

**dr Aleksandra Klich**

Institute of Legal Studies Faculty of Law and Administration  
University of Szczecin  
ul. Narutowicza 17a, 70-240 Szczecin  
Poland  
e-mail: aleksandra.klich@usz.edu.pl  
ORCID: 0000-0002-2931-712X

**Operation of public authorities in the time of COVID-19 in Poland –  
principles of electronic communication with the party and participants to proceedings  
from the perspective of the activity of the Managing Authority of the Regional  
Operational Program**

**Abstract:** On 14 March 2020 the state of epidemic threat was introduced in Poland applicable until 20 March 2020 when the state of epidemic was introduced in the territory of the Republic of Poland. The situation associated with the growing number of SARS-CoV-2 infections forced ongoing monitoring of the epidemic situation, which entailed an introduction of a number of restrictions and solutions intended to isolate the infected persons on the one hand, and to minimize the risk of development of an epidemic in Poland on the other. Activity of the Polish legislator is also essential, which tried to introduce solutions that would correspond with current expectations and needs. In this paper, the author points to the issues of communication with a public authority by specific reflections on the principles of serving documents on beneficiaries of EU programs under which they were awarded funding for their implementation. The author points to the dynamics of the legislator's work in this respect by analyzing the rules for serving documents by a public authority on beneficiaries who are public entities and those who are not.

**Key words:** electronic communication, serving documents, public authority, administrative proceedings

## **1. Introductory issues**

The situation associated with an epidemic threat caused by SARS-CoV-2 has affected almost all spheres of every-day functioning due to its global character. This also applies to the operation of public authorities, which are in this time obliged under the provisions of applicable law (including the Constitution of Poland) to act with regard to matters (not only administrative) entrusted in them, including maintaining continuity (Karciaz, 2020, Lex/el). The threat concerning the development of the epidemic escalated in Poland in the first half of March 2020.

A growing number of infections, as well as deaths, triggered anxiety manifested i.a. in the Polish government's taking a decision on specific isolation of society, which also involved laying down numerous rules that intended to ensure safety and to minimize the possibility of the spread of infections. Undoubtedly, the coronavirus pandemic (COVID-19) is a serious challenge for all societies. In order to stop the spread of the virus, governments of many countries have adopted policies intended to regulate human behavior and their social habits. In particular, citizens throughout the world are strongly encouraged to get involved in the so-called 'social distancing' (Pedersen M. J., Favero N., 2020, p. 1). This term is also known in international literature as 'physical distancing' (Briscese et al., 2020; Merelli 2020, Paun et al. 2020). It is indisputable that activities that aim to create new unknown rules of functioning in society were not sufficient. As a consequence, it became necessary for the legislator to respond to the transformations on an on-going basis, which was to prevent a state of affairs in which regulations would not keep up with the reality. Responding to COVID-19 is an unprecedented challenge for public sector practitioners and addressing those challenges requires knowledge about the problems public sector workers face (Schuster, Ch., 2020). Under the Regulation of the Minister of Health of 13 March 2020 on announcing the state of epidemic threat on the territory of the Republic of Poland, the state of epidemic threat was announced throughout the country on 14 March 2020 due to SARS-CoV-2 infections. In turn, by the Regulation of the Minister of Health of 20 March 2020 on announcing the state of epidemic on the territory of the Republic of Poland, the state of epidemic throughout the country was announced until further notice. On the same day, by the Regulation of the Minister of Health of the same date, the state of a pandemic threat was announced which has not been cancelled to date.

Legislative changes first forced by the state of epidemic threat and as a consequence the state of epidemic covered a wide range of issues. As the virus spread, representatives of governments

