UNIWERSYTET ZIELONOGÓRSKI

DYSKURS PRAWNICZY I ADMINISTRACYJNY 2/2022 ISSN 2657-926X

Małgorzata Gajda-Durlik
WSPiA University of Rzeszow
ORCID 0000-0002-3432-7832
malgorzata.gajda-durlik@wspia.eu

Use of information technologies in administrative evidence proceedings – selected issues

Keywords: administrative proceedings, evidence proceedings, electronic document, electronically recorded letter, electronic material

Summary. The article deals with the basic issues related to the use of modern information and communication solutions in administrative evidence proceedings. The assessment of the functionality of the electronic document, referred to in Article 3(2) in conjunction with Article 3(1) of the Act on Informatisation of the Activities of Entities Performing Public Tasks in administrative evidence proceedings, in the context of changes in the Code of Administrative Procedure resulting from the Act on Electronic Delivery of Documents, was treated as particularly important. In connection with the resignation – as a result of the amendment – from using *i.e.,* the following terms: "electronic document", "form of an electronic document" within the meaning of the Act on Informatisation of the Activities of Entities Performing Public Tasks, the assessment of the legal character of an electronic document in administrative proceedings becomes an even more complex legal issue than it used to be. It is therefore fundamental to define the semantic scope of the term "electronic document" in legal terms in the context of regulations of the Code and to assess its essence and function in the phase of administrative evidence proceedings. In particular, it will be crucial to determine the relationship between the "document recorded in electronic form" within the meaning of Article 14 § 1a of the Code of Administrative Procedure and the "electronic document", as well as between it and the document in electronic form admitted as evidence and other evidence recorded electronically in the administrative evidence procedure.

Informatyzacja administracyjnego postępowania dowodowego – zagadnienia wybrane

Słowa kluczowe: postępowanie administracyjne, postępowanie dowodowe, dokument elektroniczny, pismo utrwalone w postaci elektronicznej, materiał elektroniczny

Streszczenie. W artykule poruszono podstawowe zagadnienia związane z wykorzystywaniem nowoczesnych rozwiązań informatyczno-komunikacyjnych w administracyjnym postępowaniu dowodowym. Jako szczególnie istotną potraktowano ocenę funkcjonalności dokumentu elektronicznego, o którym stanowi art. 3 pkt 2 w zw. z art. 3 pkt 1 ustawy o informatyzacji działalności podmiotów realizujących zadania publiczne w administracyjnym postępowaniu dowodowym, w kontekście zmian w k.p.a. wynikających z ustawy o doręczeniach elektronicznych. W związku z rezygnacją – w wyniku nowelizacji - z operowania m.in. pojęciami takimi jak: „dokument elektroniczny", „forma dokumentu elektronicznego" w rozumieniu ustawy o informatyzacji działalności podmiotów realizujących zadania publiczne, ocena charakteru prawnego dokumentu elektronicznego w postępowaniu administracyjnym staje się jeszcze bardziej złożonym - niż dotychczas - zagadnieniem prawnym. Zasadnicze

znaczenie posiada zatem wyznaczenie zakresu znaczeniowego pojęcia „dokument elektroniczny" w ujęciu prawnym - w kontekście regulacji Kodeksu oraz ocena jego istoty i funkcji w fazie administracyjnego postępowania dowodowego. Kluczowe dla rozważanej materii będzie w szczególności określenie relacji pomiędzy „pismem utrwalonym w postaci elektronicznej" w znaczeniu art. 14 § 1a k.p.a., a „dokumentem elektronicznym", a także pomiędzy nim a dowodem z dokumentu w postaci elektronicznej oraz innym materiałem dowodowym utrwalonym elektronicznie w administracyjnym postępowaniu dowodowym.

1. Introduction

The dynamic development of the information society, and thus the strengthening of the role and frequency of use of modern information and communication technologies in the private and public sphere, measurably affects the qualitative changes in administrative proceedings resulting from the conversion of paper-based administration to electronic administration. Processes related to the use of modern mechanisms enabling fast data transmission, being a consequence of the combination of IT and communication solutions, become first of all an integral element in the sphere of communication between public administration bodies and between them and parties or other entities in the course of proceedings. Apart from communication, these technologies should also increasingly be applied in the evidence phase of the proceedings as an effective tool for obtaining data and information in connection with establishing the facts of a case, and as an efficient mechanism for conducting evidence proceedings. In this respect, particularly important is the assessment of the functionality of the electronic document, referred to in Article 3(2) in conjunction with Article 3(1) of the Act on Informatisation of the Activities of Entities Performing Public Tasks[1] in administrative evidence proceedings, considered in the context of changes in the Code of Administrative Procedure resulting from the Act on Electronic Delivery of Documents[2]. After the changes introduced to the Code of Administrative Procedure by the above-mentioned Act, in connection with the resignation from using *i.e.*, the following terms: "electronic document", "form of an electronic document" within the meaning of the Act on Informatisation of the Activities of Entities Performing Public Tasks, the assessment of the legal character of an electronic document in administrative proceedings becomes an even more complex legal issue than it used to be[3]. It is

[1] Cf. the Act of February 17, 2005 (Journal of Laws of 2021 item 2070, as amended); abbreviated as AIAE.

[2] Cf. the Act of November 18, 2020 (Journal of Laws of 2020 item 2320, as amended); abbreviated as AEDD.

[3] Problems in assessing the legal nature of the electronic document in administrative proceedings, as well as in adopting conclusive assessments of the essence and function of this document in administrative proceedings are pointed out *i.e.,* by B. Kwiatek. Cf. B. Kwiatek, *Dokument elektroniczny w ogólnym postępowaniu administracyjnym*, Warszawa 2020, p. 105 ff.; see also G. Sibiga, *Ko-*

fundamental to define the semantic scope of the term "electronic document" in legal terms in the context of regulations of the Code of Administrative Procedure[4] and to assess its essence and function in the phase of administrative evidence proceedings. In particular, it will be crucial to determine the relationship between the "document recorded in electronic form" within the meaning of Article 14 § 1a of the Code of Administrative Procedure – in connection with the consolidation of the statutory nomenclature – and the "electronic document", as well as between it and the document in electronic form admitted as evidence and other evidence recorded electronically in the administrative evidence procedure.

2. Advances in the use of information technologies in administrative evidence proceedings

Significant for the development of the process of using information and communication technologies in administrative proceedings is *i.e.*, the Act of November 18, 2020, on Electronic Delivery of Documents. By virtue of the indicated Act, as of October 5, 2021, substantial changes were introduced in the construction of the principle of written form of administrative proceedings, previously expressed in Article 14 § 1 CAP[5]. Pursuant to the added Article 14 § 1a CAP: "Cases shall be handled and resolved in writing and recorded in paper or electronic form...". The introduced construction was based not only on the principle of equivalence of letters in administrative proceedings regardless of the form of their recording (on paper or electronically), but it was referred to *expressis verbis*, next to the form of resolving the case, to the procedural activities of each phase of the administrative proceedings. The changes resulting from the indicated Act also indirectly touch upon the important issue of expanding the functionality of the electronic document in evidence proceedings. Pursuant to the derogated provision of Article 14 § 1 CAP, until the effective date of the amendment, cases had to be resolved in writing or in the form of an electronic document within the meaning of the Act of February 17, 2005, on Informatisation of the Activities of Entities Performing Public Tasks, delivered by electronic means. A linguistic interpretation of this provision indicated, first, that the form of the electronic document was not a variation of the written form, but was a form separate from the written form – which significantly limit-

munikacja elektroniczna w Kodeksie postępowania administracyjnego. Komentarz, Warszawa 2011, p. 53 ff.; G. Szpor, [in:] G. Szpor, Cz. Martysz, K. Wojsyk, *Ustawa o informatyzacji działalności podmiotów realizujących zadań publiczne. Komentarz,* Warszawa 2015, p. 64 ff.

