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ELECTRONIC DOCUMENT IN POLISH ADMINISTRATIVE PROCEEDINGS - SELECTED ISSUES

Pursuant to the rule of writing form binding in administrative proceedings (article 14 of the Code of Administrative Procedure [1]), each manifestation of interaction of an external entity with the authority in the course of proceedings should be recorded in writing. In accordance with artice 14 § 1 of the C.A.P. all matters shall be disposed of in writing or in the form of an electronic document as defined in the Act of 17 February 2005 on Informatization of Operation of Entities Performing Public Tasks [2]. Due to the fact that the regulations of the C.A.P. do not provide a definition of an "electronic document", in accordance with the directives of functional interpretation it should be understood in accordance with the provisions of A.I.O. In the light of the article 3 pt 2 in relation to article 3 pt 1 of the A.I.O., an electronic document is a meaningful set of data arranged in a specific internal structure and recorded on a material or device used for recording, storing and reading data in a digital form. The content of an electronic document should be understood as a set of data arranged in a specific internal structure, which constitutes a separate meaningful whole. Therefore, the content, as a set of data, must meet the statutory requirements - constitute a separate meaningful whole and be organised in a specific internal structure. Moreover, this set of data should be recorded on a material or device used for recording, storing and retrieving data in a digital form, i.e. a computer data carrier.

When analysing the regulations defining the framework of general administrative proceedings, it should be noted that an electronic document can be used both in the activity of a party and activity of a public administration authority. Firstly, a party may submit an application to an authority in the form of an electronic document. „Application" within the meaning of article 63 of the C.A.P. shall be understood as as any type of statement of the parties and other participants of the proceedings, with which they address the authority. The C.A.P. itself indicates exemplary types of applications, which include demands, explanations, appeals and complaints. The application should at least indicate the applicant, his address and demand, and shall satisfy other requirements specified in specific provisions of law. Moreover, pursuant to Article 63 § 3a of the C.A.P., an application in the form of an electronic document should: 1) bear a qualified electronic signature, a trusted signature or a personal signature, or be authenticated in a way which makes it possible to confirm the origin and integrity of data verified in electronic form; 2) contain data in a specified format, included in the application form specified in separate regulations, if these regulations require submission of applications in accordance with a specified form; 3) include an electronic address of the applicant.

The C.A.P. provides *explicite* that applications may be submitted, i.a., by other means of electronic communication through an electronic sub-box of a public administration authority established pursuant to the A.I.O. (article 63 § 1 of the C.A.P.) – electronically. The requirements set out above - the use of electronic means of communication and the use of an electronic sub - box for that purpose by an authority - must be fulfilled jointly in order for the applicant to be considered to have validly, in legal terms, lodged with the authority a letter in the form of an electronic document [3, p. 142]. Pursuant to art. 61 § 3a of the C.A.P., the date of filing

a document in the form of an electronic document should be considered the date of entering application into the public administration authority's ICT system. It seems justified that the authority should accept applications every day - 24 hours a day, 7 days a week. In summary, applications in the form of an electronic document may be submitted by electronic means of communication via the electronic sub - box of the authority (sent electronically). However, the submission of an IT data carrier to the authority does not meet this requirement, as the legally required data transmission between ICT systems does not take place in this case. The submission of an application in the form of an electronic document obliges the public administration authority to confirm the submission of the application, which is referred to as an "official certificate of receipt". Both the A.I.O. and the C.P.A. regulations provide for requirements to be met by the official certificate of receipt. These include, i.a., the full name of the public administration authority to which the application was delivered, the time and date of delivery and the date on which the official certificate of receipt was generated.

Secondly, an electronic document can be used by a public administration authority to communicate with a party, other parties to proceedings or other public administration authorities. The C.A.P. regulates differently the conditions and manner of delivering documents by electronic means to parties and other participants of the proceedings, depending on the addressee. The legislator has divided the addressees into public and non-public entities. A public entity is an addressee obliged to make available and use an electronic sub-box pursuant to article 16 point1a of the A.I.O. A non-public entity is an addressee who does not meet the requirements of a public entity. The regulations provide that the authority is obliged to deliver documents to non-public entities in the form of an electronic document after certain prerequisites have been fulfilled: 1) he or she submits an application in the form of an electronic document through the electronic sub-box of the public administration body; 2) he or she requests the public administration authority for such service and indicates an electronic address to the public administration authority; 3) he or she agrees to serve letters in proceedings by such means and indicates an electronic address to the public administration authority. In accordance with article 39^1 § 1d of the C.A.P., it is permissible to dispense with service by electronic means. In the case of opting out of electronic delivery, the public administration authority delivers the documents in the manner laid down for a document in a form other than the electronic document form, i.e. in the traditional written form. Consequently, submitting such an opt-out means that service will be effected in the traditional way, i.e. upon receipt by the postal operator, by the authority's employees or other authorised persons or authorities. In the event that there are circumstances beyond the control of the authority which make the service of documents by electronic means impossible, the authority should inform the addressee of the document and obtain consent from the addressee to the service of documents by traditional mail. The consent referred to above will, in the light of the provisions of the law, constitute a resignation from the service of documents by electronic means of communication, which enables the authority to deliver them in the traditional manner. In the case of public entities, the legislator has dealt with the issue of electronic delivery in a different way. In accordance with article 39^2 of the C.A.P., the discussed conditions of service by electronic means regulated in article 39^1 of the C.A.P. do not apply to public entities. At the same time, the C.A.P. provides that it is possible to serve letters to public entities by traditional mail (article 39 of the C.A.P.) or electronically (article 39^2 of the C.A.P.). However, it is noted in the literature that in view of the principle of procedural speed and simplicity, the authority conducting the administrative proceedings should deliver to the public entity the documents by electronic means, unless separate provisions or rational reasons militate in favour of using traditional service [3, p. 176 – 179, 4, p. 233].

In accordance with article 46 of the C.A.P., the necessary condition for the effectiveness of delivery of a document in the form of an electronic document to a non-public entity by means of electronic communication in the body's ICT system (assuming at the same time that the other requirements stipulated by law are met) is confirmation of receipt of the document by the addressee. The official certificate of receipt, which serves as proof of receipt of the document by the addressee, constitutes proof of delivery of an electronic document which was sent by a public administration authority. It may be stated that it constitutes a kind of equivalent of the return acknowledgement of receipt of a written letter in the traditional method of delivery. The addressee of an electronic document confirms its receipt by signing the certificate of delivery with a qualified electronic signature or a signature confirmed by the ePUAP trusted profile, or by ensuring the possibility to confirm the origin and integrity of the data included in this certificate using the technologies referred to in art. 20a point 2 A.I.O. It would appear that electronic delivery is more advantageous for the recipient (in relation to traditional delivery), as it allows the date of receipt of a specific document to be verified, which may be particularly important in the context of letters setting a deadline for a specific procedural act. On the other hand, for recipients of a document which are public entities, the conducting authority shall transmit the document directly to the electronic sub-box of the addressee. In the case of receipt of an electronic document via the electronic sub-box of a public entity, a certificate of submission shall be automatically created and made available to the sender of the document by the information and communication system used for the service of delivery.

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