



# Digitisation of documents and legal archiving

**Roland Bastin**  
Partner  
Information &  
Technology Risk  
Deloitte

**Stéphane Hurtaud**  
Partner  
Information &  
Technology Risk  
Deloitte

**Laureline Senequier**  
Manager  
Information &  
Technology Risk  
Deloitte



## The shift from physical documents to digital documents, otherwise known as dematerialisation.

Information is the memory of a company. Digital documents are taking over from paper documents, but some questions need to be answered before shifting completely from one to the other.

First you have to digitise your data: transfer the data from physical form to digital form. However, depending on how the electronic data will be used and what you will do with the existing printed documents, the type of technical solution you choose will differ.

Before deciding on a solution, some preliminary questions must be answered:

- Will the information be used for everyday purposes? (i.e. do I need data to be organised?)
- Should the information be protected? (i.e. do I need to restrict access to the data to certain users?)
- Will I destroy the original printed version? (i.e. do I need the document to have legal value?)

The answers to these questions determine what features are required and thus will guide the company in its choice of technical solution. Below you will find three possibilities:

	Document Management System (DMS)	Data Vaulting	Legal Archiving or e-Archiving
<b>Definition</b>	Set of tools and techniques to acquire, order, manage, store and publish electronic documents inside an organisation.	Digital equivalent to a physical safe.	Set of tools and techniques to identify, select, order and store electronic documents on a secure system in the long term.  Legal archiving goes one step further than e-Archiving as it involves giving a legal value to the archive.
<b>Key features</b>	<ul style="list-style-type: none"> <li>• Updates possible on multiple versions</li> <li>• Document destruction possible by employees</li> <li>• Use for day-to-day work</li> <li>• May include managing the document's disposal</li> <li>• May be structured</li> </ul>	<ul style="list-style-type: none"> <li>• Virtual space for storing and archiving</li> <li>• Secured logically and physically)</li> <li>• Impregnable</li> <li>• Documents returned to the owner without modification</li> </ul>	<ul style="list-style-type: none"> <li>• It is not possible to modify documents</li> <li>• Destruction is forbidden, except under strict conditions</li> <li>• Includes managing the document's disposal</li> <li>• Legal archiving (in addition to e-Archiving):                             <ul style="list-style-type: none"> <li>- Electronic signature of the document</li> <li>- Maintain integrity of the document over time</li> </ul> </li> </ul>

In the rest of this article, we will expand further on legal archiving. The objective is to highlight points for analysis when this solution is envisaged.

### e-Archiving and legal archiving: two sides of the same coin

#### The planned change in the legal framework

A legal framework concerning electronic archiving already exists in Luxembourg. However, this framework does not provide a sufficiently solid legal guarantee regarding the destruction of an original document that has already been digitised. To address this issue, in 2008 and 2009, the CSSF and the ABBL recommended that original documents not be destroyed. To overcome this limitation, a team of experts was gathered to design a new legal framework based on a new law on electronic archiving—an update of other impacted laws (Civil Code, Commercial Code, Financial Sector Law) and of the related Grand Ducal Regulation (GDR).

The proposed legal framework puts forward several major considerations:

- **Creation of the Dematerialisation and Conservation Service Provider status (defined as 'PSDC' in the draft law):** the objective is to regulate the activity of digitisation and archiving and thus build the trust of those companies receiving services, as well as the trust of judges, ministries, administrations and courts. PSDCs will be monitored by ILNAS through a formal accreditation scheme. An organisation can choose to become accredited for digitisation and/or archiving. It should be noted that a specific PFS status will be created for PSDCs serving the financial sector.
- **Reversal of the burden of proof:** in the event that a faithful copy of the original document is produced and archived by a PSDC under the conditions set forth in the GDR, it will be the duty of the plaintiff to prove that the copy is not a faithful or sustainable reproduction of the original document.
- **Technical and organisational requirements:** the GDR, and more specifically the accreditation scheme, will set precise technical requirements, organisational constraints and implementation conditions.

As of today, the draft bill, draft updates to impacted laws, and draft updates to the GDR have been submitted to the Chamber of Deputies. The draft bill has received comments from the Chamber of Commerce, the Chamber of Trades and the Council of State. Large parts of the supervision scheme have also been published by ILNAS. The new government has given high priority to this law and it is expected to be adopted by the end of 2014.



