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# Serving a party or another participant in administrative proceedings with a printout of documents obtained from a communication and information system as a procedure adopted in connection with the spread of the SARS-CoV-2 virus

**Abstract**

The pandemic caused by the spread of the SARS-CoV-2 virus has forced the legislators to change the procedures enabling administrative procedures to be improved when access to the authority is restricted. The institution for the serving of documents has been significantly restricted, and therefore it has been made possible for a party or another participant in administrative proceedings to be served with a printout of documents obtained from a communication and information system. This enables the principle of active participation by the parties in administrative proceedings to be implemented, and also postpones the prospect of extending the proceedings. Therefore, it allows further proceedings to be conducted without the need to comply with the rules on the serving of documents in the absence of a threat to health security. Such a solution makes it possible to conduct the proceedings in a way which inspires the confidence of its participants in the public authorities.

Key words: electronic means of communication, electronic document

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Taking into account the need to establish specific instruments in relation to the spread of the SARS-CoV-2 virus, the legislators have introduced amendments allowing the authorities to serve on a party or another participant in administrative proceedings a printout of documents obtained from a communication and information system[1]. This regulation stems from the need to ensure health security[2]. Its protection is such an important aspect that the legislators have introduced simplified rules for the serving of documents.

In the case of documents issued by a public-administration authority in the form of an electronic document using a communication and information system, which has been provided with a qualified electronic signature (a qualified electronic signature means an advanced electronic signature which is created by a qualified electronic signature-creation device, and which is based on a qualified certificate for electronic signatures[3]), a trusted signature (a trusted signature is an electronic signature whose authenticity and integrity is ensured by the use of an electronic seal of the Minister in charge of computerisation, containing 1) data identifying the person, established on the basis of the electronic identification means issued in the system which ensures the operation of the public electronic identification scheme in which a trusted profile or a personal profile is issued, including first name(s), surname, PESEL number; 2) an identifier of the electronic identification means with the use of which it was created; 3) the time of its creation[4]), or a personal signature (a personal signature is an advanced electronic signature[5], verified with the

**1** This solution was introduced under art. 14 ustawy z dnia 16 kwietnia 2020 r. o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2, Dz.U. 2020, poz. 695, z poźn. zm.

**2** For further details on health security, see M. Karpiuk, J. Kostrubiec, *The Voivodeship Governor's Role in Health Safety*, „Studia Iuridica Lublinensia" 2018, nr 2, s. 65–74, M. Karpiuk, *Glosa do wyroku Wojewódzkiego Sądu Administracyjnego z dnia 19 kwietnia 2017 r. (IV SA/Wa 312/17)*, „Studia Iuridica Lublinensia" 2018, nr 4, s. 145–152; M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*, Olsztyn 2017, s. 157–158; M. Karpiuk, *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 12 lutego 2018 r. (II OSK 2524/17)*, „Studia Iuridica Lublinensia" 2019, nr 1, s. 190–193.

**3** Art. 3 pkt 12 rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 910/2014 z dnia 23 lipca 2014 r. w sprawie identyfikacji elektronicznej i usług zaufania w odniesieniu do transakcji elektronicznych na rynku wewnętrznym oraz uchylające dyrektywę 1999/93/WE z dnia 23 lipca 2014 r. (Dz. Urz. UE 2014, L 257, s. 73), hereinafter the eIDAS Regulation.

**4** Art. 3 pkt 14a ustawy z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne (t.j., Dz.U. 2020, poz. 346, z późn. zm.), hereinafter u.i.d.p.

**5** According to Article 3(11) of the eIDAS Regulation, an advanced electronic signature means an electronic signature which meets the following requirements. 1) It is uniquely linked to the signatory. 2) It is capable of .identifying the signatory. 3) It is created using

use of a certificate for a personal electronic signature – Article 2 (9) of the Act of 6 August 2010 on ID cards, consolidated text, Journal of Laws of 2020, item 332, as amended), or an advanced electronic seal (an advanced electronic seal means an electronic seal which meets legally defined requirements – Article 3 (27) of the eIDAS Regulation[6]), or a qualified electronic seal (a qualified electronic seal means an advanced electronic seal, which is created by a qualified electronic seal creation device, and is based on a qualified certificate for an electronic seal - Article 3 (27) of the eIDAS Regulation), serving may consist of the provision of a printout of a document obtained from that system[7]. This may take place in such a form if a party or another participant in the proceedings has not submitted an application in the form of an electronic document via the electronic registry inbox of a public-administration authority, has not applied to the public-administration authority for such a serving, or has not consented to the serving of documents in such a manner.

