Digitalisation in the Notaryship

I. The Development

1. The first Digital Signature Act was passed in Germany in 1997. Europe soon followed suit and adopted the Signature Directive, which was later replaced by the eIDAS (electronic Identification, Authentication and trust Services) Regulation in 2014, and the E-Commerce Directive. One of the centre-pieces of the implementation of the Directive is Section (§) 126a of the German Civil Code (BGB), which regulates the electronic form. Although this legal norm does not play a major role in practice, a number of issues will be discussed in the light of its regulation that are relevant in other legal norms. Section (§) 126a BGB primarily lacks of relevance due to the fact that this legal norm according to Article 24 eIDAS requires a qualified electronic signature for security reasons, the generation of which requires an effort that practitioners clearly shy away from.[1] The procedural counterpart is Section (§) 371a of the German Code of Civil Procedure (ZPO).
2. The Digitalisation Directive (EU) was issued in 2019.[2]
3. The possibility of digitalisation was given a massive boost by the COVID-19 pandemic, which made meetings in person impossible or at least considerably more difficult due to government measures. In Article 2 COVMG, special regulations were issued primarily for company law, association law and the law governing homeowners' associations.
4. These options were abolished on the 31st of August 2022. However, the legislator has incorporated the possibility of virtual meetings into the respective special laws. First and foremost are Sections (§§) 16a - 16e BeurkG (Notarial Recording Act); they are for example referred to in Section (§) 2 Paragraph 3 GmbHG (Act on Limited Liability Companies). The virtual general meeting for a public limited company or stock corporation (in German: AG) is regulated in Section (§) 118a AktG (Stock Corporation Act), the virtual shareholders' meeting for a limited liability company (in German: GmbH) in Section (§) 48 Paragraph 1 Sentence 2 GmbHG. Association law and the law governing homeowners's associations (WEG = Act on the Ownership of Apartments and the Permanent Residential Right) regulate the general meeting by means of electronic communication in Section (§) 32 Paragraph 2 Sentence 2 BGB and Section (§) 23 Paragraph 1 Sentence 2 WEG respectively.

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[1] Staudinger/Hertel, BGB, 2023 Section (§) 126a marginal no. 50.

[2] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20th June 2019 amending Directive (EU) 2017/1132 regarding the use of digital tools and processes in company law, OJ L 186/80 with effect from 31st of July 2019.

5. Since recently a draft bill for a law on the introduction of electronic notarisation in presence exists.[3] In Section (§) 129 Paragraph 3 BGB, it intends to recognise the digital document as a publicly certified declaration if, among other things, the signature is provided in a notarially certified handwritten signature. Furthermore, Section (§) 13a of the BeurkG (Notarial Recording Act) is then supposed to open up the possibility of an electronic record.

II. Exemplary Regulations

1. Sections (§§) 126a BGB, 371a ZPO
   a. Regarding the function of the written form requirement, the legislator itself sees a difference in the warning function.[4] The legislator has drawn the consequence of this in Section (§) 766 Sentence 2 BGB for the suretyship, in Section (§) 780 Sentence 2 BGB for the promise to fulfil an obligation and in Section (§) 781 Sentence 2 BGB. The issuing of a suretyship in electronic form is hereby excluded. The provision thus stipulates something different (in German: “ein anderes”) within the meaning of Section (§) 126 Paragraph 3 BGB. These exceptions are expressly permitted by Art. 9 Paragraph 2 lit. c of the E-Commerce Directive.[5]
   b. It appears reasonable to apply the argumentum a fortiori, for example for the notarisation of a purchase agreement for a property. However, this matter is specifically regulated in Sections (§§) 16a ff. (and following) of the BeurkG; the safety precautions there provide an increased guarantee of correctness.
   c. The procedural counterpart is Section (§) 371a ZPO. Section (§) 371a Paragraph 3 ZPO regulates the evidentiary value somewhat unsystematically; this regulation would actually have its place in the Sections (§§) 415 ff. (and following) ZPO.

[3] Drafted on 23rd February 2024. It is intended to achieve the goals of the United Nations General Assembly resolution of 25th September 2015, in particular Sustainable Development Goal 16 of the UN 2030 Agenda.
[4] BT-Drucks. 14/4987 p. 17 (written form is likely to provide greater protection against haste at the moment, at least from a subjective perspective); the literature agrees; e.g. MünchKomm-BGB/Einsele, Münchener Kommentar zu BGB, 9th ed. 2021, Section (§) 126a marginal no. 26; Staudinger/Hertel Section (§) 126a marginal no. 49.
[5] Marly, in: Grabitz/Hilf, Das Recht der Europäischen Union, 40th ed. 2009, Art. 9 marginal no. 12.

