

## Evolution of legal regulation of digitalization of notarial activity in independent Ukraine

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**Abstract.** The relevance of the study is due to the insufficient regulation of digitalization processes in notarial practice in the Law of Ukraine “On Notaries”. The purpose of the article is to study the genesis and evolution of digitization (digitalization) of notarial activities in independent Ukraine, highlighting the main stages of this process. The key role in the study was played by the comparative legal and historical legal methods, which were used to carry out a detailed analysis of the legal regulation of the development of digital technologies in notarial activities in the period of independent Ukraine. The author also uses the axiological method in the study of legal acts. The article outlines the use of information technologies in the field of notarial activity. The author examines the issues of legal regulation of the use of electronic registers in the notarial activities of independent Ukraine. Attention is paid to notaries as participants of the notarial process, who use the information of the Unified and State registers in their activities. The author emphasizes the importance of considering the international experience of countries where electronic registers have been successfully implemented and are functioning, and where digital technologies are used in notarial practice. The author identifies five main stages of digitalization of notarial activities in Ukraine. The first stage covers 1996-1999; the second – 2000-2003, the third – 2004-2012, the fourth – 2013-2020, the fifth stage began in 2021 and will last for the period of introduction of the e-notary system in the State. The author outlines the emergence and formation of a new legal institution and legal principle – digitalization of notarial activity, without which modern notaries are unable to perform their duties. The author substantiates the position that the use of e-notary technologies will contribute to the further development and improvement of notarial activities in Ukraine. The practical significance of the work lies in the fact that the proposals formulated on the basis of the results obtained can be used to improve the current legislation, as well as directly in notarial activities

**Keywords:** digital technologies; electronic registers; public and private notary; digitization of notarial acts; electronic evidence; electronic notary

### Introduction

Ukraine’s independence has led to radical changes in both the social and legal fields of the state, and reforms in the notary sphere have not been spared. The development of notarial activity in the country was aimed at moving towards the Latin system of notaries, which was reflected in the first notarial legislative act “On Notary” (Law of Ukraine No. 3425-XII..., 1993), in particular, by introducing a new legal institution – a private notary of notaries.

At the same time, the process of borrowing the world’s best digitalization practices was underway, as evidenced by the adoption of legislative acts, including the approval of the National Informatization Programme in 1998 (Law of Ukraine No. 74/98-VR..., 1998). The development of new technologies has contributed to significant changes in the activities of various sectors of the economy, management, lawmaking and legal spheres. Further consolidation of digitalization processes in the country was achieved through

the adoption of several digitalization laws, including the Laws of Ukraine “On Electronic Documents and Electronic Document Management” (2003) and “On the Electronic Digital Signature” (2003).

The process of digitalization that has been developing in the country has not bypassed notarial activities and the notarial process in particular. The regulatory act that testifies to the above is Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021), which provides for a pilot project on the phased introduction of the Unified State Electronic Notary System in Ukraine. The war waged by Russia against Ukraine suspended the implementation of this resolution, but not the process of digitalization of Ukrainian society. The Law of Ukraine No. 2807-IX (2022) approved a new National Informatization Programme. Therefore, it is necessary to focus on the evolution of the digitalization of notarial activities.

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The study of the digitalization of the notarial process in Ukraine is only gaining momentum. Scientists and practitioners mainly study the use by public and private notaries of certain Unified and State Registers used in notarial practice and identify problematic issues in their maintenance. Yu. Bysaga (2023) understands digital technologies as a set of tools, methods, and processes that use digital signals, as well as the processing of such digital information for the purpose of storing, transmitting, and exchanging such information. V. Marchenko (2020) considers certain issues related to the introduction of e-notary in Ukraine, noting the need for legislative regulation of this issue in the Law of Ukraine “On Notary” (1993). A. Lyla-Barska (2021), considering certain issues of digitalization of notarial activities, also draws attention to the need to enshrine in the Law of Ukraine “On Notaries” a clear list of notarial acts to be performed using electronic services. O. Kostenko and V. Kostenko (2018) devoted their research to the introduction of electronic trust services.

Analysing the introduction of e-notaries in the world, V. Zalyotin and Ya. Babych (2020) believe that COVID-19 can be considered a fact that stimulated the introduction of digitalization of notarial activities. I. Iliopol (2022) describes the main provisions of the Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Implementation of the Experimental Project Regarding the Phased Introduction of the Unified State Electronic System of e-Notary” (2021), which approved a pilot project on the introduction of electronic notary, which was not implemented. V. Marchenko (2020) argues that the benefits of e-notary apply to all aspects of the notarial process. The author emphasizes that the digitalization system will optimize the activities of notaries and accelerate the procedure for performing notarial acts. V. Khomenko *et al.* (2021) devoted their research to the peculiarities of electronic transactions requiring notarisation.

