

**December 2023**

***In focus: Electronic archiving***

The Regulation on Unique Technical and Technological Requirements and Procedures for the Storage and Protection of Archival Material and Documentary Material in Electronic Form adopted in 2021 (hereinafter: “**Regulation**”) in accordance with the amendments from September 2022, begins to be applied from 1 **January 2024**.

The Regulation regulates the technical and technological requirements and procedures to be fulfilled by the creators and owners of archival material and documentary material when storing and protecting archival material and documentary material in electronic form (“**Electronic Archiving**”).

As a reminder, the Law on Archival Materials and Archival Activities (“Official Gazette No. 6/2020”) stipulates:

- that **archive material**, as documentary material that is permanently preserved, represents selected original, and in the absence of an original, any reproduced form of documents or records that were created by the work and activities of state bodies and organizations, bodies of territorial autonomy and local self-government units, institutions, public companies, holders of public authorities, companies, entrepreneurs, persons performing registered activities, religious communities, as well as other legal or natural persons, and are of permanent importance for culture, art, science, education and other social fields, regardless of the time and place of their

creation, and whether they are located in institutions for the protection of cultural assets or outside them, and regardless of the form and medium of the record on which they are preserved;

- that **archive material in electronic form** is archive material originally created in electronic form;
- that **documentary material** represents the entirety of documents or records created or received through the activities and work of the subjects from item 1, in the original or reproduced form of the document, regardless of the form and format of the recording, as well as prescribed records of the same;
- that **documentary material in electronic form** is documentary material originally created in electronic form;
- that the **creators of archival material and documentary material** are legal and natural persons whose creates archival material and documentary material through their work, while **holders** are legal and natural persons who hold such material on a certain basis;
- that **storage of electronic documents** may be performed as:
  - 1) reliable storage that may be carried out by the holder or creator of documentary material, while respecting the procedures and technological solutions that ensure the possibility of proving the validity of a qualified electronic signature/seal; and

- 2) qualified electronic storage that can only be performed by a service provider of qualified electronic storage of documents, who is registered for such service by the competent ministry.

The Regulation applies only to archival material and documentary material created in electronic form, i.e. to archival material and documentary material that has been digitized (conversion of a document from non-electronic to electronic form) in such a way that the digitized document has the same evidentiary force as the original.

In accordance with the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business (“Official Gazette No. 94/2017 and 52/2021”), a document that has been digitized has the same evidentiary force as the original document if the following conditions are cumulatively met:

1. that document digitization was performed under the supervision of:
  - a) a natural person or authorized person of a natural person in the capacity of a registered entity or authorized person of the legal entity to whom the document belongs; or
  - b) a person authorized to certify signatures, manuscripts and transcripts in accordance with the law governing the certification of signatures, manuscripts and transcripts; or
  - c) a person who is authorized by special law to certify the digitized act;
2. that the identity of the digitized act with the original is confirmed by a qualified

electronic seal or qualified electronic signature of the above-mentioned persons.

The Regulation stipulates that the creators and holders of archival material and documentary material have the following duties and obligations in connection with electronic archiving:

- to perform electronic archiving using a software solution – an information system for reliable electronic storage, whereby they are obliged to provide access to archival material and documentary material to the competent public archive through the eArhiv.

The Regulation defines that public sector entities will use the governmental platform eArhiv for electronic archiving, while private sector entities may perform electronic archiving with the help of any software for that purpose, which will fulfill the obligation of reliable electronic storage of documents, while respecting the procedures and technological solutions that ensure the possibility of proving the validity of a qualified electronic signature/seal, or by engaging another legal entity – a service provider of qualified electronic storage of documents;

- to render a list of categories of archival material and documentary material with retention periods and submit the same in electronic form for approval to the competent public archive in the eArhiv through the “eUprava” portal;
- to adopt internal rules which they will abide by in the preparation of documentary material for reliable electronic storage;
- to apply protection measures of the software solution;
- to prepare documentary material for electronic archiving in accordance with the regulation governing reliable electronic

storage and document formats suitable for long-term storage;

- to classify documentary material in accordance with the list of categories of archival material and documentary material and to determine retention periods of documentary material;
- to record information on the creator of the software solution, as well as to determine metadata on the documentary material;
- to confirm fidelity to the original documentary material and the accuracy of the metadata with a qualified electronic signature, i.e. seal;
- to keep records of actions undertaken in the preparation process for electronic storage and electronic archiving;
- to store documentary material in formats suitable for long-term storage;
- to keep an archive book in electronic form;
- to periodically attach a qualified time stamp when commencing reliable electronic storage, i.e. update a qualified electronic signature or stamp on the archived documentary material in electronic form until it is handed over to the competent archive in accordance with the regulation governing reliable electronic storage and document formats that are suitable for long-term storage;
- to pass a general act on the manner of recording, protection, and use of electronic documents (prescribed by the Law on Archival Material and Archival Activities).

The creator and holder of archival materials and documentary material is required to, after selecting documentary material that is permanently stored, separate from the software solution for destruction any documentary material whose retention period has expired, by creating a request in electronic form with listed documentary material whose

retention period has expired, which request is delivered to the competent authority public archive in eArhiv via the “eUprava” portal.

The creator and holder of documentary material is required to, after expiry of the period of 30 years from the date of creation of documentary material that is permanently stored, create a request in electronic form in the software solution and submit it to the competent public archive in the eArhiv, on the basis of which the competent public archive renders the act of determining archival materials for cultural heritage in accordance with the law.

The Regulation does not define the periods in which electronic archiving will be carried out, although it is expected that the deadlines established by the Law on archival materials and archival activities, which provide for the submission of documentation once a year, no later than April 30<sup>th</sup> of the current year, for documentary material created in the previous year, will be followed.

Additionally, it has not been defined, nor is there an official interpretation, whether electronic archiving will only apply to documents created after 1 January 2024, which would be in accordance with the law on electronic document, or to documents created before entry into force of the Regulation.

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