acts of the notary are closely related to the protection of individuals and legal entities in Ukraine (Samsin *et al.*, 2021). According to researchers, the use of ICT by notaries can simplify the process and help avoid subjective mistakes. This will help to open up new opportunities for simplifying transactions that involve foreign parties in Ukraine.

It can be stated that the notarial services in Ukraine are being in the dynamic development and improvement of both the system itself and the notarial services in general. The introduction of electronic notarial services is a rather urgent issue and needs to be implemented as soon as possible. The main goal of the electronic notarial services is to transform it into the most accessible and convenient institution (Apalkova, 2021). According to the researcher, the development of digital technologies should focus on the introduction of electronic registers to speed up the execution of notarial acts.

## Conclusions

In the EU countries, the notarial practice of declaring will in civil transactions is aimed at ensuring a proper balance. It is necessary between the interests of the state in implementing the digitization of the notarial process, on the one hand, and the interest of citizens in receiving quality services, on the other.

The deployment of eIDAS means a higher level of security and greater convenience for online services in the EU notary system. Remote authentication, electronic archiving, long-distance video conferencing, and electronic identification have become more predictable. Appropriate actions improve standardization opportunities and reduce variations and deviations. All of the above also contributes to the sustainability.

Any form of electronic signature may be used to sign transactions unless expressly prohibited by the law of an EU Member State. Some Member States provide that wills, trusts, powers of attorney and any agreements normally signed by a notary cannot be signed with an electronic signature.

A qualified signature provides a higher level of security by providing electronic evidence, which is guaranteed by a digital certificate. The European provider of qualified services — Gaya — is worth mentioning. An important legal aspect is Gaya's compatibility with electronic identification, authentication and signature regulated by eIDAS. The result is the legal force of the agreements signed with this platform.

The notarial practice of declaring wills in civil transactions of the EU countries indicates the gradual digitalization. According to French law, the parties are free to determine the form of their contract, that is the manner of signing it. Documents in the field of family and inheritance law that require a so-called "personal signature" cannot be signed with an electronic signature. Belgium introduced digital power of attorney for more simplified use of notarial services.

In the Netherlands, the requirement of physical presence of a notary and/or witnesses has been replaced by the use of audio-visual equipment for authentication of the testator's last will. The introduction of an electronic public act in Italy during the performance of notarial acts is worth mentioning. But it can also be stated that the notaries of the EU countries have fears that these innovations pose a certain threat to notarial practice.

Despite the war in Ukraine, the notarial practice in the country is being developed and improved. The international experience of European countries can help in the exchange of effective practices and improvement of the national legislation of Ukraine in the notarial field.

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