M. Dolynska (2020) contributed to the coverage of certain issues of both e-notaries and the use of certain Unified State Registers by notaries in her previous works. M. Drana (2023) devoted her research to the problems of personal data protection in the implementation of electronic notaries. K. Nesterenko and O. Bulgakova (2020), I. Apalkova (2021), devoted their research to the issues of the introduction of electronic transactions into the notarial process studying the development of the world notary and the reform of the Ukrainian notary, also point to the need to introduce e-notary. However, the genesis and evolution of legal regulation of digitalization in notarial activities in independent Ukraine remain unexplored.

The aim of the article is to outline the genesis and evolution of digitization (digitalization) of notarial activities in independent Ukraine during 1993-2023, highlighting its main stages. The study was conducted using several general scientific and special methods. The key role was played by the comparative legal and historical and legal methods, which were used to study the legal regulation of the development of the use of digital technologies in notarial activities in the period of independent Ukraine. Using the historical method, the author reconstructs the course of the process of introduction and development of digitalization of notarial activities in Ukraine during 1996-2023. The quality of regulatory and legislative acts was determined using the axiological method. The modelling method was used to develop proposals and recommendations aimed at improving the further digitalization of notarial activities. The hermeneutic method

helped to understand the texts of legislative and regulatory acts dealing with digitalization, including notarial activities.

The author studied the regulatory and legislative acts on digitalization in Ukraine in general and notarial activities in particular, the experience of digitalization in other countries, as well as the scientific achievements of both scholars and practitioners, both Ukrainian and foreign, concerning research. In conducting this research, the author analysed the regulatory and legislative acts, in particular the Law of Ukraine “On Notaries” (1993), Resolutions of the Cabinet of Ministers of Ukraine “Some Issues of Using Special Forms of Notarial Documents” (2021) and “Some Issues of Implementation of the Experimental Project Regarding the Phased Introduction of the Unified State Electronic System of e-Notaries” (2021), which regulate the introduction of informatization of public legal relations in Ukraine, with particular attention to the digitalization of notarial and procedural legal relations.

### The birth of digitization of the notary process in Ukraine

The beginnings of digitization in legal activities can be traced back to the 1970s, i.e. to the times of Soviet Ukraine. In particular, the digitization of the work of the state notary is seen in the preparation and submission of annual reports on the work of state notary offices to the regional departments of justice. This practice has continued since Ukraine's independence and is enshrined in the Law of Ukraine “On Notaries” (1993). However, Yu. Bysaga (2023) is right in noting that this law does not contain provisions on the use of digital technologies.

During 1996-1999, certain principles of digitalization were introduced into notarial activities in Ukraine. This is evidenced by the legal acts adopted in 1996-1997, for example, Orders of the Ministry of Justice of Ukraine “On Making Additions to the Instructions on the Procedure for Notarial Acts by Notaries of Ukraine” (1996), “On the Approval of the Regulation on the Supply, Storage, Accounting and Reporting of the Expenditure of Forms of Notarial Documents” (1997), “On the Introduction of Special Forms of Notarial Documents” (1997).

The Order of the Ministry of Justice of Ukraine “Regulation on the Supply, Storage, Accounting and Reporting of the Expenditure of Forms of Notarial Documents” (1998) provides for the creation of the Unified State Register of Special Forms of Notarial Documents, which began to function on the basis of the Order of the Ministry of Justice of Ukraine “On the Implementation of Measures for the Protection of Notarized Documents” (1999). In other words, the use of forms was considered to be a strictly accountable document, and notaries were subject to appropriate sanctions for violations of accountability, including suspension of notarial activities.

It is worth noting that the said Unified Register of Special Forms of Notarial Documents was entered into the said Unified Register by state notaries of state notary offices, state notary archives, as well as private notaries, with information on all notarial acts certified by them on notarial forms starting from 1 October 1996. Thus, this date should be considered the starting point for the digitalization of notarial activities in Ukraine. The State Enterprise “Information Centre” of the Ministry of Justice of Ukraine transferred the information received from notaries on the use of forms to the said register.

Since one of the most common types of notarial acts at that time was the certification of powers of attorney, the Order of the Ministry of Justice of Ukraine “On Making Additions to the Instructions on the Procedure for Notarial Acts by Notaries of Ukraine” (1996) approved the Regulations on the Unified Register of Powers of Attorney. The electronic record of notarized powers of attorney at that time underwent significant changes and adjustments. An example is the Order of the Ministry of Justice of Ukraine No. 29/5 (1999); No. 52/5 (1999), which set out the new wording of the Regulation “Regulations on the Uniform Register of Powers of Attorney Certified in the Notarial Procedure”, i.e., the obligation of public and private notaries of Ukraine to register certified powers of attorney for the right to use and/or dispose of property, including vehicles, as well as to register the termination of powers of attorney.