<sup>1</sup> ISO/IEC 27001:2005, part of the growing ISO/IEC 27000 series of standards, is an information security management system (ISMS) standard published in October 2005 by the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC). As of October 2013, a new version has been published: ISO/IEC 27001:2013.

<sup>2</sup> ISO/IEC 27002 provides best practice recommendations on information security management for use by those responsible for initiating, implementing or maintaining information security management systems (ISMS).

### Technical regulation requirements and measures

As part of the supervision scheme, technical requirements were published by ILNAS in June 2012. The framework is based on three layers. The first layer is the foundation and applies ISO/IEC 27001<sup>1</sup> and 27002<sup>2</sup>. The second layer provides more detail on a number of ISO/IEC 27002 controls and tailors them to reflect digitisation/archiving activities. The third layer consists of more measures and additional controls on top of ISO/IEC 27002 and is specific to digitisation/archiving. The controls and measures in layer three include information on digitisation/archiving policies and technical requirements for the systems supporting digitisation/archiving as well as their usage. Overall, the latter provides a more detailed understanding of what the digitisation/archiving software should and should not do. The accreditation scheme also includes documents relating to the supervision of PSDCs and audit guidelines.

### What if digitisation and archiving services are provided to financial institutions?

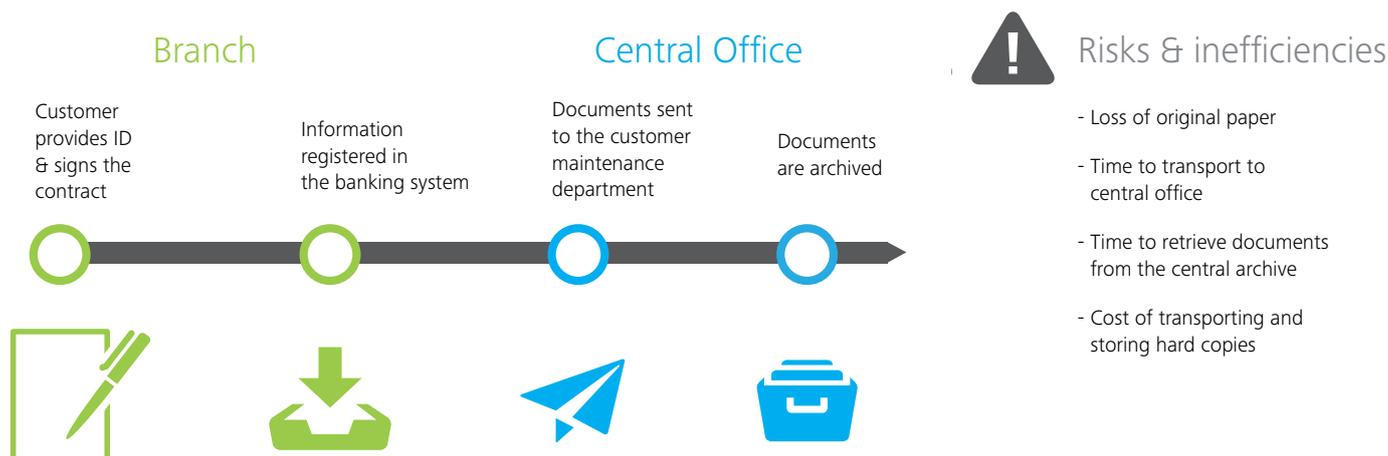
Whenever digitisation/archiving services are provided to financial institutions, all PSDCs are also required to obtain PFS status. Two new Auxiliary PFS statuses (Articles 29-5 and 29-6) are expected to be added to the law of 5 April 1993 on the financial sector. Conditions set forth for the PFS status include a share capital forecasted at EUR 50,000 for digitisation service providers (PFS/PSDC-D) and at EUR 125,000 for archiving service providers (PFS/PSDC-C).