Article $39^3$ of the Code of Administrative Procedure introduces rules for converting (transforming) a document originally drawn up in the form of an electronic document into written form (a document printout), the conditions for such an action, and its effects. The above is particularly important, due to the fact that the essence of each document is its permanence and unchangeability, and modifications generally lead to the loss of the evidential value of the document (primarily of an official document), or to the cessation of the legal existence of a specific analogue or digital material as a document at all[8].

The authority must issue a document in the form of an electronic document, which, according to Article 3 (2) of u.i.d.p. (the Act on the Computerisation of Entities Performing Public Tasks) is understood as a separate meaningful set of data arranged within a specific internal structure and recorded on a data

electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control. 4) It is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

**6** An advanced electronic seal, as provided for in Article 36 the eIDAS Regulation, shall meet the following requirements. 1) It is uniquely linked to the creator of the seal. 2) It is capable of identifying the creator of the seal. 3) It is created using electronic seal-creation data which the creator of the seal can, with a high level of confidence under its control, use for electronic seal creation. 4) It is linked to the data to which it relates in such a way that any subsequent change in the data is detectable. Failure to meet any of these requirements will result in the absence of such a seal.

**7** Art. $39^3$ § 1 ustawy z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego, t.j., Dz.U. 2020, poz. 256, z poźn. zm.

**8** A. Skóra, *Komentarz do art. $39^3$*, [w:] *Kodeks postępowania administracyjnego. Komentarz do art. 1–60*, red. M. Karpiuk, P. Krzykowski, A. Skóra, Olsztyn 2020, s. 238.

carrier[9]. On the other hand, a communication and information system used to generate an electronic document is, pursuant to Article 3 (3) of u.i.d.p., a set of cooperating IT devices and software ensuring the processing and storage, as well as the sending and receiving of data, by telecommunication networks by means of telecommunications terminal equipment appropriate for a given type of network[10].

A model electronic document is defined in Article 3 (24) of u.i.d.p. According to this provision, it is a set of data defining this set, the method of labelling, and the required content and metadata elements of an electronic document, as well as the manner of recording the data for the indicated elements, and the order and manner of displaying on the screen, or printing, individual elements (visualisation).

In Article $39^3$ § 2 of the Code of Administrative Procedure, the legislators clearly indicates which elements should be included in a printout of a document obtained from a communication and information system. These include 1) information that the document was issued in the form of an electronic document and signed with a qualified electronic signature, trusted signature, or personal signature, indicating the name and surname and official position of the person who signed it, or that it bears an advanced electronic seal or a qualified electronic seal; 2) an identifier of that document, assigned by the communication and information system by which the document was issued.

Article 14 § 1 of the Code of Administrative Procedure introduces the rule according to which matters must be resolved in writing or in the form of an electronic document served by electronic means of communication. On the other hand, under Article 14 § 2 of the Code of Administrative Procedure, matters may be resolved, among others, by electronic means of communication[11], if it is in the interests of the party concerned, and no

**9** A document is any object or record on a computer data carrier to which a specified right is attached, or which, in connection with the subject of its contents, constitutes evidence of a right, a legal relationship, or a circumstance which can have legal significance, art. 115 § 14 ustawy z dnia 6 czerwca 1997 r. – Kodeks karny, t.j., Dz.U. 2019, poz. 1950, z późn. zm.

**10** Telecommunications terminal equipment is telecommunications equipment intended to be connected directly or indirectly to network terminals, art. 2 pkt 43 ustawy z dnia 16 lipca 2004 r. – Prawo telekomunikacyjne, t.j., Dz.U. 2019, poz. 2460, z późn. zm.