The next important act on the way to digitalization of notarial activities in Ukraine was the adoption of the Order of the Ministry of Justice of Ukraine “On the Approval of the Rules for State Registration of Acts of Civil Status in Ukraine” (1999), which introduced the Unified Register of Notaries, which was maintained by the State Enterprise “Information Centre” of the Ministry of Justice of Ukraine. The Law regulates the general issue of the activities of notary bodies of the state, since not only the registration of a new private notary in the territorial department of justice, but also the entry of data about him/her is a confirmation (electronic proof) of the creation of a new notary entity, and allows an ordinary citizen to verify the legitimacy of such a notary.

The second period of digitalization of notarial activities was initiated by the Order of the Ministry of Justice of Ukraine “On the Unified Register of Wills and Inheritance Cases” (2000), which introduced the Unified Register of Wills and Inheritance Cases in Ukraine. The adoption of this act was one of the steps towards Ukraine’s ratification of the Convention on the Establishment of a System for the Registration of Wills, signed by the EU member states in May 1972. According to clause 5 of this provision, all wills drawn up and certified, amended or cancelled in accordance with the procedure established by law, inheritance cases and certificates of inheritance rights issued from 1 December 2000 had to be entered into this register. Subsequently, state notaries of state notary offices and state notary archives also entered into the said register information for previous years on all inheritance cases and certified wills, including those kept in the files of state notary archives and state notary offices.

The year 2004 marked the beginning of the third period of digitalization of notarial activities. This was facilitated by the entry into force of several Ukrainian codes, including the Civil and Family Codes. New electronic registers were introduced on the basis of relevant resolutions of the Cabinet of Ministers of Ukraine. For example, the Resolutions of the Cabinet of Ministers of Ukraine “On Approval of the Temporary Procedure for State Registration of Mortgages” (2004) and “On the Approval of the Temporary Procedure for State Registration of Deeds” (2004). The functioning and procedure for entering information into the State Register of Deeds, where notaries entered transactions subject to mandatory registration, was regulated by the Instructions on maintaining the State Register of Deeds approved by Order of the Ministry of Justice of Ukraine No. 86/5 (2004). At the same time, in 2004, state registration of immovable property and state registration of encumbrances on

movable property was carried out in accordance with the Procedure for Maintaining the State Register of Encumbrances on Movable Property, approved by Decree of the Cabinet of Ministers of Ukraine No. 830 (2004), as amended.

Since the new Civil Code has changed the term “order” to “power of attorney”, the issue of introducing appropriate changes to the procedure for registering powers of attorney has arisen. Order of the Ministry of Justice of Ukraine No. 111/5 (2006) approved the Unified Register of Powers of Attorney, to which the Ministry of Justice introduced several amendments.

According to Resolution of the Cabinet of Ministers of Ukraine No. 812 (2009), the authority to regulate the procedure for the use and storage of notarial forms, as well as the establishment of a sample of such forms, was transferred from the Ministry of Justice to the Cabinet of Ministers, which indicates its importance. The Order of the Ministry of Justice of Ukraine No. 2501/5 (2010) approved the Procedure for Maintaining the Unified Register of Notaries, which is still in operation with relevant amendments. Every citizen is entitled to find out information about notaries in Ukraine free of charge and at any time convenient for him/her, using the data of the said register.

Ratification by Ukraine on 10.07.2010 of the Convention on the Establishment of a Probate System (Law of Ukraine No. 2490-VI..., 2010), which entered into force on 31 December 2010, prompted the adoption of several by-laws, including a Resolution of the Cabinet of Ministers of Ukraine No. 491 (2011), which approved the Procedure for State Registration of Wills and Inheritance Cases in the Inheritance Register, and Order of the Ministry of Justice of Ukraine No. 1810/5 (2011), which approved the new Regulation on the Inheritance Register. However, ordinary citizens do not have free access to the Inheritance Register.

Thus, during 1996-2012, digitalization processes in the notarial process of the state were born, where the subjects were mainly public and private notaries. On behalf of public notaries, the State Notary Office acted as a party to digitalization agreements with the State Enterprise “Information Centre” of the Ministry of Justice of Ukraine.

### Digitalization of notarial activity

The Law of Ukraine “On Amendments to the Law of Ukraine “On State Registration of Property Rights to Immovable Property and Their Encumbrances” and Other Legislative Acts of Ukraine” (2010) established that from 1 January 2013, a notary acquired the status of a special entity entitled to perform the functions of a state registrar of rights to immovable property and has direct access to the data of the said register. In practice, this has contributed to more effective protection of the rights and legitimate interests of the parties to the notarial process, in particular, parties to real estate alienation agreements.

