

DIGITAL NOTARIAL LEGAL ACTS

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Abstract: *Notarial legal acts drawn up in electronic form will be a challenge for legal professionals, especially for notaries public. In our country, there has already been an attempt to digitize notarial legal acts through the adoption of Law No. 589/2004 on the legal regime of electronic notarial activity, a law that has not been implemented. The rapid pace at which technology is being adopted creates a need to merge notarial services with the new expectations and needs of society, and this progress can be achieved safely through the intelligent use of digital solutions and tools. In this context, the digitization of notarial activities represents a new orientation and response to social reality, and notarial legal acts drawn up in electronic form will be used by notaries public through the TOP-NOT IT/electronic platform. As a model, the Top-Not platform will be inspired by Italian law, whose PNI-Italian Notary Platform is administered by NOTARTEL.*

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JEL Classification: K20

1. Introduction

As far as digitization is concerned, there is a draft law on electronic notarial activity which is in public debate and is to be adopted in the Parliament. This law will regulate the legal regime of performing notarial acts and procedures in electronic form through the Top-not electronic platform.

2. The regulation of notarial documents in electronic form in Romania

The draft law on electronic notarial activity L593/2024 was adopted by the Senate on 17.02.2015 and is co-sponsored by the Ministry of Research, Innovation and Digitalization and the Ministry of Justice.

The fast pace at which technology is being adopted gives rise to the need to merge notarial services with society's new expectations and needs, and this progress can only take place safely through the intelligent use of digital tools, while taking into account the principles governing notarial activity and the profession, as well as the safety of the civil legal circuit.

As a result, the digitization of notarial activity and the drafting of notarial legal acts in electronic form is a new stage in social reality but also a natural consequence of the continuous growth in the capacity and flexibility of new technologies and cybersecurity solutions.

Electronic contracts, on the other hand, are not new. Developments in information technology have also influenced the way contracts are concluded. By electronic means, professionals and consumers have access not only to a market limited by national borders but also to the global market. The use of electronic means to conclude contracts has great advantages: professionals can advertise their products and services nationally and worldwide, communicate information on prices and terms of delivery, using minimal financial resources for this purpose and with maximum speed, and interested parties, whether consumers or professionals, can choose from a multitude of offers and accept terms and conditions, all electronically.

Contracts concluded by electronic means have been referred to in the legal literature as "electronic contract", "contract concluded by electronic means", "contract in electronic form".

The draft law regulates the legal regime for the performance of notarial acts and procedures in electronic form through the TOP-NOT IT/electronic platform. The TOP-NOT platform will be developed and managed by the National Union of Notaries Public in Romania and aims at managing and storing notarial acts, as well as the documents on which they are based. At the same time, this platform ensures the security, confidentiality, traceability and integrity of data exchange.

As a model, the TOP-NOT platform is inspired by Italian law, whose PNI platform - Platform of Italian Notaries is managed by NOTARTEL.

The Italians are in the 5th stage of digitization, having been using electronic notarial activity and digital legal acts since 1997.

According to the regulation that will enter into force in the near future, all notarial acts and procedures in electronic form are carried out by the notary public only through the Top-Not IT/electronic platform. The notarial document in electronic form, bearing the qualified electronic signature of the notary public, as well as the qualified electronic seal of the National Union of Notaries Public in Romania, hereinafter referred to as the Union, applied by the Top-not platform, is of public authority, produces the same legal effects as the same legal document in letter form.

The notarial act or procedure is drawn up by the notary public either on paper or in electronic form.

The electronic form is never mandatory, unlike Italian law, where in some cases the electronic form of notarial documents is mandatory, such as public procurement contracts.

To draw up a notarial document in electronic form, a written request signed with a qualified electronic signature is required.

Notaries public shall have the possibility to opt for the performance of notarial acts and procedures in electronic form and, if they do so, they shall be obliged to apply to the Union in advance for authorization to carry out their activity in this manner, as well as for access to the Top-not electronic platform and to the single computer program for the notary's office registers.