throughout the world introduced significant restrictions i.a. on the movement of people, the functioning of services and rules on physical distancing. The importance of services which use modern technological solutions increased. In the current reality, technology has a profound effect on citizens' daily lives and ensures their access to information and communication i.a. with competent authorities (Digital Technologies, 2020, p. 2). It needs to be emphasized, that research on the use of information technology in order to improve the efficiency of and enhancing trust in public administration was the subject of analysis long before the development of the pandemic caused by COVID-19, which is testimony to the significance of the so-called informatization of the public services sector too (Ishchenko 2019, Petroye 2019, Korovyak 2018). In the practice of the so-called professional attorneys-in-fact representing their clients, the most essential changes which have affected the to-date model of operation concerned the manner of organization and conducting court proceedings, both before administrative courts and common courts of law. These changes have also covered the manner of operation of public authorities. Given the possibility of obtaining funding under European funds, this paper presents the rules and regulations of conducting administrative proceedings in cases which deal with the implementation of programs under the cohesion policy financed in the 2014-2020 perspective. From the point of view of this study the scope of freedom of a public authority in contact with entities participating in the implementation of these programs, which was moved to virtual space, is especially important. In accordance with applicable laws, the coordination of implementation of operational programs in Poland is the responsibility of the minister competent for regional development who performs the tasks of a Member State. In turn, their implementation, including preparation of draft development strategies of a voivodship (regional level of local government) and of other development strategies, regional operation programs, programs that serve the implementation of partnership agreements for a cohesion policy and their execution lies with the governing body of a given voivodship (called the managing

authority of the regional operational program – hereinafter: the managing authority)<sup>1</sup>. Persons seeking financial support for projects carried out under a given Project Priority Axis, described in detail in an application for funding for project implementation, found themselves in a rather negative position due to the epidemic situation. The implementation of provisions included in a project financing agreement made with a governing body of a given voivodship was often problematic, which is naturally associated with obstacles that have their source both in terms of moving on to subsequent stages of project implementation (e.g. due to an absence of real possibilities of undertaking activities aiming to file a final application for payment) and in pending administrative proceedings, e.g. for returning awarded funds.

Conducting administrative proceedings in the time of a coronavirus (COVID-19) epidemic causes a lot of problems which all public authorities who apply the provisions of the Code of administrative procedure and their employees must face. A lot of authorities are not only tackling staff shortages (caused either by sickness or the need to look after their children while schools are closed) but also need to limit, if not completely then at least to the minimum, contact in the authority (authority employee) - party of administrative proceedings relation (Karciaz, 2020, Lex/el). The aim of this paper is to point out practical problems concerning the rules of organization and work of public authorities in Poland in the time of a state of epidemic threat and the state of epidemic caused by COVID-19. The basis of reflections includes the most important regulations of the following acts:

1) Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (Dz. U. (Journal of Laws) of Laws) of 2020 item 374 as amended, hereinafter: Shield);

---

<sup>1</sup> A voivodship is a unit of administrative division of the highest level in Poland, since 1990 - a unit of basic territorial division of administration, since 1999 - also a local government unit.

- 2) Act of 31 March 2020 on amending the act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts (Dz. U. (Journal of Laws) of 2020 item 568 as amended, hereinafter: Shield2);
- 3) Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Dz. U. (Journal of Laws) of 2020 item 695, hereinafter: Shield3); and
- 4) Act of 14 May 2020 amending some acts in the field of protective activities in connection with the spread of the SARS-CoV-2 virus, (Dz. U. (Journal of Laws) of 2020 item 875, hereinafter: Shield4).

The issue that has triggered most doubts since the first days after the announcement of the state of epidemic threat in Poland and then the state of epidemic included the way in which beneficiaries can submit electronic documents to the authority in order for this action to be effective in administrative proceedings conducted by the managing authority. It was doubtful whether in pending administrative proceedings in which that far the authority had not served documents to the public entity's electronic mailbox (ePUAP), but had been doing so in a traditional manner (through the Polish postal operator), the beneficiary should be informed (and how) on the change of the manner of serving documents (which now were to be served with the use of ePUAP). For this reason, as regards communication with public entities, the issue that had to be settled was whether the managing authority may oblige the party initiating the proceedings (e.g. in the event of filing an application for a case to be re-examined or for granting a relief) in a traditional form to submit documents electronically. The next area of doubts concerned authenticating documents in the beneficiary's communication with a public authority, that is both the possibility to send correspondence by email in the form of a scanned document which has been signed by hand (if the entity does not have a qualified electronic

signature) upon meeting one of the requirements enumerated in Article 39<sup>1</sup> § 1 of the Code of Administrative Procedure (hereinafter CAP), (Dz. U. (Journal of Laws) of 2020 item 256), and in the matter of signing documents by the authority by using a certified electronic signature where the beneficiary does not have the possibility to verify its authenticity because they do not have relevant software. The said doubts serve as an example. Their source was the managing authority's striving to encourage beneficiaries to submit correspondence through the ePUAP platform or to contact the authority by means of electronic mail, as well as to enhance the possibility of using such communication channels in pending administrative proceedings. Due to absence of guidelines in this area these doubts intensified in the first days after the announcement of the state of epidemic threat and then epidemic, which is extremely crucial given the broad scale of using EU funds.

