

IMPLEMENTATION OF JUDICIAL ACCOUNTING EXPERTISE IN THE DIGITAL CONTEXT

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Abstract

Romania is currently in an explosive expansion of digitalization created unexpectedly by the COVID-19 pandemic and imposes the need to implement a standardized system in the field of forensic accounting expertise. A digitalized accounting system is essential for streamlining the collaboration between the judiciary and forensic experts. We define digital transformation as the result of fundamental changes in the way literal documentation processes work. This sometimes means moving away from the long-term processes on which the old procedures were built in favour of relatively new practices, which are still undefined. We need a regulatory framework to implement public strategies and policies in the field of digital transformation and the information society. In this sense, a new structure has been organized and operates, the Authority for the Digitization of Romania (ADR), with legal personality within the working apparatus of the Government and under the coordination of the Prime Minister, which includes all departments and services of strategy, coordination, supervision, and implementation in the field of e-government. Analyzing the other branches of the economy we can see areas in which standardized data access systems have been implemented or will be implemented in accordance with the technical requirements of the authorities. An already implemented system can be found in the transfer pricing files where we work in DAC6, an end-to-end cloud solution, which allows collaboration with EU Member States, by reporting xml files. The exhaustive analysis of the situations dealing with the approached subject uses qualitative methods, quantitative methods and the revision of the specialized literature. The aim of the paper is to show how digitization can improve the process of conducting forensic accounting reports, how can justice be more efficient through digitization, what are the challenges of implementing the digitized system in conducting forensic accounting and last but not least what are the aspects of its ethics.

Keywords

Forensic accounting expertise, digitization, accounting, DAC6, ADR

JEL Classification

M40, M41, M42.

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Introduction

Financial services are an essential element of the European Union's efforts to avoid a new global financial crisis (after the one started in 2007-2008) and the reform that followed after this crisis, in the context of the COVID-19 pandemic that accelerated the digitalisation process. Against the background of this pandemic, Romania was thus offered new opportunities for technological development.

Creating an integrated digital accounting system at the level of individuals and legal entities in Romania, which through a single search engine allows bankers, courts, ANAF, categories of liberal professions, etc. to access the database and obtain the necessary information is a key priority in the context in which everything around is changing with astonishing speed.

This challenge can be achieved through considerable efforts that we will have to make, now, to be able to develop economic and financial business in the future. Relying on the support and collaboration of IT specialists and financial-accounting staff, we are called to make applications easy to use, accessible and online, from any device, completely secure, to reform the financial-accounting services in the sense of centralization from the individual level (corporation), at the national level, as well as at the level of the European Union.

We need a regulatory framework to implement public strategies and policies in the field of digital transformation and the information society. In this sense, a new structure has been organized and operates, the Authority for the Digitization of Romania (ADR), with legal personality within the working apparatus of the Government and under the coordination of the Prime Minister, which includes all departments or services of strategy, coordination, supervision. and implementation in the field of e-government (coming from 4 institutions).

The need to adopt integrative applications that have a good functioning and flexibility of processes, appears in a globalized environment with more and more varied accounting programs. For this, it must be considered that the accessibility of those interested should be easy, simple, able to adapt to legislative changes and new technologies quickly, with transparent information, low implementation costs, to contribute to savings of human and material resources, protected from cyber-attacks and to contribute to the elimination of tax evasion, etc.

Representatives of the 27 EU member states voted in the Council's[†] Permanent Representatives Committee (Coreper), and the city of Bucharest was selected by these representatives to host the future headquarters of the new European Cyber Security

[†]<https://www.consilium.europa.eu/ro/policies/cybersecurity/seat-selection-cybersecurity-centre/> "Representatives of the governments of EU Member States voted in the Council's Permanent Representatives Committee (Coreper), and the city of Bucharest, Romania, was selected by these representatives to host the future headquarters of the new European Cyber Security Center. It will improve the coordination of cyber security research and innovation in the EU and will also be the EU's main tool for pooling investment in cyber security research and technological and industrial development."

Center. It will improve the coordination of cyber security research and innovation in the European Union and will also be the EU's main tool for pooling investment in cyber security research and technological and industrial development.

Using different software solution, you can quickly obtain files with important information for citizens and professionals in the search activity carried out, as well as the processing of the data entered.