The notary public may perform in electronic form, without the physical presence of the parties, the following notarial acts and procedures:

- a) written notarial legal consultations;
- b) receiving and storing documents in electronic form in the electronic notarial archive;
- c) the authentication of documents in electronic form;

d) legalizing the signature of the authorized interpreter and translator on translations in electronic form.

The conclusion may also be accomplished in electronic form, without the physical presence of the parties, and the conclusion may also be accomplished in electronic form, without the physical presence of the parties, for the correction of clerical errors and, where appropriate, the making of corrections to obvious omissions in the documents and procedures referred to in points. (c) and (d).

The notary public may also authenticate the signature of the translator of documents in electronic form in paper form, after comparing the paper copy with the document in electronic form.

The following operations may be carried out by electronic means, without the physical presence of the parties, in the notarial probate procedure and in the procedure for authentication of documents:

- a) transmitting the request for the opening of the proceedings, accompanied by the death certificate in electronic form and the request for the authentication procedure to be carried out;
- b) transmission of the request for postponement and notification of the new time-limit set;
- c) forwarding requests for the reinstatement of a succession file;
- d) forwarding requests for the suspension of succession proceedings;
- e) forwarding requests for the inventory of property belonging to the deceased and requests for the affixing of seals;
- f) forwarding requests for the rectification or completion of documents in respect of which material errors or obvious omissions have been made;
- g) verifications and communications to/from public registers, where appropriate;
- h) transmission of the required documents in electronic form;
- i) transmitting to the National Commercial Register Office the documents concerning companies;
- j) transmission by the notary public of other requests, accompanied, where appropriate, by the related documentation, in order to fulfill this procedure.

Notarial documents in electronic form may not be drawn up for the purpose of rectifying material errors or filling in obvious omissions in a notarial document drawn up on paper.

In the exercise of notarial activity, the notary public may carry out the following operations by electronic means, without the physical presence of the parties:

- a) transmission of requests addressed to public institutions and authorities;
- b) communication of applications and any other documents for the performance of real estate advertising operations;
- c) requesting the tax registration of taxpayers, at their request, following the fulfillment of any notarial acts and procedures requiring this operation;
- d) carrying out the formalities, at the request of the party, in order to exercise the right of pre-emption, in the cases provided for by law;
- e) obtaining any writs, certificates, opinions and authorizations necessary for the drawing up of notarial acts and procedures.

Notarial acts or procedures may be carried out in electronic form only at the professional premises of the notary public, if the parties are physically present and sign the act with a qualified electronic signature.

The completion of notarial acts in electronic form shall be evidenced by a conclusion drawn up in electronic form.

At the request of any of the parties, their successors, their legal or contractual representative or any person having a legitimate right or interest, the notary public may issue an electronic duplicate of an original notarial instrument in paper form in his archives, referred to as an E-duplicate, or a paper duplicate of an original notarial instrument in electronic form in Top-not's archives, referred to as an A- duplicate.

Once the content of the instrument has been faithfully reproduced, including, where appropriate, the content of the notarial conclusion, the duplicate conclusion shall be drawn up, specifying the form in which the original instrument was issued. The A-duplicate shall bear the holograph signature and seal of the notary public and the E-duplicate shall bear the qualified electronic signature of the notary public and the qualified electronic seal of the Union applied by the Top-not platform.

3. The regulation of notarial documents in electronic form in France

In France, the digitization of notarial activity began in the first years after 2000, with the construction of a platform for the exchange of information between notaries and various partners such as the Ministry of the Economy and Financial Affairs, the Ministry of Justice and commercial banks. The electronic registration of notarial acts on the basis of a protocol called *Tele@ctes is done on the Planete platform*. The electronic notarial act was introduced in 2008, the first act was signed on October 28th 2008, the signatures being affixed on an electronic device. Electronic signatures and the electronic notary's seal are currently applied and managed according to the European E-iDAS Regulation.