## **2. The authority's electronic communication with parties to the proceedings**

The requirements for serving documents electronically were formulated by the legislator in Article 39<sup>1</sup> CAP. Pursuant to this provision, service of documents shall be effected by means of electronic communication within the meaning of Article 2 subsection 5 of the Act on Provision of Services by Electronic Means (Journal of Laws of 2020 item 344), if a party to or other participant in the proceedings shall satisfy one of the conditions specified by the legislator.

Means of electronic communication shall be understood as technical solutions, including ICT devices and compatible software tools which allow for individual remote communication with the use of data transmission between ICT systems, in particular electronic mail. The public administration authority may request that a party to or other participant in the proceedings expresses his consent for documents to be served in the electronic form prescribed in other

categories of individual matters specified and disposed of by this authority. The public administration authority may apply for the consent specified in § 1 subsection 3 or § 1a by sending a relevant request by means of electronic communication to a party to or other participant in the proceedings to his email address. Article 46 § 3–8 shall not apply to this application, discussed later. The legislator conditions the effectiveness of service on confirmation of receipt of the electronic document in the manner specified in Article 46 § 4 subsection 3 CAP, that is in compliance with the instruction from the public administration authority on the manner of receiving the documents, especially the manner of identification at the indicated electronic address in the public administration authority's ICT system and according to the information about the requirement to sign the official confirmation of receipt as specified. Admittedly, effectiveness of serving pleadings in the form of electronic documents is conditioned on confirming receipt of such pleadings in the manner referred to in Article 46 § 4 subsection 3 CAP. Whereas the possibility for pleadings to be served in the form of electronic documents to the electronic address of the addressee is conditioned on sending a notice to the electronic address of the addressee containing: a) an indication that the addressee may receive the document in electronic form, b) an indication of an electronic address which may be used by the addressee to download the document and confirm its receipt; c) an instruction in relation to the manner of receipt of the document, in particular the manner of identification at the indicated electronic address in the ICT system of the public administration authority and information concerning the requirement to sign the official confirmation of receipt as specified.

The requirement of signing an official confirmation of receipt 'as specified' means the requirement of placing a qualified electronic signature or a signature confirmed by the ePUAP

trusted profile. If the document has not been received in electronic form as specified in § 4 subsection 3, the public administration authority shall, after 7 days of the day when the notice was sent, send another notice to enable the receipt of the document, where it needs to be borne in mind that such a notice may be automatically created and sent by the authority's ICT system and receipt of this notice is not confirmed. According to Article 46 § 6, if the document has not been received, service shall be deemed effective upon the expiry of 14 days of the date when the first notice was sent. If a document in the electronic form prescribed has been deemed collected, the public administration authority is obliged to allow the addressee to access the following in the ICT system of the authority:

- 1) the electronic document for a period of at least 3 months of the date when the electronic document was deemed collected;
- 2) information regarding the date when the document was deemed collected; and
- 3) information on dates when notices specified in § 4 and 5 were sent.

If a party to the proceedings or another participant in the proceedings is a public entity which is obligated to provide and maintain an electronic registry box service shall be made via the electronic registry box of such entity and the provisions of the aforementioned Article 39<sup>1</sup> CAP do not apply.

### **3. Rules for serving documents on non-public entities**

First, one needs to point to the fact that the legislator specified in Article 39<sup>1</sup> § 1 CAP in a very restrictive and firm way the principles and possibilities of public administration authorities' using the measure of serving documents by means of electronic communication. If the premises of Article 39<sup>1</sup> § 1–1a CAP are met, all documents in administrative proceedings which are



addressed to any participant of these proceedings can be served by using means of electronic communication, which, pursuant to Article 2 subsection 5 of the Act on Provision of Services by Electronic Means includes technical solutions, including ICT devices and their corresponding software tools, which allow individual remote communication by using data transmission between ICT systems and in particular electronic mail. The Polish legislator directly points out that in the case of participants to proceedings other than a public entity serving documents by means of electronic communication is dependent on the consent of the addressee of the authority's document. This consent may be revealed in three ways, that is by:

- 1) clear action expressed in submitting a request in the form of an electronic document via the electronic registry box of the public authority (hereinafter: authority);
- 2) requesting at the authority for such service along with providing the authority with an electronic address; and
- 3) expressing consent for documents to be served by means of electronic communication along with providing the authority with their electronic address.

