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## **ELECTRONIC DELIVERY: OPPORTUNITY OR EXCLUSION?**

### **ABSTRACT**

The new regulations come into force in Poland as of 1 July 2021. The delivery by means of electronic communication will become the rule. Will it not limit the rights of people who do not have access to the Internet or who cannot use it? Will the new regulations not contribute to the even greater exclusion of people who are already excluded (seniors, the disabled or people living in poverty)? Will the new solutions make it easier for them to find their place in the modern world?

### **ELECTRONIC DELIVERY: OPPORTUNITY OR EXCLUSION?**

On 18 November 2020, the Polish Parliament passed, inspired by the government bill, the Act on Electronic Delivery<sup>1</sup>. Its provisions were to take effect between 1 July 2021 and 1 October 2029. As a result of a very quick amendment of the act which had not yet entered into force, just before the originally intended date, the effective date of the new solutions on electronic delivery has been postponed by the Act of 15 June 2021. Therefore, the Act on Electronic Delivery will be effective with respect to certain entities and certain solutions included therein as of 5 October 2021.<sup>2</sup> After that period, all public authorities, both executive and judicial, will be obliged to use electronic

<sup>1</sup> Journal of Laws of 2020, item 2320, as amended.

<sup>2</sup> The Act of 15 June 2021 on the Amendment of the Act on Electronic Delivery, Journal of Laws of 2021, item 1135.

delivery as a rule<sup>3</sup>. As stated in the explanatory memorandum to the bill, the aim of the drafters was to provide a default digital exchange of correspondence with public entities and to introduce simple and transparent electronic communication between public authorities and the citizen<sup>4</sup>. However, the very provision stating when the specific solutions contained in this Act will take effect proves that the legal solutions intended to achieve this simplicity are not simple at all<sup>5</sup>.

In this paper, however, I am going to omit the analysis of specific legal solutions and problems with adapting new regulations, which are imprecise and require complex interpretation, to the existing ones. I believe that it is worth paying more attention to the social aspect which, in my opinion, was not taken into account when the legislator passed the Act on Electronic Delivery on 18 November 2020. The very regulations specifying the deadlines for particular solutions to come into force show that the legislator is making unrealistic assumptions, e.g. that there are two worlds that do not interpenetrate – the world in which government administration bodies are operating and the separate world of local government bodies<sup>6</sup>. This assumption is unquestionably erroneous, which proves that the legislator does not know the reality behind the regulations it is creating.

Through the provisions of the discussed Act, a presumption of the priority of digital solutions over traditional ones has been introduced. Until now, in all procedures – civil, criminal, administrative court and administrative – the rule was to deliver letters to external entities, including natural persons, in a traditional way: against a delivery receipt by a serving agent (e.g. a postal operator, an employee of an authority or a court, or another authorised entity), principally to a residential address<sup>7</sup>. This is the form of delivery that Polish citizens are

<sup>3</sup> The Act on Electronic Delivery Act amends 86 acts which had previously been enacted and have still been in force.

<sup>4</sup> Rationale to the Government Bill on Electronic Delivery, Sejm of the 9th term, Sejm paper no. 239, p. 7, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/D1349ADC36052E93C125850C003768C9/%24File/239.pdf> [accessed: 23 July 2021].

<sup>5</sup> See also: G. Sibiga, *Przesunięcie zmian w KPA na 5.10.2021 r. nie rozwiązuje wątpliwości prawnych i dalszego prowadzenia postępowania administracyjnego na podstawie przepisów przejściowych*, <https://legalis.pl/przesuniecie-zmian-w-kpa-na-1-10-2021-r-nie-rozwiazuje-watpliwosci-prawnych-i-dalszego-prowadzenia-postepowania-administracyjnego-na-podstawie-przepisow-przejsciowych/> [accessed: 28 June 2021].

<sup>6</sup> Article 166 of the Act on Electronic Delivery.