This article tries to present the need to digitize accounting, by developing integrative applications that ensure the expected results.

1. Review of the scientific literature

The great global trends of digitalization, cloud technologies or artificial intelligence are also being felt in the field of accounting. Innovations such as the optimization of accounting solutions through artificial intelligence are real opportunities that require flexibility and vision[‡] and that result in security, outstanding management, and cost-effectiveness.

The COVID-19 pandemic is a challenge for the Romanian economy as well as for the European economy. However, there are also deepening imbalances in terms of macroeconomic sustainability, the persistence of legitimate sources of concern, including from a geopolitical and geostrategic[§] point of view.

Thus, lies the obligation to adapt to change, to monitor the risks involved, to implement appropriate solutions not only to the requirements of the present, but also to the future.

The digitization process must be guided, controlled, the rules will have to be defined about what is allowed or not when using artificial intelligence (AI).

Regarding the use of a digitized system in court, there is a first problem regarding the admissibility of the evidence given by artificial intelligence. About other aspects of electronic evidence, as long as there is no European legislation, national legislation on electronic evidence shall apply. This also applies to experts when they intend to use electronic means of investigation - even if they are working on transnational cases, for which there is still no specific legislation other than Regulation (EC) 1206/2001. There are strong challenges that must be faced before digitization can be used in the evidence of forensic accountants, as the expert will have to explain how the accounting expertise was carried out and especially how the rights of defense were respected at every stage.

When defining the aspects of more efficient justice due to artificial intelligence, several questions need to be asked: What is a good decision? What is the acceptable quality of

[‡] Excerpt from the message of the President of Romania, Mr. Klaus Iohannis, sent on Friday, September 28, 2018, at the opening of the Congress organized by the Body of Expert Accountants and Certified Accountants of Romania (CECCAR) in the context of the

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such a decision and how should it be assessed? What is a reasonable time for preparing and deciding or opinion issued by forensic accountants and how can it be quantified? What are the reasonable costs? Is the accounting expertise approved? Such questions can only be answered by applying a legal rule and resolving a value conflict.

"The criteria for evaluating these questions can be:

- transparency of the process;
- observance of the adversarial principle / of the principles of the fair trial;
- indication of the reasons on which the opinion is based, a thorough response to the arguments of the parties;
- impartial decision-making process;
- careful listening to the parties;
- the impression of the parties that they were heard with their arguments is one of the keys to the success of a legal justice;
- "Catharsis" given by the trial, giving the feeling that justice has been done;
- considering non-verbal issues and topical issues.

New technologies, such as AI, can help the judge in some of these aspects, such as monitoring and analyzing case law, which can be automated with algorithms that analyze data sets - but not for resolving a value conflict, and especially not for "Human rights" mentioned above for the administration of justice. In court, AI can only be a tool and should only be used if it helps to make more effective decisions. As such, it can be used, for example, to calculate an exact fine or maintenance allowance in standard cases, but it will certainly not be useful when considering issues such as freedom of expression. In any case, the AI can only be a support for the expert or the judge - but it will not be able to replace them. And even when - as the case may be, in the future - a decision is handed down by the AI, a human judge will still be used, who will be specifically trained in this regard". (Source: [European expertise & expert institute](#))

It will be important for forensic experts to have databases that allow courts to know whether an expert is officially recognized or registered as a forensic expert; the database should also contain relevant information on their specialties and qualifications, the degree of loading, as well as their location. Experts should also be able to dematerialize exchanges, at least in civil and administrative proceedings, through a platform accessible to the judge, the parties and their lawyer, and experts should be able to present their views on that platform.

However, when working with AI, the work will be different from a "traditional" analyze, there will be an algorithm that works with a certain amount of data and a human control of the results from the different steps of the analyze.

"To deal with ethical issues, there should be a legal basis for working with AI, not as a lot of entities are currently working without any legal framework, which is why it should not continue in this way. There have already been interesting reflections at European level: the CEPEJ has issued a Charter of Ethics on the use of artificial intelligence in judicial systems, which is a first basis for such a framework. The CCBE has also published considerations on the legal aspects of artificial intelligence, which will provide additional support". (Source: [European expertise & expert institute](#))

Beyond such ethical rules, the real challenge will be to find technical solutions to ensure compliance with these rules. One of the major issues will be ensuring that people retain control over the use of AI - although it is very difficult to know how it works, as lack of transparency is one of the most difficult issues when working with AI.