Furthermore, starting from 1 January 2013, the Unified State Register of Real Property Rights consolidated the information of several previous separate registers, which were being terminated. In particular, the Resolution of the Cabinet of Ministers of Ukraine No. 824 (2012) terminated the effect of resolutions No. 410 and No. 671 issued earlier in 2004.

The Resolution of the Cabinet of Ministers of Ukraine No. 703 (2011) regulated the Procedure for state registration of rights to immovable property and their encumbrances and the Procedure for providing information from the State

Register of Property Rights to Immovable Property. However, the above act did not last long and was cancelled by Resolution of the Cabinet of Ministers of Ukraine No. 868 (2013), which also approved new procedures for state registration of rights and for providing and receiving information from the said register.

The Law of Ukraine No. 5037-VI (2012) introduced amendments to the Law of Ukraine “On Notaries” effective 1 January 2013, which not only confirmed the functions of a notary as a registrar of rights to real estate, but also allocated to a separate notarial provision (Article 46<sup>1</sup>) the authority for notaries (both public and private) to perform the above functions of registration of both real rights to real estate and their encumbrances. The legislator emphasized that a notary, when performing notarial acts, directly uses the State Register of Real Property Rights. According to notarial practice, assistants of private notaries and consultants of state notary offices also have the right to enter the said register. However, on 16.04.2014, Law of Ukraine No. 1219-VII (2012) amended the above article in a new version.

Pursuant to the order of the Ministry of Justice, in December 2013, the State Information Service of Ukraine created an automated electronic reporting system for notaries, the “Electronic Notary Reporting System”, which corresponds to the paper Reporting Form N 1-Notary (Annual) “Report on the Work of Public and Private Notaries” approved by Order of the Ministry of Justice of Ukraine No. 1529/5 (2011). This reporting system not only automated the process of reporting by notaries, but also enabled the Ministry of Justice of Ukraine and its territorial bodies to promptly process and analyse notarial reports. The author of the article, as a former employee of the notary department of the territorial department of the Ministry of Justice of Ukraine, highly appreciates the automation of notarial reporting.

Therefore, 2013 marked the beginning of a new stage of digitalization of notarial activities, both in terms of general principles – expansion of notaries’ functions in terms of exercising powers in the field of state registration of rights to real estate respecting which notarial acts were performed, and in terms of improving the process of performing notarial acts respecting real estate, submission of statistical reports by notaries using digital means.

On 21.07.2014, the Ministry of Justice of Ukraine adopted Order No. 1174/5 (2014), which sets out in a new version the Procedure for admitting individuals to take the qualification exam and conducting the qualification exam by the Higher Qualification Commission of the Notary. A novelty was the conduct of the notary qualification exam in the form of electronic anonymous testing. It is worth noting that the system generates tasks for each candidate for the position of notary individually, by generating a list of both tasks and test questions from a general list. The first notary exam in the form of electronic anonymous testing was conducted in Ukraine on 6 October 2014.

The Law of Ukraine No. 247-VIII (2015), *inter alia*, granted notaries the right to access and use the State Land Cadastre (in accordance with the Procedure established by the Cabinet of Ministers) when exercising real rights respecting land plots, in addition to the mandatory use of information from the State Register of Real Rights.

The Laws of Ukraine No. 834-VIII (2015) and No. 835-VIII (2015) adopted on 26 November 2015 significantly expanded the powers of notaries in the field of state

registration. Thus, Law of Ukraine No. 834-VIII (2015) not only restated the Law of Ukraine “On State Registration of Property Rights to Immovable Property”, but also restated Article 46<sup>1</sup> of the Law of Ukraine “On Notaries”, which concerned the mandatory use by notaries of information from the State Register of Property Rights to Immovable Property through direct access to it by notaries.

The Law of Ukraine No. 835-VIII (2015) is set out in a new version: The Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs”, and established that notaries are also subjects of state registration as of 13 December 2015, in case they carry out state registration of other legal entities and individual entrepreneurs in accordance with Article 6 of the above act.