<sup>7</sup> See also: J. Szczerbowski, *Informatyzacja postępowania cywilnego*, in: M. Rzewuski, *Postępowanie cywilne*, C.H.Beck, Warszawa, 2019, 531.

accustomed to. It should be added that even though the regulations on delivery have been in force for many years, many people still do not understand why, even though they have not collected the letter from the post office, it is considered to have been delivered. Eventually, in administrative proceedings, i.e. those concerning everyday matters of citizens such as social welfare, vehicle registration, construction or social security matters, it will become a rule that letters will be delivered by public administration bodies to electronic delivery addresses. Other means of delivery, including using the public hybrid service, will be an exception. The initiators of the new solutions assume that the most widespread solution nowadays, in which the authority sends letters in a paper form by means of correspondence using a postal operator, will be completely abandoned. Will people who currently have trouble understanding the procedural institution of serving a letter by advice notification adapt to the new arrangements? How long will it take them to learn the new delivery rules? Above all, will they take advantage of the opportunities offered by electronic means of communication?

The entry into force of this legislation is expected to mark the end of the 'paper age'. But will this really happen? Were the drafters not too optimistic and did they prepare solutions that correspond to reality? And will the new solutions not restrict the rights of those natural persons who do not use electronic means of communication because they are not able to or do not know how? And will the new regulations not contribute to the even greater exclusion of people who are already excluded because of their age, disability or poverty? Or will these solutions perhaps help to make electronic means of communication more widespread? Is the administration really good and accessible?<sup>8</sup>

E-government is one of the priorities of the European Union. In 2003, the programme *eEurope+2003: A Co-operative Effort to Implement the Information Society in Europe* was established. The leaders in terms of online access to public administration services in Europe are Malta (overall score of 97%), Estonia (92%), Austria (87%), Latvia (86%), Denmark (84%) and Lithuania (83%), with an average online availability of public administration services of

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<sup>8</sup> Sitek, M. (2015). Right of the society to the good administration (good governance) and democracy. In Sitek, M., Terema, P., Wójcickiej, M. (Eds.), *Collective human rights in the first half of the 21st century* (pp. 197-210). WSGE.

68% across the countries surveyed. Among the Central European countries, all the Baltic States are therefore in the lead. Estonia, Latvia and Lithuania have also maintained a stable position among the most innovative countries in the region for years. The digital challenges are far less well addressed by the countries of the South. The following countries ranked lowest on the European Commission's list: Montenegro (41%), Albania (41%) and Northern Macedonia (33%). Poland, with the result of 59%, is in a distant 27th position, below the average for all surveyed countries<sup>9</sup>.

In Poland, the first and unfortunately unsuccessful attempt to introduce IT solutions in administration was the Act on Electronic Signature of 18 September 2001<sup>10</sup>. Out of 194 countries around the world where the level of e-government development was assessed in 2014, Poland was ranked 42nd among EU countries and 65th among all countries in the world<sup>11</sup>. The percentage of Polish citizens using the Internet to handle administrative matters in 2014 was 27% against an average of 47% for the European Union countries<sup>12</sup>. Poland's weak position is related to insufficient adaptation of technical infrastructure and poor broadband Internet coverage, that is a low percentage of households equipped with such bandwidth. According to the data provided in spring 2021 by the Office of Electronic Communications, about 2 million households in Poland still do not have access to broadband networks<sup>13</sup>. This

<sup>9</sup> 2020 data from the *eGovernment Benchmark 2020* report. The degree of e-government implementation is examined annually by the European Commission which prepares a comprehensive assessment of progress in digital public service delivery for 36 European countries (27 European Union countries plus Albania, Montenegro, Iceland, North Macedonia, Norway, Serbia, Switzerland, Turkey and the United Kingdom). To this end, it analyses a number of indicators that are considered at four levels. The first focuses on citizens, i.e. the users of e-government – including above all the scale of services provided online, the second analyses the transparency of the solutions offered, the third – their accessibility and the fourth – their scope available to foreigners. Each country's final score is the average of these four dimensions. <https://digital-strategy.ec.europa.eu/en/library/egovernment-benchmark-2020-egovernment-works-people> [accessed: 23 July 2021].

<sup>10</sup> Journal of Laws of 2001 no. 130, item 1450.

<sup>11</sup> See i.a.: K. Śledziewska, D. Zięba *E-administracja w Polsce na tle Unii Europejskiej Jak z niej (nie) korzystamy*, Warsaw, June 2016 [https://www.delab.uw.edu.pl/wp-content/uploads/2016/10/DELab\\_e-administracja\\_w\\_PL.pdf](https://www.delab.uw.edu.pl/wp-content/uploads/2016/10/DELab_e-administracja_w_PL.pdf) [accessed: 23 July 2021].