It has also been made possible to authenticate documents remotely, but with each of the parties being in the presence of a notary public, each notary being responsible for taking the consent of the party he or she is assisting. The "meeting" of the parties assisted by the notaries took place by videoconferencing, in a space for which a high level of security is imposed to ensure confidentiality .

During the exceptional period linked to the health crisis, all notarial acts could be temporarily signed remotely, as the presence of notaries in their offices was made impossible (Decree No. 2020-395 of April 3rd 2020 on the authorization of remote notarial acts during the health emergency period). This Decree amended the notarial regulation and allowed consent to be taken without the presence of the beneficiary in front of the notary but had a temporary applicability, until the expiry of one month after the end of the health emergency. Subsequently, a normative act came into force allowing remote consent to be taken, but only in the case of powers of attorney - Decree No. 2020-1422 of November 20th 2020 on the regulation of the notarial power of attorney at a distance.

The Higher Council of the French Notariat has adopted internal rules to ensure that the legal rules are applied under maximum security conditions for communication between the notary and the principal, while respecting confidentiality and the protection of personal data.

In conclusion, powers of attorney can now also be signed remotely, in electronic form, with a qualified electronic signature, via a secure platform.

4. The regulation of notarial documents in electronic form in Italy

The Italian legislation is one of the most advanced in the field of digitization, with the process starting in 1997.

The digital notarial documents in Italy is regulated by the following normative acts: -Digital Administration Code - Legislative Decree No. 82 of March 7th 2005 (in Ordinary Supplement No. 93 to Official Gazette No. 112 of May 16th 2005) Legislative Decree No. 110 of July 2nd 2010 (in Official Gazette No. 166 of July 19th 2010) - Provisions on the electronic public deed drawn up by a notary public Law No 89/16.02.1913 on the organization of notaries and notarial archives Royal Decree No. 1326 of 10 September 1914-Approving the Regulation for the execution of Law No. 89 of 16 February 1913 on the organization of the notary and notarial archives.

According to these regulations, all notarial acts can be done in electronic form, there are some limitations related to inheritance upon death.

The parties may indicate to the notary the electronic or paper form of the notarial acts, but the notary has the possibility to choose between the two forms, even against the parties' request.

Unlike in our country, where the use of the Top-Not platform is mandatory, in Italy the use of the PNI (PiattaformadelNotariatoItaliano) is not mandatory.

The use of this PNI platform is mandatory for documents with graphometric signatures and for documents with remote parties.

As a procedure, the parties, trustees, interpreter and witnesses personally sign the digital public document in the presence of the notary with digital signature or electronic signature. The notary personally applies his digital signature after the parties, interpreter and witnesses and in their presence.

Signing with the participation of the parties by videoconference is allowed only in one case: the document of incorporation of simplified limited liability companies established in Italy with capital paid up in cash.

Present parties can sign in several ways:

- Remote digital signature issued by Namirial, Aruba or Infocert
- One Shot for Act signature issued by Notartel
- Smart card or token for digital signature
- Presence only: graphometric signature with tablet

The Italian Notary has developed an application PNI (PiattaformadelNotariatoItaliano) for the conclusion of digital documents and also for the online incorporation of limited liability companies. It is a cloud-oriented solution which, thanks to its open component architecture, offers an ecosystem of functionalities that can be extended through third-party services.

5. In conclusion

Digitalization is one of the priorities of the notary profession and the signing of digital legal acts is a current challenge for the notary profession.

The draft law brings multiple benefits for the profession of notary public, by modernizing and streamlining the work of this profession, and for the national and

international business environment, by allowing simplified and fast access to notarial services, eliminating the obstacles of physical distance and providing a secure way of storing and managing notarial documents.

At the same time, demonstrating an astonishing strength of adaptation and modernization, the contemporary notary public has understood how to make intensive use of new technologies, making the notarial act easily accessible and useful through fast and secure procedures.

The conclusion of notarial documents in dematerialized electronic form and the creation of the possibility of taking the consent of the parties remotely by electronic means are only some of the current challenges generated by the modernization of notarial activity.

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