[4] Cf. the Act of June 14, 1960 (Journal of Laws of 2021 item 735, as amended); abbreviated as CAP.

[5] Cf. A. Wróbel, commentary to Article 14 CAP, [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2022.

ed its significance in the course of the proceedings, and second, that the electronic document was an alternative to the written form – an equivalent form of resolving the case[6]. There were fundamental doubts as to the meaning of the term "resolving the case" referred to in Article 14 § 1 CAP. The question arose as to whether the term "resolving the case" should be principally associated – in accordance with the literal wording of the provision – with the stage of completion of the proceedings or whether it should equally refer to other procedural actions of the authority and the parties (participants) in the course of proceedings[7]. The nomenclature used by the legislator in Article 14 § 1 CAP "Cases shall be... resolved..." referred directly to the terminology used by the legislator in Article 104 CAP which reads: "A public administration body shall resolve a case by issuing a decision, unless the provisions of the Code provide otherwise". "A decision resolves the case on its merits in whole or in part or concludes the case otherwise at a particular instance". The wording of Article 104 CAP therefore points to the decision as the basic form of resolving an individual case[8]. Analogous conclusions apply to rulings, both those constituting incidental acts[9] and those which by their nature represent the procedural form of the result of the proceedings in the case being settled[10].

However, crucial for the assessment of the semantic scope of the term "resolving the case", in the meaning adopted in Article 14 § 1 CAP, is the teleological and axiological dimension of the principle of written form of proceedings expressed – until the entry into force of the amendments arising from the Act on Electronic

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[6] Cf. R. Kędziora, commentary to Article 14 CAP, [in:] R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz,* Warszawa 2017; H. Knysiak-Sudyka, commentary to Article 14 CAP, [in:] H. Knysiak-Sudyka, *Kodeks postępowania administracyjnego. Komentarz,* Warszawa 2019; A. Wróbel, commentary to Article 14 CAP, [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany...*, LEX/el. 2022.

[7] A. Wróbel argues that the electronic document referred to in Article 14 CAP is only a form of resolving the case, therefore the term "decision in the form of an electronic document", "decision having the form of an electronic document" etc. is legitimate. Cf. A. Wróbel, commentary to Article 14 CAP, [in:] A. Wróbel, M. Jaśkowska, M. Wilbrandt-Gotowicz, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2020. Another position is presented by Z. Kmieciak, who refers this form both to resolving the case and other procedural actions of the authority, the parties, other participants in the course of proceedings. Cf. Z. Kmieciak, commentary to Article 14 CAP, [in:] Z. Kmieciak, W. Chróścielewski, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2019.

[8] More on this cf. J. Jendrośka, [in:] J. Borkowski, J. Jendrośka, R. Orzechowski, A. Zieliński, *Kodeks postępowania administracyjnego. Komentarz,* Warszawa 1989, p. 186.

[9] These include rulings made at various stages of the proceedings, i.e., initiation of the proceedings, investigation, decision-making, in the timespan of the proceedings from the date of its initiation until the final decision. More on this G. Łaszczyca, *Postanowienie administracyjne w ogólnym postępowaniu administracyjnym,* Warszawa 2011, p. 103 ff.

[10] *E.g.*, the ruling on the refusal to initiate proceedings (Article 61a § 1 and 2 CAP), ruling on correcting a decision (Article 113 § 1 and 3 CAP). More on this G. Łaszczyca, *Postanowienie administracyjne...,* p. 103 ff.

Delivery of Documents – in Article 14 § 1 CAP, and as a result of the amendments – in Article 14 § 1a CAP. The principle of written form of proceedings based on relative criteria in the administrative process in relation to the principle of oral form of proceedings, as an exception arising from Article 14 § 2 CAP, determines the sphere of proportions relevant for the form of proceedings (hearing, proceedings in chambers), remaining in direct relation to the institution of holding sessions in chambers, typical for the administrative process. Therefore, the principle of a written record in the course of proceedings, with the admission of a surrogate in the form of an electronic form of actions, as a manifestation of the transformation of public administration from "paper-based" to "electronic", remains the rule which is an external expression not only of the guarantee of precision in recording the actions having legal significance in the case, but also of the transparency of proceedings and certainty of legal transactions[11]. The essence and purpose of the principle of written form lies primarily in preventing possible disputes as to the content of the legal relations established in the proceedings[12]. It results basically from technical issues related to the duration of the investigation conducted as a rule in the form of sessions in chambers; special affirmation of documentary evidence; allowing the possibility of indirect performance of evidence taking activities – *e.g.* giving testimony in writing, submitting written statements; written record of evidence produced in the course of proceedings – *e.g.* evidence of hearing a party, witness, expert, evidence of inspection and expert opinions prepared with the participation of a representative of a public administration body. Thus, the principle of written form of proceedings is a technique for performing evidence taking and legal activities in the course of proceedings that is appropriate to the prevailing form of evidence proceedings in administrative cases[13]. Consequently, the meaning of the phrase contained in Article 14 § 1 CAP "Cases shall be... resolved..." could not be equated with the very act ending the proceedings. Its essence should each time be reduced to the form of recording in the case files all procedural actions that are significant for the outcome of the case and the course of proceedings[14]. As a consequence, the written form or the equivalent electronic document form should

[11] Cf. M. Gajda-Durlik, *Zasady ogólne postępowania administracyjnego a zasady ogólne postępowania cywilnego,* [in:] *System prawa administracyjnego procesowego,* G. Łaszczyca, A. Matan (eds.), *Zasady ogólne postępowania administracyjnego, vol. II, part 2,* J.P. Tarno, W. Piątek (eds.), Warszawa 2018, p. 612 ff., see also H. Knysiak-Sudyka, commentary to Article 14 CAP, [in:] H. Knysiak-Sudyka, *Kodeks...*, p. 167.

[12] Cf. J.P. Tarno, *Zasady ogólne KPA w orzecznictwie Naczelnego Sądu Administracyjnego*, "Studia Prawno-Ekonomiczne" 1986, vol. 36, p. 59.

[13] Cf. M. Gajda-Durlik, *Zasady ogólne postępowania…*, p. 612 ff.