Essential measures to protect judicial staff against the pandemic have led to a sharp slowdown in court activity, while litigation has increased due to closure.

The magnitude of this crisis has varied from state to state, and countries that have placed particular emphasis on courtroom processes have been affected more than others, while countries that rely heavily on artificial information and ICT communication technologies, which cover the entire judicial process, have more easily overcome this pandemic and maintained a sustained activity.

Some countries have responded to this global crisis by:

- temporary, mandatory emergency laws that extend deadlines and simplify procedures, sometimes even in violation of fundamental rights defined by the ECHR (for example: extension of detention without the intervention of a judge);
- defining similar priorities in dealing with cases (urgency, summary proceedings, family, preservation of liberties and protection of persons, commercial);
- massive and combined development of dematerialization of procedures, videoconferencing, teleworking and electronic signatures.

The Baltic countries, which have recently turned massively to new information technologies in the field of justice, have withstood the crisis particularly well, while other countries which are just as well equipped but which, like France, have not ensured Continuity of information processing, for example by not allowing judicial office staff to work from home on court applications, has been exposed to significant delays even if the preponderance of the written procedure has been a very favorable factor for these countries.

The combined use of all information and communication techniques has shown the judiciary not only that the combined use of these techniques has been the only way to guarantee, in the event of a pandemic, the normal functioning of the institution in 90% of proceedings, but also that in normal periods, they could improve the efficiency of the judiciary, allowing remote work for those involved in the process.

It is essential to ensure that virtual hearings and proceedings that allow the judge access to provide the same protection of rights. To do that, it is necessary, in particular, to provide full information to litigants and those involved in the process on the measures implemented to avoid violations of fundamental rights, to provide the courts with sufficiently qualified staff to ensure the proper functioning tools, to ensure the protection of privacy and the confidentiality of exchanges between lawyers and clients when using these new forms of communication.

This new vision of the justice services, which is now widely supported, must not, however, lead us to lose sight of the fact that in a limited number of cases, the physical presence of the parties and witnesses must be maintained because of the value added that this presence brings.

The management of expert lists is very heterogeneous in the EU.

- **Belgium:** a national register of experts has been created, it is administered by the Ministry of Justice, but it is only accessible today by magistrates.
- **France:** The lists of judicial experts are managed at the level of the courts of appeal, a national list containing the lists of all courts is available on the website of the Court of Cassation.
- **Italy:** Lists of judicial experts are the responsibility of the courts. There is currently no national list of all these lists. Moreover, these lists are homogeneous.
- **The Netherlands:** several associations manage online directories with accredited legal experts, these directories are regularly used by magistrates, lawyers and parties. In criminal cases, recourse to accredited judicial experts is mandatory.
- **Baltic States:** for experts involved in criminal matters, the bodies under the Ministries of Justice manage the lists of experts. This project was co-financed by the EC.
- **Romania:** judicial experts involved in civil and criminal matters are mainly professional accountants, who are part of the list of the Ministry of Justice.

Solutions are currently being sought to pool, at European level, IT tools with lawyers, notaries, bailiffs, mediators, forensic experts.

EU Directive no.822 / 2018, taken over by GEO no.107 / 2020 and GO no.5 / 2020, known under the acronym DAC6, creates a new framework of fiscal transparency by introducing the **obligation to report cross-border tax optimization** schemes that present certain characteristics.

The choice of methods for determining transfer pricing may differ from one taxpayer to another, and the application of one of the methods is inspired by the characteristics of the transactions used.

"Transfer pricing is a method of pricing goods and services transferred within a multinational or transnational company to reduce tax burdens and maximize profits. It is one of the reasons why globalization has grown and operates in several territories.

This method can be beneficial for companies that want to minimize their overall tax liability. The purpose of transfer pricing is to push profits into territories where either tax rates are more favorable or where there are more gaps to be exploited.

In response to growing public concern about the practice and what many saw as a failure or lack of self-regulation, the OECD introduced its transfer pricing guidelines in 1995.