**11** Zob. także: P. Krzykowski, *Komentarz do art. 14*, [w:] *Kodeks postępowania administracyjnego. Komentarz…*, s. 80. Electronic means of communication are technical solutions, including ICT devices and compatible software, remotely using data transmission between communication and information systems, in particular electronic mail, art. 2 pkt 5 ustawy z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną, t.j., Dz.U. 2020, poz. 344.

provision of law provides otherwise, and the contents and key reasons for such disposal shall be recorded in case files by way of a report or annotation signed by the party[12].

A public-administration authority is responsible for the configuration of its electronic mail, including spam filters, and for organising the handling of its electronic mail in such a way as to ensure that applications sent to the address indicated by it are received without problems and without delay, given the legal admissibility of their submission also by electronic means. The effects of difficulties, errors, or irregularities in the design and operation by public-administration authorities of the official systems for communication with those authorities shall not be passed on to those using the systems. The risk of an authority's not receiving or reading an application sent to it by electronic mail to an officially stated electronic address of the authority shall be borne by that authority, and not by the applicant[13].

Article $39^3$ of the Code of Administrative Procedure does not determine how a printout of a document should be served. Therefore, the provisions of the Code of Administrative Procedure on serving documents apply.

Pursuant to Article $39^3$ § 4 of the Code of Administrative Procedure, a printout of a document obtained from a communication and information system constitutes evidence of what has been stated in the document issued as an electronic document. According to Article 75 § 1 of the Code of Administrative Procedure, anything which can contribute to clarifying the matter, and which is not in violation of the law, may be admitted as evidence. In particular documents, witness testimonies, expert opinions, and inspections, may constitute evidence. It should be stressed, however, that the principle of an open inventory of evidence for administrative proceedings, established under Article 75 of the Code of Administrative Procedure, does not mean that every fact can be substantiated by any chosen category of evidence. Some facts even require the use of dedicated evidence only[14].

Official documents drawn up in the prescribed form by authorised State authorities within the scope of their activity, as follows from Article 76 § 1 of the Code of Administrative Procedure, shall constitute proof of what has been officially confirmed therein. A printout of a document obtained from a communication and information system is therefore an official document.

**12** See also A. Skóra, *Ogólne postępowanie administracyjne. Zarys wykładu*, Elbląg 2015, s. 25.
**13** Wyrok WSA z dnia 12 kwietnia 2018 r., II SAB/Go 10/18, LEX nr 2481265.
**14** Wyrok WSA z dnia 25 lutego 2020 r., VI SA/Wa 2386/19, LEX nr 2977035.

The presumption of truthfulness of an official document may be rebutted by any piece of evidence; however, any party who challenges the truthfulness of an authentic document should prove their position[15]. If an official document, within the meaning of Article 76 § 1 of the Code of Administrative Procedure, is at the disposal of an authority, further proceedings to take evidence become unnecessary[16].

A printout of a document obtained from a communication and information system constitutes evidence of what has been stated in a document issued as an electronic document, and therefore, as an official document, it benefits from the presumption of truthfulness, and its rebuttal requires counter-proof.

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## Doręczanie stronie lub innemu uczestnikowi postępowania administracyjnego wydruku pism uzyskanych z systemu teleinformatycznego jako tryb wprowadzony w związku z rozprzestrzenianiem się wirusa SARS-CoV-2

**Streszczenie**

Pandemia spowodowana rozprzestrzenianiem się wirusa SARS-CoV-2 wymusiła na ustawodawcy zmianę procedur pozwalających na usprawnienie postępowania administracyjnego w sytuacji, gdy dostęp do organu jest ograniczony. Istotnym ograniczeniom uległa instytucja doręczania pism, w związku z czym umożliwiono doręczanie stronie lub innemu uczestnikowi postępowania administracyjnego wydruku pism uzyskanych z systemu teleinformatycznego. Pozwala to na realizację zasady czynnego udziału stron w postępowaniu administracyjnym, a także oddala perspektywę wydłużenia tegoż postępowania. Pozwala zatem na dalsze procedowanie bez konieczności przestrzegania reguł dotyczących doręczania pism w sytuacji braku zagrożenia bezpieczeństwa zdrowotnego. Takie rozwiązanie pozwala na prowadzenie postępowania w sposób budzący zaufanie jego uczestników do władzy publicznej.

Słowa kluczowe: środki komunikacji elektronicznej, dokument elektroniczny