[14] Cf. Z. Kmieciak, commentary to Article 14 CAP, [in:] Z. Kmieciak, W. Chróścielewski, *Kodeks postępowania…,* Warszawa 2019; see also H. Knysiak-Sudyka, commentary to Article 14 CAP, [in:] H. Knysiak-Sudyka, *Kodeks...,* p. 167.

refer both to the act that ends the proceedings in a case (decision, ruling, settlement), as well as other activities of the authority (e.g. summons, minutes, notes, notifications) or the parties or other participants (e.g. applications, i.e. requests, explanations, appeals, complaints) in the course of the proceedings; however, the use of the form of an electronic document within the procedural activities of the authority or the parties or other participants of the proceedings and its possible use as evidence in administrative proceedings depended on whether such a possibility was explicitly provided for in the provisions of the Code[15].

Here, it should be noted that while there were no doubts about the possibility to use an electronic document *i.e.*, as a form of recording the actions in proceedings to the extent permitted by law, including as a form of resolving a case and as a form of an application, it was not obvious whether an electronic document (within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE) could be assigned the function of evidence in administrative proceedings[16]. As emphasised in literature, the legal solutions adopted by the legislator in the field of electronic document were created primarily for the needs of its use by the electronic public administration, and not *stricte* for the needs of general administrative proceedings[17]. Therefore, the problem of using an electronic document as evidence in a case has gradually gained importance along with a successive – staggered – process of implementing IT solutions throughout the administrative proceedings, including the phase of evidence proceedings.

The first significant step towards the use of information and communication technologies in the operation of public administration in general was the Act of February 17, 2005, on Informatisation of the Activities of Entities Performing Public Tasks[18]. It is understood that this act for the first time introduced a legal definition of the concept of electronic document, applicable in relations with public entities, not excluding administrative proceedings[19]. Article 16.3 AIAE provides for authorisation of the Prime Minister to issue an ordinance regulating the organisational and technical conditions for delivery of electronic documents and the form of official certification of receipt of such documents by the addressees[20].

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[15] Cf. Z. Kmieciak, commentary to Article 14 CAP, [in:] Z. Kmieciak, W. Chróścielewski, *Kodeks postępowania…*, Warszawa 2019.

[16] According to A. Wróbel, an electronic document within the meaning of Article 14 § 1 CAP should not be identified with an electronic document as evidence (means of evidence) within the meaning of a private or public document. Cf. A. Wróbel, commentary to Article 14 CAP, [in:] A. Wróbel, M. Jaśkowska, M. Wilbrandt-Gotowicz, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2020.

[17] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 98 ff.

[18] Journal of Laws no. 64 item 565.

[19] G. Sibiga, *Komunikacja elektroniczna...*, p. 57.

[20] Cf. the Ordinance of the Prime Minister of September 29, 2005, on the Organisational and Technical Conditions for Serving Electronic Documents to Public Entities (Journal of Laws no. 200 item 1651).

However, the changes introduced to the Code of Administrative Procedure by the aforementioned Act concerned a narrow range of issues, *i.e.*: delivery by electronic means (Articles 39[1] and 46 CAP), compliance with the time limit (Article 57 CAP), the date of commencement of the proceedings when filing a request by electronic means (Article 61 CAP), the manner of filing a request (Article 63 CAP). The structure and method of preparing letters in the form of electronic documents *stricte* for the needs of administrative proceedings; organisational and technical conditions for serving letters in the form of electronic documents, including the form of official certification of receipt of such letters by their addressee; the method of making copies of electronic documents available, taking into account the need to ensure security in the use of letters in the form of electronic documents and efficiency of the proceedings, were determined in the Ordinance of the Minister of Internal Affairs and Administration of November 27, 2006 on Preparing and Serving Letters in the Form of Electronic Documents[21], issued under the delegation of Article 39[1] § 2 CAP. The use of IT means in general administrative proceedings found normative expression only in those provisions that were introduced to the Code of Administrative Procedure. In the administrative process, there was no direct reference to the general application of the Act on Informatisation of the Activities of Entities Performing Public Tasks. As a consequence, the importance of the electronic document in the evidence taking phase was negligible[22].

Therefore, the evolution of the procedural situation (essence and function) of the electronic document in the general administrative procedure, including in the phase of evidence proceedings, was significantly influenced only by the subsequent amendments to the administrative procedure, primarily resulting from the changes noted in 2010-2013 and then in 2014-2021. Firstly, by virtue of the amendment of February 12, 2010 of the Act on Informatisation of the Activities of Entities Performing Public Tasks[23], regulations defining the rules of functioning of the electronic platform of public administration services (including the ePUAP trusted profile, signature confirmed by the ePUAP trusted profile and the ePUAP system signature), the rule of technological neutrality and changes in the scope of official certification of receipt and definition of an IT data carrier were introduced. In addition, one implementing act on the electronic document was introduced[24]. The changes in the provisions of the Code of Administrative Procedure included:

[21] Journal of Laws no. 227 item 1664.

[22] For more on this topic, cf. G. Sibiga, *Informatyzacja postępowania administracyjnego. Postulaty zmian w przepisach prawa*, El.Adm. 2008, no. 4, p. 15 ff.

[23] Cf. the Act of February 12, 2010, Amending the Act on Informatisation of the Activities of Entities Performing Public Tasks and Certain Other Acts (Journal of Laws no. 40 item 230).

[24] Cf. the Ordinance of the Prime Minister of September 14, 2011, on Preparing and Serving Electronic Documents and Making Forms, Templates and Copies of Electronic Documents Available (Journal of Laws of 2018 item 180).

resolving cases in the form of an electronic document (Article 14 § 1 CAP), delivery of documents by electronic means (Article 39[1] § 1, Article 46 § 4-6 CAP), summonses with the use of an electronic document (Article 54 § 2 CAP), calculation of time limits for sending letters in the form of an electronic document (Article 57 § 5(1) CAP), the way of submitting applications in the form of an electronic document (Article 63 § 1, 3a and 4 CAP), issues of access to letters in the form of an electronic document (Article 73 § 3 CAP), issuing and serving rulings and decisions in the form of an electronic document (Article 107 § 1, Article 109 § 1, Article 124 § 1, Article 125 § 1 CAP), issuing certificates in the form of an electronic document (Article 217 § 4 and Article 220 § 1 CAP). In the presented scope, particularly important for the phase of administrative evidence proceedings was the amendment of Article 14 § 1 CAP, whose wording provided not only for the possibility of resolving cases in the traditional written form, but also in the form of an electronic document, served by electronic means. In addition, it was assumed that the general reference to the Act on Informatisation of the Activities of Entities Performing Public Tasks unambiguously determined the application of the provisions of this Act throughout the administrative proceedings[25]. The literature also emphasised the importance of changes that involved the introduction of a catalogue of permitted methods of authentication of electronic documents, *i.e.*, using an electronic signature as well as the ePUAP trusted profile. They have noticeably increased the availability of e-services for addressees of activities of public administration bodies[26].

Subsequent amendments, falling between 2014 and 2021, have generally focused on the introduction of mechanisms and instruments to improve the implementation of administrative actions electronically using electronic tools. The implementation of new solutions by the Act of January 10, 2014[27] allowed not only to expand the possibility of using electronic means of communication in administrative procedure, but also to use, to a wider extent than before, an electronic document in the proceedings. Among others, the provisions which so far limited the recording of certain actions in the proceedings only to the letter in paper form[28] were revised. The modernisation of administrative proceedings was reflected in changes concerning: power of attorney in the form of an electronic document (Article 33 § 2, 2a and 3a CAP), delivery of documents by electronic means (Article 39[1] § 1

[25] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 83.