2. Sections (§§) 16a - 16e BeurkG (Notarial Recording Act)
    a. Take Section (§) 2 Paragraph 3 GmbHG as an example; this legal norm expressly refers to the Sections (§§) 16a ff. (and following) BeurkG. The legal basis is Section (§) 78p BNotO (Federal Code for Notaries), which is referred to by Section (§) 16a BeurkG. The video communication system must fulfil all of the requirements specified there. In particular, according to Section (§) 78p Paragraph 2 Number 2 BNotO in conjunction with Section (§) 16c Sentence 1 Half-Sentence 1, Sentence 2 BeurkG, a photograph must be transmitted electronically. Section (§) 78p BNotO in conjunction with Section (§) 16c Sentence 1 Number 1 BeurkG requires one to provide, the electronic proof of identity or in conjunction with Section § 16c Sentence 1 Number 2 BeurkG, to provide the electronic means of identification. The regulation is exhaustive; a German passport, for example, is not sufficient as it does not have the electronic functions.[6] If the person concerned is personally known to the notary, the electronic transmission of a photograph is not necessary according to Section (§) 16c Sentence 3 BeurkG. If, however, the proof of identity or the other aforementioned identification methods are missing, the online notarisation procedure is not possible.[7] This also applies if the person concerned is personally known to the notary.[8] This is a strange difference to the normal case regulated in Section (§) 10 Paragraph 3 Sentence 1 Alternative 1 BeurkG, for which solely the notary's knowledge of the person involved is sufficient.[9] However, the wording and the intention of the legislator are so clear that a decision opposing the wording of the law is out of the question, especially as the consequences are of little relevance.
    b. The operation of the video communication system in accordance with Section § 78p BNotO has sovereign character.[10] This is special because, according to the concept of the law, the notarial function is tied to the individual person.[11] The notary cannot delegate these tasks and responsibilities.[12] According to Section (§) 67 Paragraph 1 Sentence 2 BNotO, the state chambers of notaries (in German: Landesnotarkammern) must ensure that notaries and notary assessors exercise

[6] BeckOGK BeurkG/Rachlitz, Section (§) 16c marginal no. 16.
[7] BeckOGK BeurkG/Rachlitz, Section (§) 16c marginal no. 17.
[8] Explanatory memorandum of the government draft BT-Drucks. 19/28177 p. 122; BeckOGK BeurkG/Rachlitz, Section (§) 16c marginal no. 17.
[9] BeckOGK BeurkG/Bord, as on 1st of January 2024, Section (§) 10 marginal no. 21.
[10] BeckOK BNotO/Hushahn, as on 1st of February 2024, Section (§) 78p marginal no. 2.
[11] BeckOK BNotO/Eschwey, as on 1st of February 2024, Section (§) 1 marginal no. 19.
[12] BeckOK BNotO/Eschwey, Section (§) 1 marginal no. 20.

their profession lawfully and conscientiously.[13] However, the state chamber (Landesnotarkammer) is limited to this.[14] The Federal Chamber of Notaries has the task of operating the video communication system according to Section (§) 78 Paragraph 1 No. 10 BNotO. This is a deliberate decision of the legislator,[15] which sounds reasonable, but leaves a crucial question unanswered. This is the question of liability, should there be a fault in the video communication system. Direct liability of the Federal Chamber of Notaries is ruled out if and insofar a primary economic loss is concerned. This leaves the liability of the notarising notary, which is regulated in Section (§) 19 Paragraph 1 Sentence 1 BNotO. A breach of duty as well as fault of the Federal Chamber of Notaries are both attributable to the notary. This follows from the fact that he alone is responsible for the notarisation. According to the basic principle of Section § 278 BGB, the fault of auxiliary persons is attributed to the notary in the same way as his own fault.[16] This is based on the idea that the party, who takes advantage of the division of labour, should also bear the disadvantage, namely the risk that the assistant acting for them culpably infringes the legally protected interests of the client.[17] The fact that the notary must legally make use of the video communication system,[18] does not change this, at least as long as notarisation in person is still possible.