<sup>12</sup> Raport: E-administracja w oczach internautów, Ministerstwo Cyfryzacji i Administracji, November of 2014, p. 16-29, [https://www.nist.gov.pl/files/zalacznik/1452360088\\_raport\\_eadminstracja\\_w\\_oczach\\_internautow\\_2014\\_z.pdf](https://www.nist.gov.pl/files/zalacznik/1452360088_raport_eadminstracja_w_oczach_internautow_2014_z.pdf), [accessed: 23 July 2021]

<sup>13</sup> <https://www.uke.gov.pl/akt/raport-o-stanie-rynku-telekomunikacyjnego-w-2020-r-,391.html> [accessed: 23 July 2021].

means that at least 4 million people in Poland have difficulties in using the Internet without restrictions. This also applies to people living in the very centre of Poland, in small towns near the capital.

The time of the pandemic caused by the Sars-Cov-2 virus in 2020 has demonstrated that many activities that used to require face-to-face contact can be carried out online. Universal distance learning, inconceivable back in 2019, has become a daily reality for millions of pupils, students and teachers around the world just a few months later. Online conferences are popular and can be attended by people who previously would have found the cost of travel or the need to leave their place of residence for several days a significant obstacle to participation in such a scientific meeting. Even doctors have started examining their patients through online contact. There are, of course, many legitimate reservations about the quality of such online services, but it is undisputed that the Internet and means of electronic communication have enabled at least imperfect but nonetheless substitutes for necessary procedures to be carried out. The fact is that a large part of our lives for more than a year now has been done through electronic communication tools. But despite this more than a year of 'training', do all members of our society use electronic communication comfortably or do they use it at all? In my opinion, it is precisely the experience of the 2020 year which should influence more detailed and more realistic legal regulations on electronic delivery. I also believe that the introduction of these solutions should be accompanied by a broad educational campaign and extensive state action to address areas with poor internet coverage in Poland.

During the pandemic, it became clear how important universal access to the broadband network is. In my opinion, in order to make electronic delivery more widespread, it is as important as, or perhaps even more important than the Act and the regulations it contains, to take into account the data I mentioned earlier, which shows that about 2 million Polish households still do not have access to broadband networks. And how many citizens of our country do not have access to the Internet at all? And is the Internet signal a common good for Polish citizens? Is it available to everyone because it is free? In theory, the internet signal is provided free of charge. In practice, most of us pay for it. This is one of the reasons for the phenomenon known

as ‘growing Internet exclusion’<sup>14</sup>. Poverty or age are the causes of Internet exclusion of a significant part of Polish population.

Interestingly, rich Western societies are experiencing the opposite phenomenon. It is referred to as a ‘silver tsunami’<sup>15</sup>. With advances in medicine, absence of wars, and prosperity, there is a growing proportion of 60+ people for whom the virtual world is natural and who know how to function in it, while having high purchasing power. Thus, they are becoming important consumers whose voice must be heeded by companies and governments alike. For these reasons, the energy, financial and telecommunications sectors, among others, are very attentive to people in this age group<sup>16</sup>. For example, T-Mobile in the Czech Republic and Slovakia is opening its outlets where it employs only 60+ people, so that they can explain the functioning of new technologies to buyers of the same age in a language they can understand.

Unfortunately, this is not the case in Poland. Polish 60-year-olds are usually no longer working and their pensions do not make them interesting consumers for telecom companies. Thus, they are not able to use modern technologies and there are few entities interested in spreading this knowledge among seniors<sup>17</sup>.

It might seem that this problem does not involve young people. During the closure of schools due to the threat of SARS-CoV-2 infection, about 1.6 million children had to be educated from home. However, during online teaching, which lasted several months, i.a. the Commissioner for Human Rights has drawn attention to the phenomenon described as thousands of children ‘going missing from the educational system’<sup>18</sup>. They did not attend online classes, and neither they nor any of their guardians contacted the school. We do not know whether this was due to the lack of equipment, unskilled handling of equipment or software allowing online contact, or poverty resulting in electricity cut-offs or problems with

<sup>14</sup> See i.a: M. Popiołek, *Wykluczenie cyfrowe w Polsce*, <http://cejsh.icm.edu.pl/cejsh> [accessed: 23 July 2021].

<sup>15</sup> <https://www.linkedin.com/pulse/silver-tsunami-multi-trillion-dollar-business-margaretta-colangelo/> [accessed: 23 July 2021].