Consequently, the PSDC will be supervised by both ILNAS, for its PSDC status, and by the CSSF, for its PFS status. As of yet, other than those circulars applicable to Auxiliary PFS (including CSSF Circular 12/544 concerning the risk analysis and descriptive reports), no regulation/circulars specific to PFS/PSDCs have been published by the CSSF.

### Opportunities to move towards digitisation and e-Archiving

Many organisations are already digitising their documents but have yet to make the decision to destroy their hard copies. While there is a real business for digitising documents, there is still a need for a greater shift in the general mind-set of both individuals and businesses for destroying or archiving documents. The overall objective of the planned change in the legal framework is to increase trust in companies specialised in digitisation and archiving. This trust will be achieved through greater supervision of digitisation/archiving companies, by guaranteeing the financial stability of the service provider, as well as through process transparency and documentation at the service provider, archiving sustainability and the obligation for document restoration. A good example is the account opening process in banks. Opening an account for a new customer usually consists of the following steps: the new customer provides specific documents to identify himself or herself to the banker at the branch (e.g. ID, salary slip) and then signs a contract. The information is then entered in the banking system. The documents are sent to the customer maintenance department in the central office to confirm the opening of the new account. Finally the documents are archived in a central location, usually somewhere other than the central office.

### Example of a simplified account opening process based on hard copies



When using hard copies with a legal value, this process currently presents three major drawbacks: operational risk (i.e. loss of original paper), inefficiency (i.e. time to transport documents to the central office, time to retrieve documents from the central archive) and cost of transporting and storing hard copies (i.e. renting buildings for paper archives).

Digitising documents from the branches will provide a solution to these three drawbacks. It would optimise the process and thus reduce the time it takes to open an account, minimise the overall operational risk and reduce or even eliminate the cost of transport and storage. Indeed, major banks have already set up, or are in the process of setting up, 'SCAN TO PROCESS'. Digitisation of electronic archives, which means going one step further—'SCAN TO ARCHIVE'—will only completely do away with the transport/storage of the original paper if the original document can be destroyed.

### What is the business case for archiving after digitising?

When it comes to taking the plunge of archiving and thus initiating an electronic archiving project, clear objectives must be defined by carrying out a thorough analysis. The questions below will guide the analysis and support the organisation in more clearly defining the scope, objective and expected return on investment:

- **Are we going to destroy the physical document?**  
This question will help to determine the cost-saving potential of the project.
- **For legal archives, are we really going to destroy the original document?**  
This question will raise the issue of whether or not PSDC accreditation needs to be obtained.
- **For which documents are we required to ensure reversal of the burden of proof?**  
This question will determine whether PSDC accreditation is required.
- **In which jurisdictions outside of Luxembourg will the electronic archive be accepted?**  
This question will help determine whether PSDC accreditation will cover the whole geographical scope of the legal archives.

- **What is the cost of storing paper versus the cost of the IT infrastructure and the cost of ensuring integrity and sustainability of the electronic archive?**

This question will help to determine the return on investment of electronic archives.

- **For legal archives, what is the cost of storing paper versus the cost of the IT infrastructure, the cost of ensuring integrity and sustainability of the electronic archive and the cost of maintaining a PSDC accreditation, including audits?**

This question will help to determine the return on investment of the legal archive.