[26] Cf. B. Czerwińska, *Wnoszenie i doręczanie pism za pomocą środków komunikacji elektronicznej w e-Urzędzie*, [in:] J. Korczak (ed.), *Województwo – region – regionalizacja 15 lat po reformie terytorialnej i administracyjnej,* Wrocław 2013, p. 169.

[27] Cf. the Act Amending the Act on Informatisation of the Activities of Entities Performing Public Tasks and Certain Other Acts (Journal of Laws item 183).

[28] Cf. rationale to the government draft (7th term, Sejm paper no. 1637), p. 44.

and 1a-1d, Article 40 § 4, Article 41 § 1 and Article 46 § 3-10 CAP), summonses in the form of an electronic document or with the use of an electronic document and summons requirements (Article 50 § 1, Article 54 § 1(4), Article 91 § 2 CAP), submitting applications in the form of an electronic document (Article 63 § 3a, 3b and 5 CAP), annotations in the form of an electronic document (Article 72 § 1 and 2 CAP), access to the case file by electronic means (Article 73 § 3 CAP), certification of conformity with the original of a copy of a document in the form of an electronic document (Article 76a § 2a CAP), certificates in the form of an electronic document (Article 220 § 3-5 CAP). Also, a major change in the rules related to the commencement of the eIDAS Regulation[29] on July 1, 2016, created a new legal framework for the use of ICT tools in administrative proceedings. The eIDAS regulation – directly applicable in the Polish legal order – contains regulations concerning *i.e.*, the legal framework for electronic signatures, electronic seals, electronic time stamps, electronic documents, registered electronic delivery services and certified website services. The process of adapting Polish law to the requirements of the eIDAS regulation was reflected in the newly enacted Act of September 5, 2016, on Trust and Electronic Identification Services[30], as well as in the Act of November 18, 2020, on Electronic Delivery of Documents.

Within the regulations of the Code, adaptation amendments have taken place gradually. In the first phase they were focused on: powers of attorney in electronic form and authentication of their copies (Article 33 § 2a and 3a CAP), instructions related to the receipt of letters in the form of electronic documents (Article 46 § 4(3) CAP), affixing a signature to a summons using an electronic document (Article 54 § 2 CAP), requirements for applications lodged in the form of an electronic document (Article 63 § 3a(1) CAP), the way of access to case files in the ICT system (Article 73 § 3 CAP), certification of conformity with the original of copies of documents prepared in the form of an electronic document (Article 76a § 2a CAP), components of decisions and rulings (Article 107 § 1 CAP and Article 124 § 1 CAP)[31].

In the next stage, on the occasion of changes aiming at the de-formalisation and legalisation of the administrative procedure[32], the use of IT tools was intensified by introducing *i.e.*: copies of case files in the form of an electronic document, in order to transmit them together with a reminder (Article 37 § 4 CAP), delivery of

[29] Regulation of the European Parliament and of the Council of July 23, 2014, on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ EU L 257, p. 73); hereinafter: eIDAS.

[30] Journal of Laws of 2016 item 1579.

[31] Cf. amendments resulting from the Act of September 5, 2016, on Trust and Electronic Identification Services (Journal of Laws of 2016 item 1579).

[32] Cf. the Act of April 7, 2017, on the Amendment of the Act – Code of Administrative Procedure and Some Other Acts (Journal of Laws of 2017 item 935).

letters to an electronic mailbox to certain public entities acting as a party or other participant in administrative proceedings (Article 39^2 CAP), certification of conformity with the original of a copy of a document by an authorised official of the authority conducting the proceedings (Article 76a § 2b CAP), elements of a decision issued in the form of an electronic document (Article 107 § 1 CAP), the possibility of drawing up a settlement in the form of an electronic document (Article 117 CAP), defining the date of issuing an objection, a decision or a ruling ending the proceedings in the case in the form of an electronic document – for a tacit resolution of the case (Article 122b(3) CAP), the possibility to issue a certificate by way of a ruling in the form of an electronic document – for a tacit resolution of the case (Article 122f CAP), the obligation to file an application in the form of an electronic document when filing an application using an electronic form in simplified proceedings (Article 163c § 1 and 3 CAP). The introduction of those solutions, which made the usefulness of the electronic document more realistic, was assessed as particularly important for the administrative evidence procedure. It has become the primary means of communicating statements of intent, knowledge, or other electronically (digitally) recorded statements (information) by electronic means between public entities and between public entities and a non-public entity[33]. The general rules of evidence proceedings arising from objective truth and the authority's evidentiary discretion, including the rules of the open catalogue of means of evidence, did not allow either the possibility of treating an electronic document as a source of evidence to be ruled out (nor did they exclude the possibility of transmitting it directly to the authority on IT data carriers). However, it should be emphasised that despite the positively evaluated usefulness of the electronic document in administrative evidence proceedings, the Code itself lacked a legal definition of this document. The term "electronic document" appeared *expressis verbis* only in Article 54 § 2 CAP and in Article 117 § 1 CAP. In other provisions, whenever they provided for the right to use an electronic document, other wordings appeared at various times, such as "form of an electronic document" (Article 14 § 1 CAP), "letter in the form of an electronic document" (*e.g.*, Article 73 § 3 CAP), "document in the form of an electronic document" (Article 46 § 4-6 CAP). Regardless of the terminological inconsistency, the reference in Article 14 § 1 CAP to the "form of an electronic document" within the meaning of the provisions of the Act on Informatisation of the Activities of Entities Performing Public Tasks, has given rise to the claim that in determining the meaning of these terms it is necessary to use the definition of an electronic document within the meaning

[33] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 98.

of Article 3(2) AIAE, taking into account the modification of the legal solutions of this Act by the provisions of the Code[34].

After the changes introduced to the Code of Administrative Procedure by the Act on Electronic Delivery of Documents, the legislator has consistently abandoned the term of "electronic document" within the meaning of the Act on Informatisation of the Activities of Entities Performing Public Tasks. The conceptual changes are reflected not only in Article 14 § 1a CAP, which is a vehicle of the general principle of written form of proceedings and in the provisions relating to the procedural forms of implementation of the principle in the course of proceedings, but also in the provisions contained in those items of the Code of Administrative Procedure which have been directly or indirectly devoted to evidence proceedings (*e.g.* Article 76a § 2a CAP, Article 220 § 3 CAP). In this state of affairs, the problem of legal position – the essence and function of the electronic document defined in Article 3(2) AIAE in administrative evidence proceedings does not lose its relevance. In particular, the question of the forms of procedural actions of evidence proceedings, documents and other legally relevant data that can be materialised in these proceedings in electronic form – an electronic document, and thus, in essence, the problem of its scope of application in this phase of the proceedings, requires consideration and verification.