The guidelines on cross-border, intangible services, cost contribution agreements and advance pricing agreements were subsequently amended in 2010 to provide guidance on which method of transfer pricing would be appropriate in various circumstances". (Source: [ECONOMICS ONLINE](#))

An overview of transfer pricing transactions is illustrated in figure no. 1 as follows:

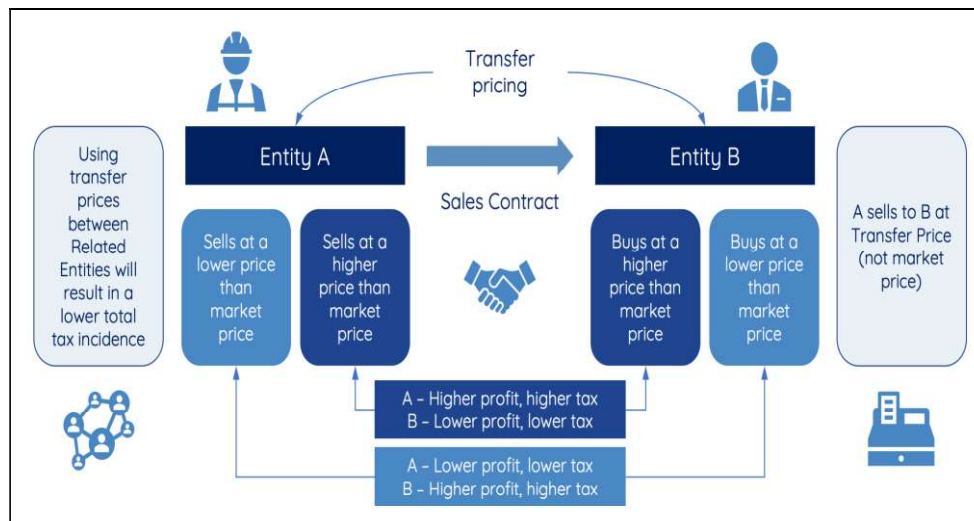


Figure no. 1. Overview of transfer pricing transactions

Source: <https://www.mahanakornpartners.com/the-regulation-of-transfer-pricing-in-thailand/>

"The underlying philosophy is that the prices of transferred resources should reflect how prices could be determined if the multinationals were not connected - which can be summarized as the principle of free competition". (Source: [ECONOMICS ONLINE](#))

It was estimated that the reporting obligation will have a potential deterrent and the information thus obtained will facilitate rapid action to assess the risks of non-compliance and apply tax treatment aimed at eliminating legislative gaps, notifying taxpayers and, where appropriate, initiating tax audits.

The reporting obligation applies to:

- tax consultants, accountants, auditors, lawyers or any other person directly or indirectly involved in the design, marketing, organization or management of tax optimization schemes;
- for taxpayers, in which the professionals from the previous point do not report for any reason.

Artificial intelligence is in a wide range of development and is the main concern of modern society, related to digital transformation. This is the result of fundamental changes in the way literal documentation processes work. Sometimes we have to move away from the long processes on which the old procedures were built in favor of relatively new practices, which are still undefined.

Some civil lawsuits, in order to be resolved, require the analyze of documentary materials by one or more experts, appointed by the court. The laborious activity they carry out is completed by concluding a forensic report.

For the elaboration of the paper, the most important stage is the gathering of evidence, based on which the conclusions are based. The study of documents is the premise and the necessary and mandatory condition for the preparation of the accounting expertise

report, duly substantiated, based on supporting documents and accounting records, and not on presumptions, statements of the parties or witnesses.

Regardless of their professional training and experience, judges cannot have knowledge in all areas of activity for which there are pending cases, which is why the services of an expert are needed to clarify certain issues, the role of judges being fair resolution of cases.

The judge must assess the probative force of the forensic accounting expertise according to free will based on law and conscience, being able to admit or reject the conclusions of the forensic accounting expertise according to its scientific level and quality and correlation with other evidence administered in cases subject to investigation and trial.

Because the accounting expertise is a scientific and professional work and due to the deontology of the accounting expert, the judicial accounting expertise offers the judicial body a solid evidence for prosecuting the persons guilty of violating the law, disregarding financial discipline and damage to assets.

The forensic examination has strict objectives, approved by the court, and the chartered accountant must respond strictly to them, without expressing his own considerations. The answers of the accounting specialist must be concise and use the right body.