<sup>16</sup> <https://mojebankowanie.pl/juz-nie-silver-economy-a-silver-tsunami-srebrna-ekonomia-trzecia-najwieksza-gospodarka-swiate-i-wciaz-rosnie/>

<sup>17</sup> See i.a: K. Skroban, M. Skierniewska, *E-wykluczenia osób starszych z aktywnego życia zawodowego*, [http://rocznikikae.sgh.waw.pl/p/roczniki\\_kae\\_z56\\_24.pdf](http://rocznikikae.sgh.waw.pl/p/roczniki_kae_z56_24.pdf) [accessed: 23 July 2021]. R. Susło, M. Paplicki, J. Drobnik, *Wykluczenie cyfrowe osób starszych* [https://repozytorium.uni.wroc.pl/Content/99642/PDF/12\\_R\\_Suslo\\_M\\_Paplicki\\_J\\_Drobnik\\_Wykluczenie\\_cyfrowe\\_osob\\_starszych.pdf](https://repozytorium.uni.wroc.pl/Content/99642/PDF/12_R_Suslo_M_Paplicki_J_Drobnik_Wykluczenie_cyfrowe_osob_starszych.pdf)

<sup>18</sup> <https://bip.brpo.gov.pl/sites/default/files/Do%20Ministra%20Edukacji%20Narodowej%20ws.%20wykluczenia%20uczni%20c3%b3w%20w%20czasie%20epidemii%2015.05.20.pdf> [accessed: 23 July 2021].

paying Internet bills. Only in Warsaw it was established that at the beginning of the epidemic there were 600, at the end of the school year – 343 missing children. Almost half of them were primary school pupils<sup>19</sup>. In another big city, Poznań, there were 200 such children<sup>20</sup>. In Łódź, 2.5 thousand students did not participate in online lessons in spring 2020<sup>21</sup>. Not having a computer and a high-quality internet connection were the most common reasons for absenteeism. Excluded children were helped more by social workers than by institutions<sup>22</sup>.

Unfortunately, the explanatory memorandum to the bill on delivery lacks information whether the state envisages any campaigns encouraging the use of electronic delivery and, above all, educational campaigns, thanks to which e.g. seniors will be able to learn how to use electronic communication. As the time of the pandemic also showed, compulsory computer science classes in Polish schools failed to prepare children and young people to use modern technologies for educational purposes. In such a situation, is the electronic revolution, which is to enter into force as of 1 July 2021, likely to become widespread? Do the new solutions take into account the Polish reality? And will they become an impulse for transformation of the Polish society into a modern society or will they contribute to another deep division of its members and exclusion of a significant part of them? Will the revolution change our paper-based world permanently, and will the victims not be those who already now cannot fully exercise their legal rights?

It is worth remembering that e-government, of which electronic deliveries should be an element, is supposed to be a tool for improving the quality of life of administration service recipients, and not a goal in itself. And it's worth realising that regulatory changes are secondary to advances in communications technologies. The establishment of e-government – like administration in general – should serve and not exclude.

<sup>19</sup> <https://www.se.pl/zdrowie/warszawa/szok-ponad-600-dzieci-zniknelo-w-warszawie-w-czasie-epidemii-aa-vBP4-adow-nTmf.html>

<sup>20</sup> <https://gloswielkopolski.pl/problemy-ze-zdalna-nauka-z-ponad-200-uczniami-z-poznanskich-szkol-nie-ma-kontaktu-w-czasie-nauczania-na-odleglosc-szkoly/ar/c1-14985874>

<sup>21</sup> A. Puculek, *Dzieci płaczą z bezsilności, bo nie mogą uczestniczyć w zdalnych lekcjach. W Łodzi jest ich 2,5 tys.* „Gazeta Wyborcza” 3 of April 2020, <https://lodz.wyborcza.pl/lodz/7,44788,25836241,akcja-komputer-dla-ucznia.html?disableRedirects=true> [accessed: 23 July 2021].

<sup>22</sup> A. Buchner, M. Wierzbička, *Edukacja zdalna w czasie pandemii*, [https://centrumcyfrowe.pl/wp-content/uploads/sites/16/2020/11/Raport\\_Edukacja-zdalna-w-czasie-pandemii.-Edycja-II.pdf](https://centrumcyfrowe.pl/wp-content/uploads/sites/16/2020/11/Raport_Edukacja-zdalna-w-czasie-pandemii.-Edycja-II.pdf)

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## LEGAL ACTS

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