In consequence we may assume that in the light of regulations applicable on the ground of the Polish legal order, serving documents in administrative proceedings by the authority by means of electronic communication in the first period of the state of epidemic threat and epidemic fundamentally was possible when two conditions were met, that is consent of the participant to the proceedings and the authority being equipped with an ICT system that ensures operation of service of electronic documents in the scope that allows identification of system users (i.e. addressees of documents) by using a trusted signature, information verified by means of a qualified certificate of an electronic signature or other technologies applied in the system used by the authority. The legislator expressly distinguishes between two situations, since the participant's acceptance may - apart from a clear submission of a request in the form of an

electronic document - take the form of him requesting at the authority or him expressing his consent for the authority. The difference between these two forms involves the fact that in case of a request the initiative lies with the proceedings' participant, whereas 'expressing content' happens as a result of a summon addressed to him by the authority which conducts the proceedings (Sibiga G., 2018, p. 579). A provision formulated like this excludes the possibility of 'coercing' the proceedings' participant to use the possibility of serving documents by means of electronic communication. A reverse situation would be inadmissible, that is if the authority served a decision in the form of an electronic document despite the fact that the party had not requested this and consent for it had not been obtained. Such a service would be ineffective because one could not acknowledge that the party had the opportunity to learn its content (II SA/Kr 85/14).

If service of documents by means of electronic communication is to occur on the initiative of the authority, it is necessary to ask the participant to give his consent for such a solution. The subject of the authority's request may involve a question about consent to have documents served by means of electronic communication in a certain case or other categories of individual cases, specified by the authority, dealt with by the authority. The second case involves obtaining consent for this form of service also in connection with other cases which may be conducted in the future. The wording of Article 39<sup>1</sup> CAP does not exclude the possibility of the authority applying to the participant to express his consent for documents in these proceedings to be served by means of electronic communication at all stages of proceedings. As a rule, the authority's applying for consent should have a written form and be served in a manner specific for this form. In Article 39<sup>1</sup> § 1b CAP the legislator provides for a possibility to apply for the consent by means of electronic communication to the email address of the party or other participant of the proceedings. This is possible when the authority knows the email address of

a given person. However, what is significant is that principles of effective service of an electronic document laid down by the legislator in Article 46 § 3–8 CAP do not apply in such a situation. The legislator directly excludes application of these provisions in Article 39<sup>1</sup> § 1c CAP, which means that the authority's mere request for the consent does not have to have the form of an electronic document yet. This solution surely encourages simplification and acceleration of the procedure of sending the request to the participant and in consequence it should allow for a quicker response from the participant in terms of providing answers. This simplification concerns only the authority's service of its request on the participant but not the submission of a document with the participant's declaration to the authority.

The legislator does not introduce a time limit on applying to the participant of the proceedings to express his consent for service of documents by means of electronic communication. This means, that *de facto* such an application may be sent at any stage of administrative proceedings. The addressee of the authority's application has the possibility to give his consent or refuse to give his consent in the analyzed subject matter. The consent must be expressed in a way that does not raise doubts and must be clear. However, it needs to be emphasized that failure to take a stand by the addressee of the authority's application will be equal in legal consequences with the absence of the necessary consent. It is not possible to accept the construct of the so-called tacit consent. Therefore, if the participant of the proceedings does not give his express consent which does not raise doubts, then any presumptions by the authority about expression of consent for service by means of electronic communication is inadmissible. Due to the fact that the authority's application is a type of a summon, provisions of Article 54 CAP will apply to it, where elements of summons have been specified. Doubts may only be raised by the question of specifying the time limit within which the request should be complied with. However, taking into account the fact that the consent for electronic service may be given at any stage of pending

proceedings, it is impossible to restrict the right to submitting such a declaration with a time limit. As has been pointed out, where the summoned participant to the proceedings remains silent, as well as in the event of an express refusal, it will be reasonable to serve a pleading (i.e. document in a paper form) in a manner and according to rules laid down in Article 39 CAP.