The Law of Ukraine No. 1666-VIII (2016) amended Article 46<sup>1</sup> of the Law of Ukraine “On Notaries” (1993) regarding the need to use information from unified and state registers. In particular, it is stipulated that starting from 02.11.2016, public and private notaries are obliged to use information from both unified and state registers “by direct access to them”. The legislator has established a rule according to which public or private notaries of the state are obliged to use information from unified and state registers created and operated by the Ministry of Justice of Ukraine when performing notarial acts. In particular, for the first time, the need to use the following registers was emphasized: The State Register of Civil Status Acts and the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, as well as the Unified State Demographic Register. Notaries are also obliged to use information from both registers when performing notarial transactions with real estate, including objects under construction: The State Register of Real Property Rights and the State Land Cadastre. M. Nimak (2019) notes that in the State Register of Real Property Rights, a public, or private notary registers “not a notarial act – certification of a contract, but real rights and their encumbrances”, i.e. notaries also carry out registration activities.

The following legislative and regulatory acts contributed to further adjustments in notarial legislation regarding digitalization processes in Ukraine: Resolution of the Cabinet of Ministers of Ukraine No. 918-r (2016) – approving the Concept of the development of the system of electronic services in Ukraine; Law of Ukraine No. 2155-VIII (2017) – regulating the procedure for the provision of electronic trust services. These acts became one of the legislative factors that contributed to the development of new digitalized notarial instruments in the future.

Law of Ukraine No. 199-IX (2019) amended Article 46<sup>1</sup> (part three) of the Law of Ukraine “On Notaries”, according to which public and private notaries are obliged to use information from the Unified State Electronic System in the field of construction. Starting from 16 January 2020, Law of Ukraine No. 340-IX (2019) obliges public and private notaries to obtain extracts from the State Land Cadastre when performing transactions involving land plots in accordance with the provisions of Article 38 of the Law of Ukraine “On the State Land Cadastre” (2011).

The adoption in 2021 of the Concept of the Development of Digital Competences, as well as the action plan for its implementation (Order of the Cabinet of Ministers of Ukraine No. 167-r..., 2021), contributed to the next stage of digitalization of notarial activities. The Law of Ukraine No. 1892-IX (2021) imposed an obligation on notaries to

verify the validity of the submitted documents according to the Unified State Demographic Register when establishing the person who applied to the notary for a transaction, if such documents are executed using the means of the said Register (Article 43 of the Law of Ukraine “On Notaries”, 1993).

Article 46<sup>1</sup> of the Law of Ukraine “On Notaries” (1993) was also amended, namely part two: private and public notaries are obliged to use information from the three registers in the first place when performing notarial acts: The Unified State Demographic Register, the State Register of Civil Status Acts, the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, as well as other state and unified registers created and operated by the Ministry of Justice of Ukraine. This means that digitalization tools in notarial practice have been further developed.

The Resolution of the Cabinet of Ministers of Ukraine No. 1290 (2021) approved the description and sample of the notarial document form, as well as the Procedure for their use, storage and circulation, and the procedure for reporting on their expenditure. It is worth reminding that ordinary citizens continue to have the right to check the information on the use of such forms by notaries, specifying the type of notarial act performed.

The direct embodiment of the principles of digitalization of notarial activities was the adoption of Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021). The war waged by Russia against independent Ukraine, due to the possibility of losing important information, led to the suspension of almost all electronic registers for a while. As of the end of February 2022, this resulted in the actual cessation of the activities of notaries and quasi-notaries, in particular, in the territories where military operations were conducted and in the occupied territories.

The legal regulation of notarial activities during martial law in Ukraine was mainly based on by-laws, in particular, several Resolutions of the Cabinet of Ministers of Ukraine: No. 164 (2022), No. 209 (2022), No. 480 (2022), No. 469 (2022); No. 719 (2022); No. 469 (2023). The above acts mostly concerned the use in notarial practice of unified and state registers kept by the Ministry of Justice during martial law in the country.

Analysing the amendments made by the Law of Ukraine “On Guaranteeing Property Rights to Real Estate Objects That Will Be Built in the Future” (2022) to part three of Article 46<sup>1</sup> of the Notary Law, it appears that the legislator has combined into one rule the previous amendments made to the above part of Laws of Ukraine No. 1666-VIII (2016) and No. 199-IX (2019). In particular, it is established that when certifying real estate transactions by public and private notaries, in relation to real estate or an object under construction, as well as in relation to a future real estate object, it is necessary to use information from three registers: data from the State Register of Real Property Rights, the State Land Cadastre, and the Unified State Electronic System in the Field of Construction. The active implementation of digitalization in the Ukrainian notarial process is confirmed by the fact that public and private notaries cannot carry out their professional activities without using the system of Unified Registers. When performing certain types of notarial transactions, notaries not only receive information from these registers, but also enter information into them not only on notarial acts performed by notaries, but also, for example, have the right to enter information (registration

actions) on concluded lease agreements, emphyteusis, which is electronic evidence of their conclusion.