3. Use of IT tools in administrative evidence proceedings

3.1. Electronically recorded letter vs. electronic document in administrative evidence proceedings

The starting point for consideration of the use of IT tools in the administrative proceedings will be to confront the concept of "a letter recorded in an electronic form", which for the purpose of determining the form of conducting and resolving a case in the administrative proceedings is provided by Article 14 § 1a CAP, with the concept of "an electronic document", defined in the Act on Informatisation of the Activities of Entities Performing Public Tasks.

Pursuant to Article 14 § 1a CAP: "Cases shall be handled and resolved in writing and recorded in paper or electronic form...". The provision of Article 14 § 1a CAP, the normative meaning of which, just as that of the previously binding Article 14 § 1 CAP, establishes the principle of written form of procedure, means the obligation to record the procedural steps in the course of the proceedings and resolve the case by means of a letter in written form on paper or in an electronic

[34] Cf. G. Sibiga, *Komunikacja elektroniczna…*, p. 51 ff; see also B. Kwiatek, *Dokument elektroniczny…*, p. 106 ff.

written form. The new item of Article 14 CAP, *i.e.* § 1a, notwithstanding the use of uniform terminology – "letter" – to define the form of procedural actions and the form of resolving cases, as well as clear reference of a letter recorded on paper or electronically to procedural actions in the entire course of proceedings, also eliminates the discussion caused in the doctrine by the appearance in Article 14 § 1 CAP – in addition to the written form – also the form of an electronic document[35]. Nevertheless, even when the provision of Article 14 § 1 CAP was in force, it was rightly emphasised that the adoption of "the form of an electronic document"[36] did not constitute a denial or a qualitative change in the very principle of written form of proceedings. The introduction of the term "in the form of an electronic document" was only a manifestation of the adaptation of the principle of written form to the new technical conditions, while maintaining its previous essence[37]. Taking into account the above, it should be noted that the amendment introduced by the Act on Electronic Delivery of Documents is merely structuring and clarifying in this respect; it does not change the current normative meaning of the provisions of the Code of Administrative Procedure. Under the modern view of the principle of written form of proceedings, procedural actions should be expressed in writing (textually), regardless of the form of the carrier (i.e., paper, or electronic)[38]. The written form means only the condition of expression by writing, *i.e.*, as a text consisting of *i.e.*, letters, digits, and other special characters, fixed on a carrier that allows the reproduction of the content and form of the text[39]. Other forms are, for example, oral, audiovisual or graphic, where information is transmitted by means of an image[40]. This thesis is confirmed not only by the wording of Article 14 § 1a

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[35] The issues raised in the doctrine are pointed out by B. Kwiatek, *Dokument elektroniczny…*, p. 153 ff.

[36] Cf. the Act of February 12, 2010, Amending the Act on Informatisation of the Activities of Entities Performing Public Tasks and Certain Other Acts (Journal of Laws no. 40 item 230).

[37] Cf. M. Cherka, [in:] R. Hauser, M. Wierzbowski (eds.), *Kodeks postępowania administracyjnego. Komentarz,* Warsaw 2017, p. 143; also B. Kwiatek, *Dokument elektroniczny…*, p. 147. G. Sibiga emphasised, based on the validity of Article 14 § 1 CAP, that the term "form" ("written form", "form of an electronic document") refers in Article 14 § 1 CAP to the manner of written expression. Therefore, the "form" and "expression" – the latter understood as the materialisation of the former – are distinct concepts. Consequently, the form of an electronic document is an electronic expression of recording information – a subtype of the written form. Cf. G. Sibiga, *Komunikacja elektroniczna w Kodeksie postępowania administracyjnego. Komentarz*, LexisNexis 2011; also A.G. Citko, *Rewolucja czy ewolucja? Zmiany w postępowaniu administracyjnym i postępowaniu sądowo administracyjnym*, "Edukacja Prawnicza" 2010, no. 12, p. 3.

[38] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 147.

[39] Cf. G. Szpor, *Administracyjne problemy informatyzacji*, [in:] J. Supernat (ed.), *Między tradycją a przyszłością w nauce prawa administracyjnego. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi,* Wrocław 2009, p. 721.

[40] Cf. P. Pietrasz, I. Szczepańska, *Nowe technologie w podatkowym postępowaniu dowodowym – wybrane zagadnienia*, [in:] F. Dowgier (ed.), *Ordynacja podatkowa. Stan obecny i kierunki zmian*, Białystok 2015, p. 87.

CAP, but also by the provisions constituting a manifestation of the implementation of the principle of written form in the course of proceedings. The legislator has consistently carried out unification of the statutory nomenclature for determining the form of procedural actions, including in the phase of evidence proceedings, as well as the form of resolving the case – using the term "letter", regardless of the form of its recording (paper or electronic). Whenever reference is made to a letter recorded in electronic form, it is technically understood to mean an electronic document, as an electronic form of materialisation of textual information[41].

From the perspective of the assessment of the semantic scope of the terms: "a letter recorded in an electronic form" within the meaning of Article 14 § 1a CAP and "an electronic document" within the meaning of the provisions of the Act on Informatisation of the Activities of Entities Performing Public Tasks, a separate issue is that the Code term "a letter recorded in an electronic form" has, on the one hand, a narrower meaning than the term "an electronic document" and, on the other hand, the legal existence of an electronic document in proceedings depends on the fulfilment of the legal and procedural requirements of the Code.

The provision of Article 3(2) in conjunction with Article 3(1) AIAE, while defining the term "electronic document" refers to a set of data constituting a separate meaningful whole, arranged in a specific internal structure, and recorded on a computer data carrier, *i.e.*, a material or device used for recording, storing and reading data in a digital form. It is assumed in the doctrine that the term "electronic document" – pursuant to Article 3(2) in connection with Article 3(1) AIAE – includes features and elements of a purely technical nature that must be present jointly, i.e.: 1) existence of a set of data constituting a separate meaningful whole – making up the content of the document; 2) arrangement of the data set in a specific internal structure; 3) recording the contents of the document – a set of data arranged in a specific internal structure on a computer data carrier, referred to in Article 3(1) AIAE.[42] The concept of the electronic document, in its technical sense, therefore indicates that it is adaptable to administrative proceedings to the extent legally relevant in those proceedings, including as a form of materialisation of the letter, but

[41] This thesis is confirmed, among others, by Article 61(1)(2) AIAE, in accordance with which, whenever in provisions on informatisation contained in separate acts reference is made to: electronic data, data expressed electronically, data in electronic form, IT data, information expressed electronically or information in electronic form – this should be understood, in case of any doubt as to interpretation, to mean the electronic document referred to in Article 3(2) AIAE.