Having regard to Article 8 CAP, the authority is obliged to instruct the participant about what shall be understood as means of electronic communication in order not to give him a wrong impression that communication e.g. by sending an email to the authority with scanned documents attached will be effective. In the light of applicable laws one cannot assume that sending a scan of a signed document means that rules on electronic service referred to in Article 39<sup>1</sup> CAP have been met. A scan must be identified with an electronic copy of a paper document, whereas applicable laws do not provide for the possibility to authenticate such a copy by a public authority. Without a doubt, when a scanned document is sent through, in principle it will not have a secure electronic signature or a signature placed by hand, which is contrary to electronic service discussed in Article 39<sup>1</sup> CAP.

Article 14 CAP is essential for this analysis, because its wording clearly shows that the authority's correspondence with parties to administrative proceedings does not have to proceed as traditional written correspondence. This provision makes it possible to handle administrative matters not only in a traditional written form or in an electronic form which is its equivalent value, but also in other less formalized ways. This provision lays down that matters may be disposed of orally, by phone, by means of electronic communication in the meaning of Article 2 point 5 of the Act on Provision of Services by Electronic Means or by other means of communication, if it is in the interest of the party and no provision of law provides otherwise. The contents and essential reasons for such disposal shall be entered in the records by way of

minutes or annotation signed by the party. Legal scholars and commentators express a view according to which taking into account the currently announced state of epidemic it is worth considering using them in some cases, especially in minor administrative matters, e.g. by sending rulings to the email address of the party upon obtaining their consent for such a way of communication and with regard to provisions of Article 46 § 5 and 6 CAP. (Karciaz M., 2020, Lex/el).

The legislator did not expressly predict in the initial weeks of announcing the state of epidemic threat and the state of epidemic in Poland the possibility of deeming a scanned document sent by a party which is not a public entity as effective service. No regulations aiming to deformalize contact through bringing it down to communication using electronic mail were introduced either. For this reason, taking into account the wording of Article 7a and Article 81a CAP, it is reasonable to settle any doubts to the benefit of the party of administrative proceedings. Observation of the authority's actions in this scope makes it possible to state that the authority indeed acted so. Legitimization of such action is also included in Article 7a CAP, in which the legislator introduced a specific principle of friendly interpretation of regulations in order to reduce the risk of burdening the party with negative effects of unclear provisions.

## **5. Rules for serving documents electronically on public entities**

The legislator introduced a general obligation to use the measure of electronic service via an electronic registry box which applies when the party or other participant of proceedings is a public entity obliged to make available and operate an electronic registry box under Article 16 paragraph 1a of the Act on Computerization of Operations of Entities Performing Public Tasks (hereinafter: Computerization Act). For this reason, where the party of administrative

proceedings is an entity referred to in Article 2 paragraph 1 of the Computerization Act, it is obliged to make available and operate an electronic registry box (hereinafter: ERB). The legislator used an enumeration in this provision which clearly specifies entities classified in the category of public entities on the basis of the criterion of performing public tasks. It also needs to be highlighted that the legislator excluded from this category the entities referred to in Article 2 paragraphs 3 and 4 of the Computerization Act, which is why the manner of serving documents specified in Article 39<sup>2</sup> CAP does not apply to them. Serving electronic documents on these entities will proceed on the basis of premises specified in Article 39<sup>1</sup> CAP, laid down for addressees of documents who are not public entities.

The wording of Article 39<sup>2</sup> CAP may determine the need to serve documents on public entities to their ERB's address. It is possible to conclude that this regulation is *lex specialis* vis-a-vis principles of service specified in Article 39 CAP. However, one needs to refer here to the principle expressed in Article 14 § 1 CAP, which shows that the legislator adopted two equal ways of the authority serving its documents, i.e. serving documents in the written form and serving an electronic document by means of electronic communication. Each of these ways results in effective service of a document, i.e. service which allows the addressee to learn the content of the document in the proceedings (II SA/Wr 420/13<sup>2</sup>). The wording of Article 39<sup>2</sup> CAP provokes formulation of a thesis according to which it is the authority which conducts the proceedings that has the right to choose how to serve documents on a public entity, which especially substantiates the postulate of implementing the principle of quick and simple proceedings. The said principle demonstrates that the authority, having different possibilities of action, first chooses those which implement this principle specified in Article 12 CAP to a greater degree. (Sibiga G., 2018, p. 582). Undoubtedly, electronic communication best and

---

<sup>2</sup>Judgement of the Voivodship Administrative Court in Wrocław of 18 September 2013, II SA/Wr 420/13, Legalis.