Anyone can check whether a notarial document form is valid on the website of the state enterprise National Information Systems, which is one of the ways to protect the rights and legitimate interests of citizens in notarial transactions. Since only public and private notaries of the state use notarial forms when performing notarial acts, in practice, many questions arise regarding the legality, legitimacy and especially the validity of documents drawn up by other quasi-notarial bodies, in particular, officials of consular posts and diplomatic missions of Ukraine.

Pursuant to Law of Ukraine No. 2801-IX (2022), as of 31 December 2023, notaries will also be allowed to “register signatories in accordance with the legislation in the field of electronic trust services”, which is not a violation of Article 3 of the Law of Ukraine “On Notaries” (1993).

### **E-notary as a perspective of digitization of notary activity in Ukraine**

The Ukrainian notary is actively working to adopt the best international notarial practices, in particular those of the Latin notary system and electronic notary. Therefore, the experience of introducing digitalization into the notarial activities of other countries, including the Latin notary system, is valuable and useful for Ukraine.

Electronic notaries (cyber notaries) are quite common in the global notary community. For example, in Spain, there is the concept of a digital notary, in which a notary is considered a trustee of a third party. This concept to some extent contradicts the principles of Latin notary (López Jiménez *et al.*, 2022). At the same time, it is noted that the number of contracts (transactions) concluded in electronic form is increasing. The authors emphasize the need to use security methods when concluding such transactions. In the Italian Republic, the National Council of Notaries of Italy established an IT company called Notartel in 1997 to meet the needs for computerization of notarial activities (Bernatska, 2014). In France, there is also a notary network, MINITEL, which is used by all notaries in the country and allows them to exchange information not only necessary for notarial acts within the country, but also to have access to notarial documents of the European database, in particular wills. Alongside it, there is also a closed electronic notary network. Certain electronic technologies are used by notaries in Germany, including qualified electronic signatures (electronic signature cards issued by the Federal Notary Chamber). In Indonesia, an electronic notary is called a cyber notary. Such a cyber notary can only be a public notary, i.e. a government official (Agustin & Anand, 2021). The state has also introduced certain technological restrictions that contribute to the legality of the conclusion of original (authentic) acts. Studying the activities of the Belgian notary, S. Wuidar and P. Flandrin (2022) emphasize that the digitalization of notarial activities has increased the role of notaries and strengthened their position in Belgian legal circles. Belgian notaries operate through two digital applications: eRegistration and Bidit. However, the Professional Federation of Notaries (Fednot) has played and continues to play a significant role in the digitalization of notaries. According to the authors, the “ongoing digitalization” of the notary profession exacerbates the existing tension between the two roles performed by notaries in Belgium: the role of a public servant and the role of an entrepreneur.

Regarding the introduction of digitalization into the notarial process, the scholars point out that notaries have always “played the role of an intermediary” and only recently have they started to develop digital applications for economic purposes based on this characteristic”. C. Bessy (2020) believes that the diversification of the notary’s role as an intermediary is divided into three functions: trusted intermediary, legal intermediary, and market intermediary. In particular, the third function is associated with the expansion of modern notarial activities to a more business-oriented model “that promotes profit to the detriment of the quality of public services and the solidarity of the profession” (Delmas, 2019). S. Wuidar and P. Flandrin (2022) are right that the digitalization of the notary profession calls into question the balance between these three functions. Indeed, digitalization, to a certain extent, creates divisions within the profession, especially between notaries-entrepreneurs and others who are very much attached to the legal and social mission of the notary.

Some scholars point out that notarial services are expanding, and the notary profession is working decreasingly in isolation, i.e., it is becoming focused exclusively on monopolistic activities (Amiel, 2019). Indeed, the digital economy is witnessing the formation of a new institution – the electronic notary system, which is “a more optimal form of notarial services in terms of their quality, accessibility, and security” than conventional notaries (Sukhovenko, 2020).

The introduction of e-notaries in the Ukrainian state began with a discussion of the need for its introduction. According to V. Khomenko *et al.* (2021), to reform the Ukrainian notary, given the spread of respiratory viral infections, it is necessary to borrow the best foreign experience in the digitalization of notarial activities. This opinion is supported by V. Zalyotin and Ya. Babych (2020), who provide examples of the introduction of legal regulation of electronic notaries in 2020 in Belgium. This discussion was joined by government officials, representatives of the Notary Chamber of Ukraine, ordinary notaries, and academics, pointing out the positive and negative aspects, in particular in terms of legal regulation of e-notaries. Z. Zhuravlyova (2020) notes that the provisions of the Law of Ukraine “On Notaries” are “not adapted” to the procedure of e-notaries. Indeed, to introduce the e-Notary System, it is necessary, firstly, to introduce amendments to the Law of Ukraine “On Notaries” (1993).