[42] On the features and technical elements of an electronic document within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE, cf. *i.e.* A. Haręża, *Postępowanie administracyjne prowadzone za pomocą środków komunikacji elektronicznej (Część I). Dokument elektroniczny (uwagi wprowadzające)*, "Casus" 2009, no. 52, p. 18 ff.; G. Sibiga *Komunikacja elektroniczna…*, p. 51; M. Jachowicz, M. Kotulski, *Forma dokumentu elektronicznego w działalności administracji publicznej*, Warszawa 2012, p. 43.

it is not limited thereto[43]. The semantic scope of the term "electronic document" is defined in more detail by the provisions of the eIDAS Regulation. Article 3(35) of the eIDAS Regulation defines "electronic document" as any content stored in electronic form, in particular text or sound, visual or audiovisual recording. At the same time, according to Article 46 of the Regulation, legal effect of an electronic document as evidence in legal proceedings is recognized; there is no reference to administrative proceedings[44]. Despite the adaptation changes to the EU legislation by the Act on Trust and Electronic Identification Services, both the definition of Article 3(2) in conjunction with Article 3(1) AIAE and the provisions of the Code of Administrative Procedure – which give legal significance to the electronic document in administrative evidence proceedings – have not been modernised.

In the phase of evidence proceedings, the semantic scope of the term "a letter recorded in an electronic form", referred to in Article 14 § 1a CAP, is determined, in turn, not only by the technical elements of the structure of an electronic document as a form of its recording. In administrative proceedings, the content of the data set, *i.e.*, the content of the document adequate for the use in the procedure, is decisive. Such a document will – to the extent consistent with its statutory purpose – be used in administrative evidence proceedings provided that it meets, in addition to the technical requirements, the requirements of the Code in terms of the substantive content of the document and its formal elements[45]. The essence of the form of an electronic document within the meaning of Article 14 § 1 CAP, and now – of a letter recorded in an electronic form within the meaning of Article 14 § 1a CAP, is constantly contained in the notion of written form as a condition for expressing by means of writing – a text recording human thoughts (statements of knowledge, intent, views on reality, assessments, judgments, conclusions, information). The legal and procedural requirements for certain letters in traditional form apply equally to the content of an electronic document. This shall also apply to the signature under the document. Pursuant to Article 14 § 1a CAP, letters recorded in an electronic form shall be affixed with a qualified electronic signature, a trusted profile or a personal signature or a qualified electronic seal of the public administration body with the indication of the person who affixes the seal in the content of the letter. The condition for the existence of an electronic document, as a form of recording the thoughts (statements) of a person in statutorily qualified forms,

[43] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 109; additionally, B. Kwiatek argues that the absence of any of these elements negates the very existence of an electronic document. See also: M. Jachowicz, M. Kotulski, *Forma dokumentu elektronicznego…*, p. 43.

[44] As stated in Article 46 of the eIDAS Regulation, "An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form".

[45] Cf. G. Sibiga, *Komunikacja elektroniczna…*, p. 53.

such as an application, minutes, note, summons, notification, certificate, is therefore the ability to determine the originator of the document, *i.e.*, the person who expresses the statement contained therein, taking into account the requirement of electronic authentication of the content of the letter[46]. The determination of the originator shall not apply to automatically generated letters (bearing the qualified electronic seal of the authority) that are outside the direct (or with minimal) human involvement; they are, in fact, the result of the automated performance of official actions – such as the compilation of data by the ICT system[47]. Affixing an electronic signature (electronic seal) to a document is therefore an essential legal and procedural requirement of a letter recorded electronically in accordance with Article 14 § 1a CAP, also taking into account the fact that with regard to the creation of an electronic document within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE, an electronic signature is not an integral part of it[48]. Additionally, the overall systemic solutions of the Code in the context of the changes resulting from the Act on Electronic Delivery of Documents, as well as in connection with the previously binding reservation of serving letters in the form of an electronic document only by electronic means, indicate that letters recorded in this manner are applicable in electronic legal transactions, including with the use of electronic delivery. It is important that they are recorded electronically in data formats that are interoperable with their simultaneous recording on paper[49]. Printouts of electronically recorded letters that meet the requirements set forth in Article 39^3 §2 and 3 CAP should be treated as a certified copy of the document[50].

In the discussed aspect of the issue, the concept of an electronic document as a letter recorded in an electronic form within the meaning adopted in Article 14 § 1a CAP, should be referred to 1) the form of conducting proceedings in the case (the form of procedural actions of the authority, the party and other participants in the proceedings, including those related to taking evidence, as well as the form of recording in the case file the actions of obtaining evidence and their content); 2) the form of resolving the case (the act ending the proceedings in the case); additionally, only to the extent to which the Code of Administrative Civil Procedure

[46] For more on this cf. B. Kwiatek, *Dokument elektroniczny…*, p. 123 ff.

[47] Cf. M. Wilbrandt-Gotowicz, commentary to Article 61 AEDD, [in:] K. Czaplicki, A. Gryszczyńska, M. Świerczyński, K. Świtała, K. Wojsyk, M. Wilbrandt-Gotowicz, *Doręczenia elektroniczne. Komentarz*, Warszawa 2021.

[48] Cf. A. Haręża, *Postępowanie administracyjne…*, p. 19.

[49] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 120 ff.

[50] See also A. Wróbel, commentary to Article 39^3 CAP, [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2022. Another position is presented by G. Sibiga, who points in this case to a new form of resolving a case, which was not provided for in Article 14 § 1 CAP; G. Sibiga, *„Odwrócona cyfryzacja" w postępowaniu administracyjnym ogólnym po nowelizacji Kodeksu postępowania administracyjnego z 16.4.2020 r.*, "Monitor Prawniczy" 2020, no. 18, p. 957.

reserves for procedural actions the form qualified as a letter – either explicitly (e.g. Article 39 § 1 CAP regarding the service of letters; Article 63 § 3 CAP regarding the application made in writing) or implicitly (e.g. Article 67 § 1 CAP regarding the form of minutes; Article 72 § 1 CAP regarding the form of a note). The literature on the subject, however, rightly emphasises that an electronic document within the meaning of Article 14 § 1 in conjunction with Article 3(2) in conjunction with Article 3(1) AIAE (currently a letter recorded in electronic form – Article 14 § 1a CAP) cannot be equated with an electronic document in the meaning of an official or private document admitted as evidence (means of evidence)[51].

3.2. Electronic document admitted as evidence in administrative evidence proceedings

The essence and function of an electronic document in administrative evidence proceedings shall be considered in other terms to the extent that the Code of Administrative Procedure does not introduce any qualified form for documents collected in case files. These will include, in particular, documents collected in the course of evidence activities, i.e., activities undertaken by a public administration body or by other parties to proceedings in order to establish the existence or non-existence of facts that are of significance for settling a case; however, this will generally apply to documents produced outside the proceedings. As it has already been pointed out, a letter in the form of an electronic document, in accordance with the nomenclature of Article 14 § 1 CAP, and now a letter recorded in an electronic form in accordance with Article 14 § 1a CAP, is included in the term "electronic document", but it is not equivalent to it[52]; nor does it exhaust the legal meaning of an electronic document in administrative proceedings. The literature on the subject emphasises that the basis for the creation of the electronic document was *i.e.*, the need to adapt modern methods of information and communication in the activities of public administration to the legally relevant extent; broader than just the form of recording the actions of conducting and resolving the case in writing in administrative proceedings. The provisions of the Act on Informatisation of the Activities of Entities Performing Public Tasks allow for the creation of electronic documents in data formats that allow for the expression of statements, information, etc., including in the form of a letter, but also sound, graphics, video, etc. Thus, an electronic document can be a carrier of writing or take the form of recording other than text (writing), forms of expressing statements or other data in data

[51] Cf. A. Wróbel, commentary to Article 14 § 1 CAP, [in:] A. Wróbel, M. Jaśkowska, M. Wilbrandt-Gotowicz, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2020.