most effectively allows implementation of the principle of quick and simple proceedings. This is why if the authority, for factual or legal reasons, deems it more reasonable to serve documents in a traditional manner, Article 39<sup>2</sup> CAP will not be an obstacle there. It needs to be emphasized that the wording of this regulation, regardless of whether service to the electronic registry box is treated obligatorily or optionally, does not facilitate questioning the validity of serving a document in the traditional form if its addressee has learnt the content of the document served in such a way. Regulations concerning electronic service do not exclude the principle of the written form understood as a possibility to have the matter dealt with also in a form other than an electronic document (II SA/Wr 420/14, II SA/Wr 420/13<sup>3</sup>).

Where previous correspondence with a public entity has been done in the traditional form, i.e. service to the electronic registry box has not been employed, these actions naturally remain in force and are effective. However, it needs to be postulated, especially given the drafted amendments which will be addressed in the last part of the study, that public entities should carry out contact with the authority using the ERB. For this reason, in my opinion, the authority's contact with public entities should involve transferring all communication in this regard to electronic circulation. Effectiveness of service to the electronic registry box of a public entity will be established in accordance with the rules applicable to serving documents by means of electronic communication. Reflections on the moment in which electronic communication with stakeholders who are not public entities can be initiated remain valid in this regard. It seems that also in this case (that is where a public entity obliged to use an ERB is a party to proceedings), the legislator does not introduce a time limit on applying to the participant for his consent to have documents served by means of electronic communication. This means, that *de*

---

<sup>3</sup> Judgement of the Voivodship Administrative Court in Wrocław of 8 September 2013, II SA/Wr 420/14, Legalis; judgement of the Voivodship Administrative Court in Wrocław of 18 September 2013, II SA/Wr 420/13, Legalis.

*facto* such an application may be sent at any stage of administrative proceedings. This is confirmed by the content of Article 63 § 5 subsection 1 CAP, which is a certain guarantee that allows the proceedings' participant to make a suitable choice of the manner of communication with the authority at each stage of the proceedings.

## **6. Serving a print-out of a document**

According to Article 14 of Shield2, Article 39<sup>3</sup> was added after Article 39<sup>2</sup> in the Code of Administrative Procedure. From 18 April 2020, i.e. from the day of applicability of the discussed provision, each document issued by the authority in the course of administrative proceedings may be in the form of an electronic document. However, it is essential that the manner of serving such a document will be different where there are premises laid down by the legislator in Article 39<sup>1</sup> § 1 CAP (in such a case a document is served by means of electronic communication), and it will be different where such premises do not occur or where the party or other participant has resigned from service of documents by means of electronic communication (Jaskułowska A., Rypina M., Wierzbowski M., 2020, p. 9). The legislator constitutes in the newly added Article 39<sup>3</sup> CAP a solution unknown thus far to the Polish legislation involving a manner of serving documents issued in the course of the proceedings in the form of an electronic document different to service by means of electronic communication. It is service in a traditional way of a print-out of a document issued in the form of an electronic document.

In accordance with Article 39<sup>3</sup> § 2 CAP, service of a print-out of a document is possible in the case of documents issued by a public authority in the form of an electronic document using an ICT system, which has a qualified electronic signature, trusted signature or a personal signature,



an advanced electronic seal or a qualified seal appended to it. Service may involve serving a print-out of a document obtained from this system which reflects the content of this document. However, this is on the condition that the party or other participant to the proceedings have not submitted an application in the form of an electronic document via the electronic registry box of the public administration authority, they have not requested at the public administration authority that such service be made and have not given their consent for serving documents in such a way. The document's obligatory elements include information that the document was issued in the form of an electronic document and was signed by an electronic signature, a trusted signature or a personal signature, providing the first and second name and the post of a person who signed it, or that the document was appended with an advanced electronic seal or a qualified electronic seal, document's ID assigned by the ICT system through which the document was issued. Optionally, the print-out of the document may include a mechanically recreated signature of the person who signed it.