Based on the analysis of the opinions of scholars and practising notaries, as well as the provisions of the above Law, it is proposed to introduce amendments to the Law of Ukraine “On Notaries” (1993) by supplementing Article 34 of the legislative act or by supplementing the above Law with a new Article 34<sup>1</sup>, which establishes a list of notarial acts to be performed by notaries using the e-Notary System.

The introduction of the e-Notary System is a rather complex technical and technological process that requires significant capital and investment, including from practising notaries. Effective operation of the notary is currently impossible without the use of computer equipment and other electronic gadgets, so there is a need to attract specialists in the field of computer technology. N. Mokrytska and M. Dolynska (2019), considering the existing practice of dividing working time into parts and to preserve notarial secrecy, consider it appropriate to conclude an agreement with such a specialist to perform their labour functions not for a full time, but to divide it into parts or on other terms (on certain days for several hours).

Practitioners and scholars, including I. Apalkova (2021), propose to notarize not only electronic transactions but also electronic copies of documents, as well as to use “electronic copies of powers of attorney” in notarial practice. Carrying out a comparative analysis of the activities of the notary bodies of Ukraine and Georgia, M. Dolynska (2020) noted that a radical reform of the Georgian notary took place in 2009. Since 23.03.2009, the country’s notary switched to keeping a register of its actions in electronic form, and three to four months later, a common electronic database was created in which all notarial acts are registered. In particular, the electronic register contains documents issued by Georgian notaries in the course of inheritance registration and electronic records of wills. Ukrainian notaries enter the same information into the Inheritance Register. In both Georgia and Ukraine, modern notarial activities are based on the principle of digitalization, which is becoming increasingly widespread and is leading to the creation of an electronic notary.

Considering the experience of countries with Latin notaries, in particular, Georgia, the Ukrainian notary has already introduced a number of electronic services (registers) into notarial practice since 1999. The Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021), which provides for a pilot project on the phased introduction of the Unified State Electronic Notary System, launched the next, fifth stage of development of the digitalization of notarial activities in Ukraine. This resolution came into force on 13 January 2022, but the war unleashed by Russia prevented its implementation in practice. Analysing the provisions of the resolution, it was found that: there are three stages of e-notary implementation; project participants are specifically identified; eight components of the e-notary system are identified; the project expires on 31 December 2023.

Thus, Ukraine is gradually implementing e-notaries, as four of its components – the Unified Registers of Notaries, Powers of Attorney, Forms of Documents, and the Inheritance Register – are already in place, although they need to be reformed and modernized. However, they still need to be created: The Electronic Register of Notarial Acts (of all notaries in Ukraine) and the Electronic Notarial Archive. The regulation also provides for the creation and implementation of an electronic notary’s office and an electronic client office.

The above-mentioned resolution was criticized by notaries and the professional association of notaries – the Notary Chamber of Ukraine. Thus, V. Marchenko (2020), as the president of the professional association of Ukrainian notaries, points out the need for legal regulation of the introduction of e-notaries in the state at the legislative level. The author of the article, like other scholars, also supports this opinion. Furthermore, V. Marchenko (2020), draws attention to the fact that, according to the practice of Latin notaries and international standards, it is the self-governing professional organization of notaries that has a leading role in the introduction of electronic registers of notarial acts. Therefore, the author argues that such a role in Ukraine should be played by the Notary Chamber of Ukraine.

K. Nesterenko and O. Bulgakova (2020) argue that when introducing e-notaries, the Electronic Register of Notarial Acts should operate on the basis of the Notary Chamber of Ukraine. One of the main problems is the data security of the e-Notary System, which is directly related to the principle of

notarial secrecy (Article 8 of the Law of Ukraine “On Notaries” (1993). In particular, this applies to cases of multipart state notary offices, as there are cases when two or more notaries receive citizens in one office.

The introduction of the e-Notary System into notarial practice will contribute to the fulfilment of the main tasks of the National Informatization Programme, as well as paragraph 2.8.5 of the Draft Plan for the Restoration of Ukraine (National Council for the Restoration of Ukraine..., 2022), developed by the Justice Working Group, according to which “all notaries are connected to the Unified State Electronic Notary System”. It is only after Ukraine’s victory that it is advisable to elaborate on the full implementation of the e-notary system, considering the comments of both notary practitioners, the Notary Chamber of Ukraine (as a professional self-government body of notaries) and academics.

Since modern public and private notaries in Ukraine operate only with the use of modern digital technologies, the information on certain types of notarial acts specified by law is stored on the electronic services of state and unified registers, which also guarantees the protection of the rights and interests of notary clients.