c. Section (§) 10 BNotO assigns the notary an official location of office; this is to ensure that those seeking legal services are uniformly supplied with notarial services.[19] According to Section (§) 10a Paragraph 1 Sentence 1 BNotO, the jurisdiction district of the notary is the district of the local court, in which the notary has his official location of office. Section (§) 10a Paragraph 3 BNotO specifies this for video communication. In principle, clients must have their registered office within the notary's district of jurisdiction.

d. This is an important argument in favour of the scope of notarisation through video communication. Section (§) 10a Paragraph 3 BNotO only mentions legal entities, partnerships with legal capacity, sole traders and, in the case of foreign parties, those with a branch office within the notary's district of jurisdiction. The same applies to organ representatives and shareholders. The purpose here is also to

[13] BeckOK BNotO/von Strahlendorff, as on 1st of February 2024, Section (§) 67 marginal no. 3.
[14] BeckOK BNotO/von Strahlendorff, § 67 marginal no. 9.
[15] BT-Drucks. 19/28177 S. 110.
[16] BGH NJW 1996, 464, 465; 2003, 578.
[17] BGH NJW 1996, 464, 465.
[18] BeckOGK BeurkG/Rachlitz Section (§) 16a marginal number 136.
[19] BGH NJW 2004, 2974, 2975; BeckOK BNotO/Regler, as on 1st of February 2024, Section (§) 10 marginal no. 4.

prevent a supra-regional concentration of notary activities by means of video communication with individual notaries.[20] It would diametrically oppose this objective if the notarisation of declarations of intent by individuals was possible across different districts of notarial jurisdiction. Of course, an analogy of the law could be considered. However, it is much more reasonable that the legislator has designed an exhaustive regulation with Section (§) 10a Paragraph 3 BeurkG. For example notarisations falling under Section (§) 311b Paragraph 1 BGB, are excluded from video notarisation. It is therefore generally agreed upon that the online procedure is not available for other areas of law, such as Section (§) 311b BGB - contracts for the sale of land -, Section (§) 925 BGB – declarations of conveyance -, Section (§) 1410 BGB - marriage contracts -, Section (§) 2033 BGB – disposition of the co-heir -, Section (§) 2232 BGB – notarised public wills -, Section (§) 2276 BGB - inheritance contracts -, Section (§) 2348 BGB - renunciation of inheritance - and Section (§) 2371 BGB - inheritance purchase agreements.[21] So a large proportion of notarial work is still only possible with traditional procedure.

e. The power of attorney is particularly complicated. The apparent legality effect (in German: Rechtsscheinwirkung) – for example of Section (§) 172 BGB –, can only be linked to a paper version. Since electronic documents can be reproduced at will, it is not possible to return them to the principal. The electronic document therefore lacks the so called “unique function” (in German: Unikatsfunktion) which is the reason for the legitimising effect of Section (§) 172 BGB.[22] Section (§) 16d BeurkG does not change this either, as this norm only replaces the presentation of powers of attorney with the electronic form. Conversely, Section (§) 2 Paragraph 3 Sentence 2 GmbHG provides for the possibility of granting a power of attorney when establishing a GmbH in accordance with Sections (§§) 16a ff. (and following) of the BeurkG. This possibility must also be limited to this case to not completely break the system of the Sections (§§) 170 ff. (and following) BGB. [23]

f. According to Section (§) 16a Paragraph 2 BeurkG, the notary should refuse notarisation if he has doubts about the legal capacity of a party. This is difficult to imagine with German clients. Natural persons always have legal capacity according to Section § 1 BGB. The civil law partnership (in German: GbR) when externally active is also legally capable according to Section (§) 705 Paragraph 2 Half-

[20] BT-Drucks. 19/28117 p. 107; BeckOK BeurkG/Regler Section (§) 10a marginal no. 36.
[21] Böhringer GmbHR 2022, 1007 marginal no. 15.
[22] Kienzle DNotZ 2021, 600; Stelmasczyk/Kienzle ZIP 2021, 773.
[23] Armbrüster/Preuß/Gomille, BeurkG, in publication, Section (§) 16a marginal number 16.

sentence 1 BGB; Section (§) 705 Paragraph 3 BGB also establishes an irrebuttable presumption of legal capacity.[24] A civil law partnership that consults a notary will always fulfil this requirement. According to Art. 6 UDHR (Universal Declaration of Human Rights)[25] , foreign natural persons are also entitled to be recognised as legal entities. Therefore only foreign companies could be problematic regarding this issue; their legal capacity cannot be dealt with in full here.