[52] Cf. S. Kotecka, *Prawne aspekty nowych regulacji w obszarze dokumentu elektronicznego*, "Elektroniczna Administracja" 2007, No. 2, p. 33 ff.

formats provided for in Annexes 2 and 3 to the Regulation of April 12, 2012, on the National Interoperability Framework, minimum requirements for public registries and electronic information exchange and minimum requirements for ICT systems[53]. Writing is thus one possible form of expressing the content of an electronic document[54]. The essential characteristic of an electronic document, on the other hand, regardless of the form of the information recorded, is that it has the characteristics of a document as a source of confirmation of a factual or legal state[55].

Given that an electronic document is, by its very nature, a source of confirmation of a factual or legal state, it should therefore be understood in administrative evidence proceedings as in court proceedings, such as civil or criminal proceedings, *i.e.*, in a manner comparable to the essence of a traditional document in these proceedings. Also, the position and functions of such a document in an administrative procedure should be equivalent to a traditional document. However, the problem is that the Code of Administrative Procedure does not contain a legal definition of the term "document"; in fact, this term is defined inconsistently in the doctrine. Interpretations of the term "document" generally arise in connection with the analysis of Article 75 § 1 CAP, which in the catalogue of the specified means of evidence distinguishes documentary evidence, although the term "document" occurs in the Code of Administrative Procedure in other legal configurations as well[56]. It is assumed that a document is a written act that is an externalisation of specific thoughts or information[57]. For an act to be considered a document, it is essential that it be covered by writing, but the type of writing and the material on which it is drawn up are not important; only the manner in which the data is recorded in writing must make it reusable[58]. The essence of the term "document" within the meaning of Article 75 § 1 of the Code is further expressed in the substantive content and purpose of the use of this document in the proceedings as evidence (means of evidence). In turn, the purpose of evidence in the proceedings is to contribute to the clarification of the case. In this sense, a document, including an electronic document, admitted as evidence will be a written act which is a source of information enabling one to prove facts. What is irrelevant to the term

[53] Cf. Journal of Laws of 2017, item 2247.

[54] Cf. B. Kwiatek, *Dokument elektroniczny…*, p. 159.

[55] Cf. A. Harężа, *Postępowanie administracyjne…*, p. 18 ff.

[56] Cf. *e.g.*, Article 33 § 3 CAP which uses the term "document" within the scope of documents other than a power of attorney, indicating the authority of an attorney; Article 66a § 2 CAP which uses the term "document" within the scope of reference to a document in the contents of the case file, Article 70 CAP which uses the term "document" within the scope of documents relevant the case – attached to the record.

[57] H. Knysiak-Sudyka, commentary to Article 76 CAP, [in:] H. Knysiak-Sudyka, *Kodeks...*, p. 555 ff.

[58] Cf. R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2017, p. 466.

"document", however, is whether or not the written act was signed. In the former case, it is a nominal document; in the latter, it is an anonymous one[59].

Article 76 § 1 CAP introduces the category of an official document (drawn up in the prescribed form by the authorised state bodies within their scope of action) which constitutes evidence of what has been officially stated therein. The term "public document" itself is not defined in the Code. Consequently, it is accepted in the literature that the definitions used in other statutory acts, including *i.e.*, the Act on Access to Public Information[60], may be used as subsidiary measures. Pursuant to Article 6(2) AAPI, "an official document within the meaning of the Act is the content of a statement of intent or knowledge, recorded and signed in any form by a public officer within the meaning of the Criminal Code, within the scope of his or her competence, addressed to another entity or entered in a case file"[61]. The elements of a document thus remain – in addition to the manner of recording – the content of the document ("statement of intent or knowledge"), the manner in which it is used, and the signature of the relevant person. Despite the clear reference in the Code of Administrative Procedure only to the form of an official document, the semantic scope of the term "document" as referred to in Article 75 § 1 CAP also includes a private document within the meaning adopted in Article 245 of the Code of Civil Procedure[62].

In conclusion, it should be stated that the understanding of the concept of "document" provided for in Article 75 § 1 CAP requires taking into account two elements: 1) the evidentiary significance of the document; 2) techniques for structuring and recording the document. The definition of an electronic document addresses only the second of these issues[63]. Consequently, the notion of "electronic document" under the Act on Informatisation of the Activities of Entities Performing Public Tasks does not change the meaning of the notions of "document" (*e.g.*, Article 75 § 1 CAP) or "official document" (Article 76 § 1 CAP) as set forth in the Code. The definition contained in Article 3(2) AIAE is limited to specifying the technique of recording the contents of the document in the system of electronic legal transactions, which distinguishes it from a document in paper form. The concept of an electronic document does not refer at all to its substantive content and formal elements, as well as the purpose of its use, leaving in fact open to the legislator the question of assigning a legal meaning to an electronic document (determining

[59] H. Knysiak-Sudyka, commentary to Article 76 CAP, [in:] H. Knysiak-Sudyka, *Kodeks...*, p. 555 ff; R. Kędziora, *Kodeks…*, p. 466.

[60] Cf. G. Sibiga, *Komunikacja elektroniczna …,* LexisNexis 2011.

[61] Cf. the Act of September 6, 2001, on Access to Public Information (Journal of Laws of 2020 item 2176, as amended); abbreviated as AAPI.

[62] Cf. the Act of November 17, 1964 – Code of Civil Procedure (Journal of Laws of 2021 item 1805, as amended); abbreviated as CCP.

[63] Cf. G. Sibiga, *op. cit.,* LexisNexis 2011.

the essence and function of this document in the various phases of the proceedings). The semantic scope of the term "electronic document" includes both an official document and a private document in administrative proceedings; therefore, it includes one of the means of evidence specified in the Code of Administrative Procedure, *i.e.*, documentary evidence. There is no doubt that equating an electronic document and documentary evidence in administrative proceedings is possible only if the electronic document meets the legal and procedural conditions of traditional document evidence. Despite the nomenclature used in Article 3(2) AIAE – the "document", it will be included in the category of means of evidence specified and typified in the Code of Administrative Procedure as documentary evidence only if it is a carrier (way of materialisation) of evidence in the meaning adopted in the administrative procedure.