The use of e-notary technologies will contribute to the further development and improvement of notarial activities in Ukraine, in particular, in terms of optimizing the notary’s work with documents, obtaining the necessary information in a short time through the use of digital technologies (electronic document management), efficient and high-quality provision of notarial services, as well as storing notarial documents on secure electronic servers.

The introduction of the Unified State e-Notary System into the notarial activity of Ukraine is a complex procedure in terms of the use of means, tools and technological processes and requires not only significant investments, but also painstaking work to create new registers, set up an electronic place by notaries and an electronic cabinet by clients.

### Conclusions

The article examines the issues of the origin and development of legal and legislative regulation of digitalization processes in Ukraine. Using a combination of general scientific and special methods, including historical methods, and with the practical experience of implementing digitization of both notarial processes and notarial activities in general, the author identifies five main stages. It is established

that digitalization processes in notarial activities in Ukraine originated in the late twentieth century and mainly concerned only public and private notaries, and almost did not concern other quasi-notarial bodies. The author emphasizes the need to introduce information technologies into the practice of notarial acts performed by other quasi-notarial bodies. The author suggests that digitalization tools should be used primarily when performing notarial acts by officials of consular posts and diplomatic missions.

The study revealed that the newest stage of digitalization of notarial activities, which began in 2021, will end with the introduction of an electronic e-notary system into Ukrainian reality, which, with certain regional peculiarities, effectively functions in countries with a Latin type of notary. The main obstacle to the creation of a state e-notary system is Russia’s war against Ukraine, and only after its victorious end, it is worth talking about the introduction of new information technologies, including the e-notary system, into notarial practice. An important role in the implementation of this system should be played by ordinary notaries as its executors and implementers, as well as their professional self-government – the Notary Chamber of Ukraine.

The author emphasizes the importance of developing not only legislative and regulatory acts, but also guidelines for the effective implementation of digitalization in notarial practice. To effectively implement the e-Notary System into notarial practice and improve the digital literacy of notaries and their employees, the author proposes that the Notary Chamber of Ukraine, as a professional organization of notaries, should hold a series of seminars and webinars under the auspices of the Ministry of Justice of Ukraine.

Further scientific research on the introduction of digitalization in notarial activities should concern the introduction of all components of the e-notary system into the notarial practice of Ukraine, without exception. The purpose of these studies is to identify gaps in the legislative and legal regulation of digitalization processes both in relation to the e-notary system and the general principles of notarial activity, in particular access to the notary profession.

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### Conflict of interest

None.

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## Еволюція правового регулювання диджиталізації нотаріальної діяльності в незалежній Україні

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**Анотація.** Актуальність дослідження зумовлено недостатнім урегулюванням у Законі України «Про нотаріат» диджиталізаційних процесів у нотаріальній практиці. Мета статті – вивчити генезу та еволюцію оцифрування (диджиталізації) нотаріальної діяльності в незалежній Україні, виокремлюючи основні етапи цього процесу. Ключову роль у дослідженні відіграли порівняльно-правовий та історико-правовий методи, за допомогою яких здійснено детальний аналіз правового регулювання розвитку цифрових технологій у нотаріальній діяльності за часів незалежної України. Також у дослідженні нормативно-правових актів використано аксіологічний метод. У статті окреслено використання інформаційних технологій у сфері нотаріальної діяльності. Автором розглядаються питання правового регулювання застосування в нотаріальній діяльності незалежної України електронних реєстрів. Увагу приділено нотаріусам, як учасникам нотаріального процесу, що застосовують у своїй діяльності відомості Єдиних та Державних реєстрів. Підкреслено важливість врахування міжнародного досвіду країн, у яких успішно запроваджено та функціонують електронні реєстри та використовуються цифрові технології у нотаріальній практиці. Виокремлено п'ять основних етапів диджиталізації нотаріальної діяльності в Україні. Перший етап охоплює 1996-1999 роки; другий – 2000-2003 роки, третій – 2004-2012 роки, четвертий 2013-2020 роки, п'ятий етап розпочався у 2021 році та триватиме протягом періоду запровадження системи е-нотаріату в державі. Окреслено зародження та становлення нового правового інституту та правового принципу – диджиталізації нотаріальної діяльності, без якого сучасні нотаріуси не в змозі виконувати свої повноваження. Обґрунтовано позицію, що застосування технологій е-нотаріату сприятиме подальшому розвитку та удосконаленню нотаріальної діяльності в Україні. Практична значимість роботи полягає в тому, що пропозиції, сформульовані на основі отриманих результатів, можна використати, щоб удосконалити чинне законодавство, а також безпосередньо в нотаріальній діяльності

**Ключові слова:** цифрові технології; електронні реєстри; державний та приватний нотаріус; оцифрування нотаріальних дій; електронний доказ; електронний нотаріат