g. In contrast, Section (§) 16a Paragraph 2 BeurkG shows a significant difference to the face-to-face procedure regarding the legal capacity of a party. Here, sole doubts are sufficient, whereas according to Section (§) 11 Paragraph 1 BeurkG, the notary can only refuse notarisation if he is convinced that a party lacks the required legal capacity. The notary must then refuse notarisation by video communication; this does not exclude notarisation in person.[26] According to the explanatory memorandum of the government draft bill, the notary should nevertheless be obliged to carry out the notarisation if the parties involved request so; this especially if the notary is convinced that doubts cannot be dispelled even in a face-to-face procedure.[27] This is inconsistent; the differences in the wording of Section (§) 16a Paragraph 2 BeurkG and Section (§) 11 Paragraph 1 Sentence 2 BeurkG would be completely dismissed. The special regulation in Section (§) 16a Paragraph 2 BeurkG would no longer have any significance. The fact that this scenario is unlikely to arise in practice[28] does not resolve the given contradiction. The main difficulty in the context of Section (§) 11 BeurkG is that the notary must assess if the party involved has legal capacity.[29] This is already difficult in the case of notarisation in person. The problems increase in the case of notarisation by video, as it then is even more difficult to gain an impression of legal capacity. On the other hand, the notary may not refuse to act without sufficient reason as stated in Section § 15 Paragraph 1 Sentence 1 BNotO, as he has a corresponding official duty.[30] An unjustified refusal can trigger liability under Section (§) 19 Paragraph 1 BNotO due to a breach of the obligation to provide notarial instruments (notarielle

[24] BeckOK BGB/Schöne, as on 1st of January 2024, Section (§) 705 marginal number 47.
[25] 10th December 1948, UN-Doc A/RES/217 A (III).
[26] BeckOGK BeurkG/Rachlitz Section (§) 16a marginal no. 154.
[27] BT-Drucks. 19/28177 p. 117; following this BeckOGK BeurkG/Rachlitz Section (§) 16a marginal no. 155.
[28] BeckOGK BeurkG/Rachlitz Section (§) 16a marginal no. 153; conversely, Meier BB 2022, 1737 assumes a superiority of presence certification.
[29] BeckOGK BeurkG/Bord, as on 1st of January 2024, Section (§) 11 marginal no. 14.
[30] BeckOK BNotO/Sander, as on 1st of February 2024, Section (§) 11 marginal no. 56.

Urkunden), the so called “Urkundsgewährungspflicht”.[31] However, the notary can take precautions by instructing the person concerned to submit a medical report.

h. Section (§) 16b Paragraph 4 BeurkG removes a de facto obstacle from which Section (§) 126a BGB suffers; the qualified signature is created – albeit with the help of the Federal Chamber of Notaries. The difference between Sentences 3 and 4 was deliberately accepted by the legislator.[32]

i. Identification is carried out according to Section § 16c BeurkG using electronic ID cards. If doubts remain, the face to face procedure is also indicated here.[33] The recording of doubts in the notarial instrument (Urkunde)[34] does not help here either, as the identity then remains unclear and thus whether the named person has actually made the declaration themselves or not.

j. In the case of mixed notarisation regulated in Section (§) 16e BeurkG, it is discussed which of the two documents should be read aloud.[35] The original paper document can also be created after it has been read aloud.[36]

3. The virtual general meeting or shareholders' meeting

Section (§) 118a AktG now permits a virtual General Meeting. It is supplemented by Sections (§§) 131 Paragraph 1a - 131 f AktG, which regulate the right to ask questions prior to the General Meeting. Although Section (§) 48 Paragraph 1 Sentence 2 GmbHG also allows a virtual shareholders' meeting, the questions of interest do not arise here as no notarisation is required for this. The following considerations are therefore limited to public limited companies, also called stock corporations (in German: AGs).

a. One of the main problems with the virtual General Meeting is determining attendance.[37] As this is not possible at a virtual General Meeting, only the addition method, not the subtraction method, can be used to determine the voting result. With the addition method, yes and no votes are recorded separately and the number of votes cast is determined by addition.[38] With the subtraction method, only the no votes and abstentions are counted.[39] However, this is not reliably feasible in a virtual general meeting, as it is not possible to control parties leaving and joining throughout the meeting.