For the purposes of the court, the answers of the chartered accountant must be based on documents gathered as evidence and attesting to events that are the subject of accounting recognitions, evaluations, classifications, and presentations. In forensic examinations, the chartered accountant is a participant in the trial and contributes to establishing the truth and making decisions by law enforcement agencies.

A distinctive feature of the accounting profession is the assumption of responsibility to act in the public interest. The appreciation of responsibility, as in any other field of human activity, is relative. The responsibility with which an accounting expertise was performed may be done differently by the accounting expert who complies with the free will.

If there are doubts about the responsibility with which the requested accounting expertise was performed, the parties involved in the accounting expertise have their own remedies, namely at the first term after the submission of the expertise report, the parties will show their objections to it, and the court may order, even *ex officio*, either the completion of the expertise or a new expertise, according to art. 338 para. (2) of the New Code of Civil Procedure.**

The figure no. 2 exemplifies the process that a forensic accountant must carry out to complete the expert report in the event of his or her appointment by the court.

** Article 338 para. (2) of the New Code of Civil Procedure “a new accounting expertise will have to be requested motivated, under the sanction of forfeiture, at the first term after the submission of the report, and if objections were formulated, at the term immediately following the submission of the response to objections or, as the case may be, of the supplementary report”.

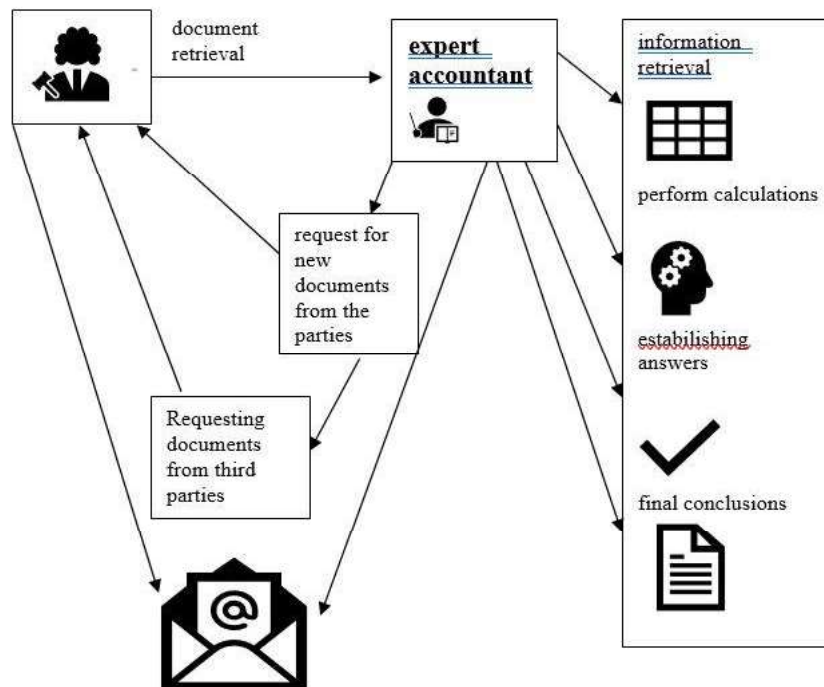


Figure no. 2. Carrying out the process of forensic accounting expertise

Source: authors' conception

It is possible that in certain cases, the chartered accountant may be unable to prepare an accounting report due to the lack of supporting documents or accounting records to certify the events and transactions subject to appraisal. In such cases, before the impossibility report is drawn up, the expert must notify the body that ordered the expertise, regarding the lack of documentary material and that he is in the situation of drawing up this report of impossibility to perform the accounting expertise, and the court will order consequently.

All these aspects are found in the working norms and represent a logical succession of the stages to elaborate the judicial accounting expertise. These rules are complemented by those of professional behavior in technical and professional terms.

Proving material truth in matters entrusted to the resolution of justice requires careful research of all sources of information (generically called evidence), among them, accounting data and other forms of evidence (supporting documents, technical-operational records) have a great importance.

The phenomenon is as motivating as possible, as accounting reflects economic operations based on strictly regulated rules and can be perfected whenever necessary. The accounting documents thus acquire the character of pre-constituted evidence, ie they are drawn up before the litigation is initiated, but they are not directly related to the possibility of their use as evidence.