3.3. Electronic document admitted as evidence versus other electronic evidence in administrative evidence proceedings

The discussions conducted so far have shown that the notion of an electronic document – despite its definition in the Act on Informatisation of the Activities of Entities Performing Public Tasks – may have a diverse legal meaning. Taking into account the legal aspect, the assessment of the nature and function of the electronic document in the various phases of administrative proceedings, as well as its legal typification is based on the legal and procedural regulations of the Code of Administrative Procedure. This is also important for the proper classification of electronic evidence in administrative proceedings. As a rule, the criteria for classification are: the carrier (distinction is made between documents recorded on paper, recorded in electronic form, recorded in audio, visual or audiovisual form); the elements (distinction is made between content, data set, recorded carrier, signature); the issuers (distinction is made between official issuers – defined as public authorities, public bodies and other state bodies, public officials, and "non-official" issuers); the collections containing the documents (distinction is made between files, records, materials, registers, systems). Essentially, the creation of a document requires the aggregation of data (characters suitable for processing on physical carriers). A data set is given different informational value (of reducing uncertainty) and, depending on it, different evidentiary value; whereby, in administrative evidentiary proceedings, legally relevant data sets will be those relating to events and conduct with which legal norms associate the creation, change or expiry of a legal relationship (legal facts). They serve informational (reducing uncertainty, including recording statements of intent and knowledge) and evidentiary functions. The issuer and the signature itself, as well as its type, are considered important factors

in differentiating these values[64]. It should be noted that the Code does not define the term "evidence". The word "evidence" has many meanings. Evidence can be a circumstance, a thing that proves something, speaks for something, testifies to something, indicates something, a sign of something, confirmation, justification, testimony[65]. Pursuant to Article 75 § 1 CAP: "Anything that may contribute to the clarification of the case and is not contrary to law should be admitted as evidence." In the legal procedure sense, evidence is any source of information that is in accordance with applicable law and that leads to the verification of facts, thus making it possible to prove facts. Regardless of how the Code's term "evidence" is defined; however, it is beyond the scope of those definitions to address the technology used to record information, statements of intent and knowledge, and other forms of communication that are intended to result from that evidence. The problem of typification of an electronic (electronically recorded) document in administrative evidence proceedings is therefore carried out taking into account the conventional criteria for the classification of means of evidence – adopted in the doctrine of administrative process. As the catalogue of means of evidence is open, an electronic document may be typified as specified or unspecified evidence (means of evidence). The function of specified evidence, *i.e.*, documentary evidence, will be fulfilled by such an electronic document within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE which meets the characteristics of an official or private document in the meaning adopted in administrative proceedings. On the other hand, an electronic document within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE covering the recording of events, conduct, other information in the form of a sound, visual or audiovisual recording will be electronic evidence other than documentary evidence, classified as unspecified means of evidence. It should be emphasised that electronic material is treated as an electronically recorded document admitted as evidence in administrative proceedings if it meets, first, the technical requirements for an electronic document within the meaning of the Act on Informatisation of the Activities of Entities Performing Public Tasks, secondly, the legal and procedural requirements for documentary evidence within the meaning adopted in the Code of Administrative Procedure[66], i.e. an official or private document. On the other hand, an electronic document in the technical terms of Article 3(2) in conjunction with Article 3(1) AIAE cannot be classified under the Code as an electronically recorded document admitted as

[64] For more on this topic, cf. G. Szpor, commentary to Article 3 AIAE, [in:] G. Szpor, Cz. Martysz, K. Wojsyk, *Ustawa o informatyzacji działalności podmiotów realizujących zadania publiczne. Komentarz,* LEX 2015.

[65] More on the interpretation of the notion of evidence in CAP, cf. C. Martysz [in:] G. Łaszczyca, C. Martysz, A. Matan, *Postępowanie administracyjne ogólne*, Warszawa 2003, p. 502 ff.

[66] Cf. B. Kwiatek, *Dokument elektroniczny…,* p. 258 ff.

evidence when it becomes a carrier (materialisation) of evidence other than a textual document. However, this does not affect the fact that the functionality of the electronic document in the Code is not limited solely to the set of electronic data contained in the representation of the graphic characters of the letter – corresponding to the legal and procedural requirements of the document[67]. Aa the catalogue of means of evidence is open, the category of "evidence" – for the purposes of administrative proceedings – includes everything that may contribute to the clarification of the case, thus also all means of evidence that are the result of technological progress and serve to confirm the factual and legal state (regardless of the form of electronic recording, e.g. graphic, music, film, multimedia, as well as the elements of the document's structure or the type of data carrier)[68]. They will meet the characteristics of an electronic document within the meaning of Article 3(2) in conjunction with Article 3(1) AIAE under the conditions of meeting the technical requirements set forth in this provision or other electronic evidence (which is not an electronic document in the technical sense) whose role and function in the administrative evidence proceedings as well as reliability and evidentiary value are subject to the discretion of the body. In procedural terms, however, it will be in each of the cases mentioned electronic evidence other than a document. It should therefore be assumed that electronic evidence as a form equivalent to traditional evidence – in accordance with the principle of equal probative value – occupies the same place in the classification of means of evidence under Article 75 § 1 CAP as traditional evidence.

4. Conclusion

In summary, the understanding of electronic document in legal regulation is evolving with the development of information and communication. Nevertheless – despite the long evolution of the implementation of information and communication measures in administrative proceedings – the deficiency of legal regulation is still clearly noticeable. The definition of an electronic document in the Act on Informatisation of the Activities of Entities Performing Public Tasks refers only to issues related to the technique of construction and recording of the document[69]. In contrast, the legal significance of an electronic document varies depending on the subject of the legal matter being regulated. Nevertheless, the notion of "electronic document" within the meaning of Article 3(2) in conjunction with Article

[67] M. Jachowicz, M. Kotulski, *Forma dokumentu elektronicznego…*, p. 41 ff.

[68] See also G. Łaszczyca, B. Wartenberg-Kempka, *Środki dowodowe nienazwane w ogólnym postępowaniu administracyjnym*, "Roczniki Administracji i Prawa. Teoria i Praktyka" 2000, vol. 1, p. 58 ff.

[69] Cf. G. Sibiga, *op. cit.,* LexisNexis 2011.

3(1) AIAE – despite the resignation of the legislator from the explicit reference to the application of this legal act in administrative proceedings – should be assigned, firstly, to qualified procedural actions of the course of proceedings and forms of resolving the case which remain in connection with the application of the general principle of their recording, in addition to the paper form, also in the electronic form (Article 14 § 1a CAP), secondly, to means of evidence, as a result of adaptation of modern information and communication methods for the purposes of administrative evidence proceedings. Within the scope of administrative proceedings regulated by the Code of Administrative Procedure, the essence of a document – regardless of the technique of its recording (in writing or electronically) – remains in connection with its content, which determines in legal terms also the function of a document in these proceedings. Its assessment and legal typification are based on the legal-procedural regulations of the Code of Administrative Procedure in the various aspects of the use of electronic materials in the proceedings. For these reasons, an electronic document being evidence should be distinguished from an electronic document which is a pleading in the course of proceedings (including a way of recording in writing – *e.g.* in the form of minutes – evidence created in the course of proceedings, *i.e.* testimony of witnesses and a party, expert opinions, inspections and expert opinions prepared with the participation of a representative of the authority) and from an electronic document which is a form of recording the manner of resolving the case in writing. For the same reasons, an electronic document, as a carrier of documentary evidence in the sense of an official or private document, will not equal an electronic document materialising another means of evidence in administrative proceedings. Notwithstanding the above, also electronic material having evidentiary significance that does not meet the technical requirements of an electronic document will be electronic evidence remaining in accordance with the modern convention of informatisation of administrative evidence proceedings.

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