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[31] Cf. e.g. BGH WM 2021, 1157, 1158 marginal no. 11.
[32] BT-Drucks. 19/28177 p. 119; Armbrüster/Preuß/Gomille Section (§) 16b marginal no. 9.
[33] BeckOGK BeurkG/Rachlitz Section (§) 16c marginal no. 24.
[34] This is the proposal of BeckOGK BeurkG/Rachlitz Section (§) 16c marginal no. 24.
[35] BeckOGK BeurkG/Rachlitz Section (§) 16e marginal no. 6.
[36] Staudinger/Hertel, BeurkG, 2023, marginal no. 445l.
[37] Koch, Aktiengesetz, 18th edition 2024, Section (§) 118a marginal no. 27.
[38] Koch Section (§) 133 marginal no. 23.
[39] Koch Section (§) 133 marginal no. 24.

b. According to an obiter dictum of the Federal Court of Justice (BGH), notarisation by the notary requires that he was present with the chairman of the meeting and another person from the management board.[40] This would largely devalue the possibility of a virtual general meeting. According to Section (§) 37 Paragraph 2 BeurkG, it is sufficient for the notary to state the place and date of the meeting as well as the place and time at which the notarial instrument was established.[41]

c. If the notary has indications for that the party involved is seeking confirmation from a third party not captured by the camera, he can refuse notarisation. However, in contrast to face-to-face notarisation, the notary may remain completely unaware of the influence. Furthermore, communication is significantly more difficult with video recordings than face-to-face. The notary must pay particular attention to this by giving clear instructions. This is required by the right to be heard, to which the notary is also bound as an organ of the non-contentious jurisdiction. However, the self-responsibility of the parties limits this. Anyone who participates in a virtual general meeting as a shareholder, although they could also appear in person, can be expected to safeguard their interests even under the more difficult conditions compared to a face-to-face meeting.

4. The draft (reform) bill of the BeurkG

   The – only optional – transition from paper to electronic form raises a number of problems that appear to not have been fully considered yet.

   a. It begins with the notary's obligation under Section (§) 17 Paragraph 2a BeurkG to provide the consumer with the intended text of the legal transaction for consumer contracts that are subject to the formal requirement of Section (§) 311b BGB, generally two weeks before the contract is concluded. This regulation was a reaction to previous issues. Purchases were already notarised shortly after viewing the property, often leaving buyers insufficient time for consideration. If sending by email or on a data carrier is considered possible with the consumer's consent,[42] problems still remain. The question is whether this itself is compatible with consumer protection. Experience shows that an electronic document is not read with the same attention as a document in paper form. For instance, also Section (§) 130d ZPO, which restricts the obligation to use electronic documents in legal proceedings to lawyers and similar persons, does not apply to consumers.

[40] BGH NJW-RR 2021, 1556, 1557 f. marginal no. 20.
[41] BeckOGK BeurkG/Meier, as on 1. 2. 2024, Section (§) 37 marginal no. 7.
[42] BeckOGK BeurkG/Regler, as of 1st of October 2023, § 17 marginal no. 221.

b. The question of issuing execution copies is also not quite clear. So far, the contracting parties, but also lending banks, for example, have received a copy. As far as can be seen, the draft does not address this question. However, no alternative is mentioned, for example, if a lender requests an execution copy for its decision on the granting of a loan. This execution copy is available either on paper or in electronic form. The expectation that the documents created in the notarisation procedure should be processed "without media discontinuity",[43] is therefore quite problematic.

c. When documents are passed on in electronic form, the problem of possible reproduction at will arises again – and this time to a greater extent. This plays a role for documents with a so-called unique function (in German: Unikatsfunktion), such as power of attorney certificates. Although it is still possible to restrict the power of attorney to certain transactions, further questions arise. First of all, it is a question of to which special powers of attorney one should restrict, but above all of the problem that a general power of attorney could no longer be issued without the difficult to manage risk, that even after revocation, the authorised representative could continue to rely on a document that could not be effectively reclaimed by the principal, at least vis-à-vis parties acting in good faith. It is therefore widely recognised under current law that the written form cannot be replaced by the electronic form, as Sections (§§) 172, 174-176 of the German Civil Code (BGB) oppose this. They regulate the return and declaration of invalidity, which can only apply for written documents.[44] This is the case because the claim for return under Section (§) 175 BGB would be meaningless, as the electronic signature, even if issued as a qualified electronic signature, can be reproduced countlessly at will.[45] A declaration of invalidity in accordance with Section (§) 176 BGB would only be possible in a complex procedure and would only take effect after one month.[46] The draft bill does not portray a technically feasible solution. Whether such a solution exists cannot be assessed here due to a lack of technical expertise. One could perhaps consider an automatic notification of the land registries. Apart from the fact that the draft does not make any regulations in this direction, other cases are also imaginable in which the seller grants a power of