Judicial accounting expertise is at the border between the field of accounting and the field of law, having the function of a proof of a special invoice, which contributes decisively to establishing the truth in the conflicts reached in the judicial phase.

2. Research methodology

The research methodology used is based on qualitative methods, quantitative methods and the review of the literature, using an exhaustive analysis of the reports dealing with the subject.

The working procedure was analyzed starting from the appointment of the forensic accounting expert until the submission of the forensic accounting expertise report, besides approaching the problem from a theoretical point of view by studying the Professional Standard no. 35, analyzing the specialized articles found in the database on Google Scholar, as well as interviews with professionals in the field.

The implementation methodology puts into practice, the network response with the help of AI. For this we need a normative framework in the field of digital transformation to achieve and implement public strategies and policies in the field of digital transformation and the information society.

3. Results and discussion

The purpose of digitizing the accounting expertise activity is to increase the trust in experts, in the litigation and requires involvement and cooperation with other related professions in the implementation of new technologies. The use of digital systems facilitates and improves access to justice.

Digital tools can contribute to a better structuring of proceedings and to the automation and acceleration of the management of standardized and uniform tasks, thus increasing the effectiveness and efficiency of proceedings before the courts.

In this pandemic, some entities have functioned normally, in about 90% of cases, as in normal times, with the help of high-tech systems in the economy and have concluded that extended digitization could improve efficiency, allowing remote work of those involved in the process, from any device and in complete safety.

The forensic accounting expertise has a decisive role in establishing the truth, in making decisions, it brings before the court, the report of an authorized person, specialized in the field of accounting, helping the perpetrators of justice to make a fair decision.

We pursue the development of integrated thinking, globalization, digital technology, the realization of works of high professionalism to be validated, the implementation of the interaction system in the digital environment and the recognition of the profession of forensic accountant.

The results of the empirical research validate the hypothesis through analyzes and comparisons and encourage, among other things, the promotion of the use of video conferencing, strengthening the procedural rights of parties and access to justice, promoting and storing data related to third party cases and not least reducing the incidence of corruption.

With the new transformation, new things can appear due to legislative changes, macroeconomic changes, recognition or not of the necessity of this profession, the importance for clarifying the cases subject to trial, etc.

To have knowledge in a field means to know, be aware of, to be informed, but having notions, ideas, information is not enough if their use is not rational, requiring informing those for whom they were intended, in a clearly, concisely and only if they were well known.

The ability to decide on a thing, based on a deep knowledge means competence, and the accounting specialist must show constant training and respond to the signals of development, to be effective for himself and society.

For each specialist during his activity, this is a personal challenge, which leads to development, if it is intentional or to regress, if it is abandoned.

I also believe that each expert must occupy the place he has earned in the profession and carry out a rhythmic, dynamic, balanced activity, for a recognition at the level of the society in which he lives, of the profession in which he carries out his activity.

The involvement of experts in the digitization process should be total, the work must be done with maximum responsibility, thus contributing to increasing the prestige of the profession and the general interest of the society in which we live.

Being at the beginning of the road in the digital age, I propose that all those who have managed to learn the secrets of this performance and have a modern experience to turn their eyes to those who are now trying to enter the understanding and practice of electronic format and who make considerable efforts to modernize this path to digitization.

Conclusions

The importance of implementing the digitization of forensic accounting expertise, recognizing the contribution of the expert and increasing confidence in the expertise performed, providing important help in decision making by the judiciary.

In the context of insufficient legislation in the digital field, the necessary measures needed to build a successful digital economy are a challenge for accounting specialists in conducting expertise.

Digital transformation is not an easy process, so it is necessary to plan the steps as early as possible, investing material and financial resources consisting in the implementation of new modern technologies.

Also, the implementation of the new systems should be a transition from traditional to modern, interoperable and invulnerable to cyber-attacks, efficient, stable, fast and compatible with the technological changes that occur every day.

Making an association of the conclusions obtained with those analyzed in other studies in the literature, for the design of this article, we find the same common goal of hope in a digital future, which will give a boost to the development of accounting!

In this sense, we rely on our own resources, on research and development and on the implementation of new technologies, through investments made in fiscal facilities and European funding provided through digitization financing programs.

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