The legislator legalized the authority's serving a print-out of a document obtained from the system that reflects the content of the document issued by the authority in the form of an electronic document. However, it is essential for the print-out to come from the ICT system with the use of which the authority issued the document in the form of an electronic document and must reflect the content of this document. The content of the print-out must be identical to the content of the electronic document (Jaskułowska A., Rypina M., Wierzbowski M., 2020, p. 9). The possibility of serving print-outs concerns situations in which both the party, by its action, and the authority did not strive to be able to implement electronic service under Article 39<sup>1</sup> CAP. The discussed regulation will apply also in the case of service to public entities, though in these cases the rule should be serving to the electronic registry box, pursuant to

Article 39<sup>2</sup> CAP. In any case, a print-out of a document should be proof to what has been stated in the document issued in the electronic form.

## 8. Summary

Technology is crucial for the protection of the community, which involves the fact that digital tools must ensure protection of citizens and must serve to level out social and economic divisions and to promote necessary transformations that aim to implement the set objectives. Moreover, local and regional authorities, when creating new legislative solutions, must act in a way that prevents potential digital exclusion, as a result of which unequal treatment of citizens might take place. In order to bring local administration and public services closer to the citizens, and also in order to facilitate communication in all directions, it became necessary to accelerate the process of digitalization as part of internal and external structures and processes (Digital Technologies, 2020, p. 3, p. 14). Globalization, the growth of international competition, technological and information changes undoubtedly cause the transformation of forms and concepts of society. In consequence, public administration is becoming flexible, decentralized, market-based, and democratic (Novachenko T. V. et al., 2020, p. 375).

Referring to the subject-matter of the analysis and the situations of the beneficiaries who are not public entities, first and foremost one needs to point to the absence of possibility of ‘forcing them’ to use electronic service. In order for service referred to in Article 39<sup>1</sup> CAP to be possible, it is necessary that the beneficiary should act clearly by submitting a request in the form of an electronic document or that he should give his consent for such a solution. The second requirement concerns in particular situations where serving documents by means of electronic communication is to proceed on the initiative of the authority.

The authority writing to the beneficiary under Article 39<sup>1</sup> CAP should, as has been demonstrated, instruct him on the consequences of expressing consent to electronic service (including also in terms of the need to have appropriate software). Where the beneficiary gives his consent to electronic service, the burden of directing and receiving documents to and from the authority lies on him. It also needs to be remembered that failure to take a stand by the addressee of the authority's application will be equal in legal consequences with the absence of the necessary consent. It is not possible to accept the construct of the so-called tacit consent. Therefore, if the participant of the proceedings does not give his express consent which does not raise doubts, then any presumptions by the authority about expression of consent for service by means of electronic communication is inadmissible.

When analyzing the matter in question, one needs to see a distinct absence of unambiguous regulations that allow qualification of a scanned document signed by hand and sent by email in the category of a document served by electronic means, using means of electronic communication referred to in Article 39<sup>1</sup> CAP. Taking into account the wording of Article 7a CAP or 81a CAP, documentation aiming to eliminate the possibility of abolishing the presumption of effective service should be produced extremely carefully. One needs to remember that not each beneficiary uses Outlook, which makes it impossible to assume unequivocally that the function of read receipt will be sufficient to assume efficiency of service. Naturally, as much as functionality of a given electronic mail allows such a formula, it is an additional aspect which determines minimization of the risk of abolishing the presumption of effective service. One needs to approach this form of communication with great caution due to the administrative court's potential questioning of such a formula of serving the authority's correspondence. It seems that in such a case a system of serving documentation in a way that

eliminates the likelihood of leaving given post ‘without a response’ (e.g. should a given employee of the authority be absent) should be created. For this reason, it is recommended that solutions guaranteeing and facilitating effective communication with the authority, regardless of unexpected situations or absence of an employee of the authority, be drafted.

Undoubtedly, the state of epidemic threat and the applicable state of epidemic enforce introduction of solutions that affect negatively the correctness of pending administrative proceedings as little as possible, which is evidenced by, for instance, the wording of Article 39<sup>3</sup> CAP or by promotion of the so-called hybrid service. For this reason, the potential risk of questioning this type of communication with the authority should not take place, though it is not possible to eliminate this risk unequivocally to a degree that guarantees certainty of effectiveness of such a solution. On the other hand, referring to beneficiaries who are public entities, the rule should be to serve documents to the electronic registry box. If so far communication has taken place in a mixed manner, or only in the traditional way, there are no reasons not to serve documents to the electronic registry box as the main form of service. In such cases the legislator assumes the electronic way as a rule, and at the same time, in the case of traditional service, it does not limit the time in which it is possible to carry out service under Article 39<sup>2</sup> CAP. Undoubtedly, the authority’s contact with public entities should involve transferring all communication in this regard to electronic circulation.

