

The Possibility of Data Processing and Storage Using Modern Technologies

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American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

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Introduction

The current level of technological development allows both digital and analog documentation (as well as any data) storage. One way to store a digital document is in the cloud. This makes documentation available at all times to the person with authorized access from anywhere in the world, with username and password encryption and internet access. In addition to documentation storage, the cloud allows the user to process the document without storing it on the server for longer than the processing time.

The above allows businesses dealing with documentation archiving and storage, as well as all those obliged to keep archival and registry materials (hereinafter referred to as: stakeholders), to process documentation quickly and significantly shorten the entire documentation processing process with the help of macro commands. What is more, minimal human resources engagement allows for easy documentation management.

This technological solution, be it for permanent document storage in the cloud or just for processing, is contracted as a third-party service (software as a service). This frees stakeholders from large capital investment, i.e., investment in equipment, and reduces their stored documentation management and human resource costs.

Although the benefits of this technology are clearly visible, the current legislative framework limits companies in Croatia from using them to the maximum extent.

Current state

The field of archival and documentary material storage in Croatia is regulated by the Archival Material and Archives Act (hereinafter: Archival Material Act), which in Article 3 defines the concept of material in digital form as follows:

- *"d) documentary material in digital form refers to the digital form of records, stored on a machine-readable medium, created as original digital material or by converting the material into digital form"*
- *"e) documentary material in digital form for long-term preservation is material whose content is recorded in digital form and stored on a machine-readable medium, whereby such digital form, as well as the medium, ensures efficient long-term storage and compliance with technological development in accordance with this Act."*

The technical details of the conversion of documentary material into digital form and its preservation, management, and evaluation are prescribed by the Ordinance on the management of documentary material outside the archives (hereinafter: Ordinance), whose Article 31, paragraph 3 stipulates the following in relation to documentation storage and processing in the cloud:

"In the case of storage of documentary and archival material in a computer cloud, the material must be stored in a separate encrypted and password-protected computer cloud, with a known physical location of the material in all stages of documentary and archival material storage and processing, which must not be outside the border of the Republic of Croatia."

Namely, the Ordinance places an absolute ban on documentation storage and processing on the computer cloud if the physical place of storage is outside the borders of Croatia. The Ordinance does not recognize either the EU or the European Economic Area (EEA) as a territory in which the storage and processing of documentation in the cloud is permitted. Therefore, the server used to store documentation via the cloud must be physically located in Croatia, which practically means that stakeholders can rely on a limited number of businesses with servers in Croatia if they want to store documentation in the cloud.

The number of service providers that meet the prescribed conditions is very limited, and their memory storage capacity is small. Legislative changes allowing more businesses to enter the market would bring significantly more competitive prices. Large global service providers have a large number of users, which is why their services are more affordable. At the same time, they are more flexible and allow for more expedient and faster updates and upgrades.

Given the aforementioned Article 31, paragraph 3 of the Ordinance, such solutions are unavailable to stakeholders. The use of *the* cloud under the Ordinance is limiting and pointless, condemning stakeholders to other ways of documentation storage and management, regardless of the general and theoretical availability of this technically more modern solution. Therefore, territorial restriction proves to be completely unnecessary.

Furthermore, the Ordinance regulates the category of data processing in the cloud and imposes territorial restrictions on the physical storage of the processed document in Croatia. The Archival Material Act indirectly interprets the storage concept, its Article 3 relating it to "long-term" material preservation. However, neither the Archival Material Act nor the Ordinance defines the concept of processing.

In practice, material processing means a process or part of a process that is not necessarily related to long-term material preservation. Regarding data processing in the cloud, the document is temporarily stored on the service provider's server during processing. If the documentation is not to be stored permanently via the cloud, the document is automatically removed from the server after the processing. Therefore, material processing does not refer to the intention of long-term document storage, as defined under the Archival Material Act. Consequently, it is necessary to observe these two concepts separately. The Ordinance itself makes a difference between these concepts. Article 31, paragraph 3 separates the two terms with the coordinating conjunction "and."

In this context, the limitation under the Ordinance in this part of the process appears to be pointless and certainly disproportionate to the goal to be achieved by allowing stakeholders free document processing in the cloud, which was highlighted in the introduction.

In addition, the Ordinance is not in line with the 2030 National Development Strategy of the Republic of Croatia, which sets the “Green and Digital Transition” as one of its priority clusters to be realized through the strategic objective of the digital transition of society and economy. *“Fostering digital transformation and application of advanced technologies in the economy and society”, “strengthening strategic digital capacities and increasing the level of digital maturity of Croatian companies in order to ensure prerequisites for the application of advanced technologies” and “the establishment of standardized platforms for networking and operations, the development of state information infrastructure, support for the emergence of new data-based digital industries, support for the adoption of advanced digital and connected technologies in industry, especially in small and medium-sized enterprises, ensuring widespread use of digital technologies throughout the economy and society”* stand out as policy implementation priorities in the area of the digital transition of the economy.

It should be pointed out that the territorial restriction of document storage when using the cloud limits businesses that provide software as a service in choosing their place of business. That means that, under the Ordinance, they must place their infrastructure (servers) on Croatian territory if they want to do business with stakeholders in Croatia.

On the other hand, stakeholders in Croatia cannot access the market and face limited possibilities when choosing a business partner for cooperation. Thus, the Ordinance here is contrary to the basic principles of the Treaty on the Functioning of the European Union, such as freedom of establishment and freedom to provide services, and exhibits a high degree of discrimination in relation to the free market for services and goods.

Even the regulation concerning personal data protection, which should be much stricter than the rules on documentation storage, does not prescribe a prohibition similar to the one described here. Namely, the regulations concerning personal data protection allow the transfer of personal data to third countries, provided that the data controller takes precautions by entering into a protective clause with the service provider. This applies, of course, to countries outside the European Union, while data transfer from one EU member state to another is entirely unrestricted.

Conclusion

AmCham believes that legislative changes that would enable digital archiving of documentary and archival material in the cloud, if the physical place of storage is located within the European Economic Area or alternatively at least within the EU, would bring multiple benefits to Croatia. By extending the permitted physical storage location to the EEA, market would be opened for the largest number of businesses providing cloud storage services without reducing the level of data security or compliance with relevant EU legislation. Legislative changes in line with the latest technological trends would contribute to better connectivity and availability of digital infrastructure, easier business operations and higher productivity, financial savings, and security.

AmCham proposes that amendments to the Ordinance on the management of documentary material outside the archives prescribe:

- 1. Digital material storage via a computer cloud to allow for the physical location of storage to be outside Croatia, but on the territory of any member state of the European Economic Area;**
- 2. Digital material processing via a computer cloud to allow for the physical location of storage during document processing to be outside the Republic of Croatia, but on the territory of any member state of the European Economic Area.**

AmCham proposes making storage, especially data processing via the cloud, unrestricted in terms of the choice of the physical place of storage of the digital document and setting technical conditions and the obligation to contract specific protection clauses to allow for effective document protection, regardless of the physical storage location.

Namely, when contracting software as a service, different protective clauses can be applied, the content of which can be regulated by law and/or ordinance. This will ensure the same protection of documentation regardless of its location of storage and processing.

An example of good practice is Italy, which has regulated the storage of archival and registry materials in the cloud in the manner described, without restrictions regarding the location of the server used to store documentation.

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