[43] Draft bill of 23. 2. 2024 p. 14.
[44] BeckOK BGB/Schäfer, as on 1st of February 2024, Section (§) 172 marginal no. 4a; MünchKomm-BGB/Schubert Section (§) 172 marginal no. 14.
[45] Bormann/Steimasczyk NZG 2021, 605; Danninger RDi 2021, 112 marginal no. 28.
[46] Danninger RDi 2021, 112 marginal no. 29.

attorney and then may not be able to revoke it effectively. If a solution cannot be found, the draft bill threatens to break the solution regulated in the Sections (§§) 170 ff. (and following) BGB.

d. This creates a number of difficulties. Even if the problems are limited to the power of attorney, it would at least have to be issued in paper form. The benefit of the possibility of electronic notarisation is thus considerably reduced. Particularly for purchase contracts for properties, powers of attorney are regularly granted, for example to employees of the notary for declaration of conveyance, but also to the buyer to encumber the properties with land charges in order to secure the loans in rem, that serve to finance the purchase price. The advantage of electronic notarisation would be considerably diminished if at least one additional notarial instrument had to be issued on paper. Because the alternative of only issuing the electronic notarial instrument entails a considerable risk for the seller – far greater than that involved in issuing a power of attorney to register an entry in the commercial register. The buyer could encumber the property on the basis of this power of attorney based on Section (§) 172 BGB and this even if the contract fails and the power of attorney is revoked. The notary must inform the seller of this risk. However, it is unlikely that the seller will take on this risk.
e. The situation can be even more difficult when it comes to powers of attorney within the framework of comprehensive trust agreements. This trust agreement can be linked to a construction supervision contract;[47] the power of attorney granted within its framework is also subject to notarisation if it forms a legal unit with the other contracts that strictly require notarisation.[48] These powers of attorney are granted for a number of planned contracts, insofar as the preparation, implementation and financing, even the reversal of the project are concerned.[49] The fate of the powers of attorney is then no longer controllable for the authorising party. They do not know who the authorised representative is in contact with. Even if they knew this, having to inform all these potential partners would be just as unreasonable for them as a declaration of invalidity. If they are instructed about this by the notary – what the notary must do to avoid a liability risk – they will sensibly not grant the notarised power of attorney.

[47] BGH NJW 2021, 2310 marginal no. 6; Staudinger/Meier, BGB, 2023, Section (§) 311b marginal no. 271.
[48] BGH NJW 2021, 2310 marginal no. 6; Staudinger Meier § 311b marginal no. 271.
[49] Cf. the case of BGHZ 161, 15.

f. Theoretically, the reverse approach would remain, namely not to allow the electronic form to be sufficient for the apparent legality effect (in German: Rechtsscheinwirkung) of Section (§) 172 BGB.[50] However, this would devalue the notarial certification, even compared to the granting of a power of attorney in private written form. What still is a relatively minor exception in the context of Sections (§§) 16a ff. (and following) of the BeurkG shows to be system-breaking here.

g. Therefore, even if the draft bill becomes law, it will have little relevance.

[50] E.g. Jauernig/Mansel, BGB 19th ed. 2023, §§ 170 - 173 marginal no. 8; Erman/Finkenauer, BGB, 17th ed. 2023, § 168 marginal no. 4; BeckOK BGB/Schäfer, as on 1st of February 2024, § 172 marginal no. 4a; MünKomm-BGB/Schubert § 172 marginal no. 14. 4a; MünchKomm-BGB/Schubert Section (§) 172 marginal no. 14; Bormann/Stelmaszczyk NZG 2019, 665; Stelmaszczyk/Kienzle ZIP 2021, 773; Danninger RDi 2021, 110 marginal no. 10; Lieder ZIP 2023, 1932.