### **References:**

1. Act of 14 June 1960 - Code of Administrative Procedure, consolidated text, Dz. U. (Journal of Laws) of 2020 item 256, hereinafter: CAP.
2. Act of 18 July 2002 on Provision of Services by Electronic Means, consolidated text, Dz. U. (Journal of Laws) of 2020 item 344.

3. Briscese, G., Lacetera, N., Macis, N., and Tonin, M., 'Compliance with COVID-19 Social-Distancing Measures in Italy: The Role of Expectations and Duration', [Online] at <https://www.nber.org/papers/w26916>, accessed July 25<sup>th</sup>, 2020.
4. 'Digital Technologies and the COVID19 pandemic', in: Live Learning Experience: Beyond the immediate response to the outbreak of COVID-19, [Online] at [https://www.uclg.org/sites/default/files/eng\\_briefing\\_technology\\_final\\_x.pdf](https://www.uclg.org/sites/default/files/eng_briefing_technology_final_x.pdf), accessed July 26<sup>th</sup>, 2020.
5. Ishchenko, A.M. 'Features of measuring the state of E-government development in the regions of Ukraine', 2019, Investment: practice and experience, 16, p. 119-124.
6. Jaskułowska, A., Rypina, M., Wierzbowski, M., in Hauser R., Wierzbowski M. (eds.), Zmiany w KPA i PPSA wynikające z regulacji Covid-19. Komentarz, Warsaw: C.H. Beck, 2020, pp. 1-35.
7. Judgement of the Voivodship Administrative Court in Wrocław of 04/03/2014, II SA/Wr 85/14, Legalis
8. Judgement of the Voivodship Administrative Court in Wrocław of 08/09/2014, II SA/Wr 420/14, Legalis.
9. Judgement of the Voivodship Administrative Court in Wrocław of 18 September 2013, II SA/Wr 420/13, Legalis.
10. Karciaz, M., 'Prowadzenie postępowania administracyjnego w okresie koronawirusa (COVID-19) z uwzględnieniem przepisów specustawy koronawirusowej', 2020, LEX/el.
11. Korovyak, O.Ya., 'Problems of implementation of e-government in Ukraine', 2018, Carpathian Legal Bulletin, 2(23), p. 45-49.
12. Merelli, A., 'For Most of the World, Social Distancing Is an Unimaginable Luxury' [Online] at <https://qz.com/1822556/for-most-of-the-world-social-distancing-is-an-unimaginable-luxury/>, accessed July 25<sup>th</sup>, 2020.

13. Novachenko, T. V., Bielska, T. V., Afonin, E. A., Lashkina, M. H., Kozhemiakina, O. M., Diachenko, N. P., 'Use of Information Technology to Increase Economic Efficiency and Credibility in Public Administration in the Context of Digitization', 2020, International Journal of Economics and Business Administration, VIII(1), p. 374-382.
14. Paun, C., J. Deutsch, A., Furlong, S., Wheaton, J., Mischke, H., Cokelaere, B. Moens et al., 'How Europe Is Responding to the Coronavirus Pandemic', [Online] at <https://www.politico.eu/article/how-europe-is-responding-to-the-coronavirus-pandemic/>, accessed July 25<sup>th</sup>, 2020.
15. Pedersen, M. J., Favero, N., 'Social Distancing during the COVID-19 Pandemic: Who Are the Present and Future Noncompliers?', 2020, Public Administration Review, p. 1-10. DOI: 10.1111/puar.13240.
16. Petroye, O., 'Evolution of the government model: from bureaucracies to governing the future', 2019, Scientific works of the National Academy of Public Administration under the President of Ukraine, 10(2), p. 92-106, doi:10.36030/2664-3618-2019-2-92-106.
17. Schuster, Ch., Weitzman, L., Sass Mikkelsen, K., Meyer-Sahling, J., Bersch, K., Fukuyama, F., Paskov, P., Rogger, D., Mistree, D., Kay, K., 'Responding to COVID-19 Through Surveys of Public Servants', 2020, Public Administration Review, p. 1-22, <https://doi.org/10.1111/puar.13246>.
18. Sibiga, G., 'Elektroniczne doręczanie pism przez organ administracji publicznej w postępowaniu administracyjnym ogólnym', 2018, Monitor Prawniczy, 11, p. 578-584.