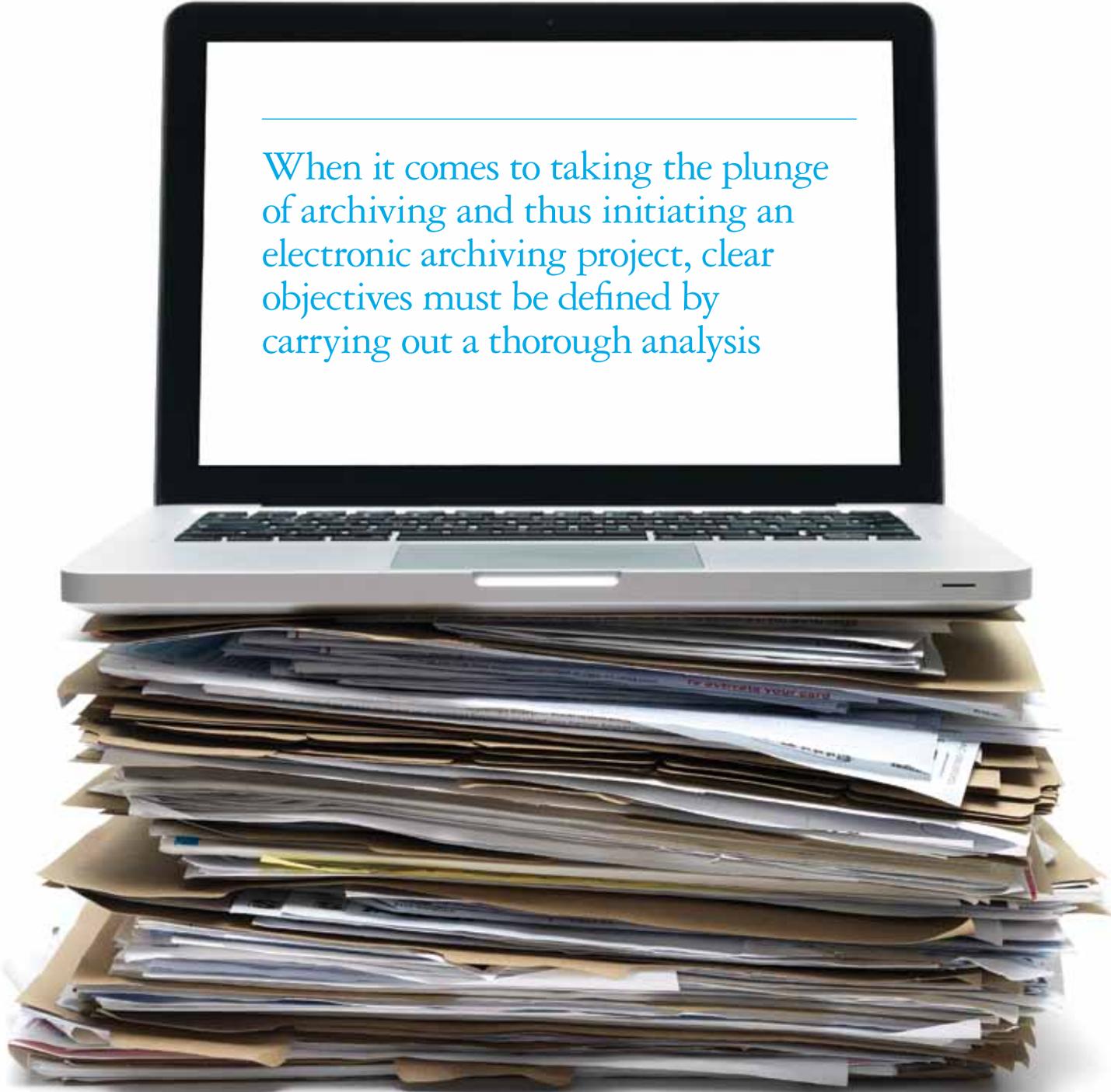
- **Are we implementing this for new documents or also for existing documents?**

This question will raise the issue of whether an additional one-off and time-consuming exercise, i.e. digitising existing documents, is required.

If legal archiving is an absolute requirement under the scope of the project, obtaining PSDC accreditation is not the only option available. There are various sourcing models that can be adopted for legal archives:

- The first alternative is to insource the process and implies obtaining PSDC accreditation.
- The second alternative is to outsource the digitisation part or archiving part of the process by using a PSDC-D for digitisation or a PSDC-C for archiving. This model implies obtaining PSDC accreditation for the part of the process insourced. In relation to the question of digitising existing documents, the process could be outsourced for existing documents and insourced for new documents.
- The third alternative involves fully outsourcing the process to digitisation and archiving service providers with PSDC accreditation.

Overall, in the first and second alternative, digitisation and archiving service providers will benefit from pooling costs.

A silver laptop computer is positioned on top of a very thick, messy stack of papers, folders, and documents. The stack is tall and appears to be overflowing with information. The laptop screen is open and displays a white background with a thin blue horizontal line at the top. Below the line, there is a paragraph of text in a blue serif font. The text reads: "When it comes to taking the plunge of archiving and thus initiating an electronic archiving project, clear objectives must be defined by carrying out a thorough analysis".

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