

NEW PROCEDURE FOR ELECTRONIC DELIVERIES IN ADMINISTRATIVE PROCEEDINGS

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ABSTRACT

This study focuses on the new procedure of electronic deliveries in administrative jurisdictional proceedings, as regulated by the provisions of the Code of Administrative Procedure. The primary research objective was to describe *de lege lata* the modes of individual deliveries, indicating their mutual hierarchy, while also addressing several issues related to the relationship between the Code and the Act on Electronic Deliveries. Both normative acts necessitate co-existence, and thus determining which of them and in which situational variants will be qualified as *lex generalis*. This task is by no means facilitated by the fact that the characteristics of the framework regulation can be found in the Code, while the Act “model” regulates the rules of communication involving public entities. The main thesis presented in the study underscores the need for a systemic interpretation of the provisions of the latter Act. The author also believes that the definition of the scope of exclusions from the application of the Act was not designed appropriately. The issues raised have not been the subject of articles thus far.

Keywords: Electronic delivery, informatisation of administration, public law, electronic communication, administration

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1. INTRODUCTION

On 5 October 2021, pursuant to Article 61 of the Act of 18 November 2020 on electronic deliveries,¹ an amendment to the Code of Administrative Procedure² entered into force, including, among others, adaptation of the delivery procedure in the Code of Administrative Procedure to the legal framework set out in the Act.³ The explanatory memorandum of the draft bill explains⁴ that its main *ratio* consists in defining the rules for the exchange of correspondence with public entities in relation to other public entities and non-public entities, including natural persons, in such a way that the default way of exchanging correspondence will be the public service of registered electronic⁵ delivery provided on the basis of the eIDAS Regulation⁶ as regards qualified services of registered electronic delivery.⁷ These changes undoubtedly fit into the broader trend of digitalisation⁸ of the public administration, including implementation of the *e-government*⁹ idea, as an expression of social and technological changes stemming from the development of ICT.¹⁰

First of all, however, it should be noted that the new inter-temporal solutions designed by the legislator related to the sequential model of implementing registered electronic deliveries will be fully applicable (applicable to all public entities) from 1 October 2029.¹¹ This means that during the transitional period,

¹ Consolidated text, Journal of Laws of 2022, item 569, as amended.

² Act of 14 June 1960 – Code of Administrative Procedure (consolidated text, Journal of Laws of 2022, item 2000; hereinafter referred to as: “KPA”).

³ The study also takes into account changes that entered into force on 7 July 2022 pursuant to Article 1 of the Act of 8 June 2022 amending certain acts in order to automate the handling of certain matters by the National Revenue Administration (Journal of Laws of 2022, item 1301; hereinafter referred to as “the KAS amendment”).

⁴ Sejm Paper No. 239, p. 6.

⁵ Hereinafter referred to in this document also in the abbreviated form: “PURDE”.

⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC; OJ L 257, 28.08.2014, p. 73; hereinafter referred to as “eIDAS”.

⁷ For the regulation, see also: Marucha-Jaworska, M., *Rozporządzenie eIDAS. Zagadnienia prawne i techniczne*, Warszawa, 2017, pp. 19–44.

⁸ For “computerisation” see opinions and definitions collected by Pietrasz, P., *Informatyzacja polskiego postępowania przed sądami administracyjnymi a jego zasady ogólne*, Warszawa, 2020, pp. 24–35, and Wilbrandt-Gotowicz, M., in: Wilbrandt-Gotowicz, M. (ed.), *Doręczenia elektroniczne, Komentarz*, Warszawa, 2021, p. 30.

⁹ For issues with a common definition of the term “e-government”, see also: Błażewski, M., *Antywartości jako bariery rozwoju e-administracji*, in: Błaś, A. (ed.), *Antywartości w prawie administracyjnym*, Warszawa, 2016, pp. 262–263.

¹⁰ Information and communications technology. See also: Kurczewska, K., ‘Zastosowanie zasad public governance w prawie publicznym jako wyraz zachodzących zmian społecznych i technologicznych’, in: Niżnik-Dobosz, I. (ed.), *Zastosowanie idei public governance w prawie administracyjnym*, Warszawa, 2014, pp. 283–289.

¹¹ See Article 155 of the Act and Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 742 et seq.; Pietrasz, P., ‘Zasady doręczenia pism i wnoszenia podań drogą elektroniczną w postępowaniu podatkowym prowadzonym przez samorządowy organ podatkowy w tzw. okresie przejściowym’, *Samorząd Terytorialny*, 2022, No. 5, p. 8. This problem is also pointed out by G. Sibiga (*Postponing changes to the Code of Administrative Procedure until 5 October 2021 does*

public administration bodies and their clients will have to function in a “dual legal regime” of electronic deliveries consisting in the parallel functioning of the so-called old and new delivery procedure.¹² As far as electronic deliveries are concerned, it should also be clarified that the Act envisages a much broader scope of the ‘deliveries’ concept than the Code of Administrative Procedure.¹³ This is because it covers bilateral communication between a public entity and a natural person or other non-public entity, thus encompassing not only issues related to deliveries and the principle of officiality within the meaning of the Code of Administrative Procedure, but also the procedure for communication of an external entity with the authority, which in administrative jurisdiction takes the form of a procedure for submitting applications.¹⁴

This study focuses only on the new procedure of electronic deliveries in administrative jurisdictional proceedings regulated by the Code of Administrative Procedure. It covers modes of individual deliveries along with their hierarchy, as well as a number of issues related to the relationship between the Code of Administrative Procedure and the Act on Electronic Deliveries. Both normative acts need to co-exist. We should, therefore, determine which one of them and in which situational variants will be qualified as *legi generali*, and which one will constitute *lex specialis*. This is not an easy distinction as the framework regulation can be found in the Code of Administrative Procedure,¹⁵ while the Act regulates the rules of communication

not resolve legal doubts and further conduct of administrative proceedings based on transitional provisions, <https://legalis.pl/przesuniecie-zmian-w-kpa-na-1-10-2021-r-nie-rozwiazuje-watpliwosci-prawnych-i-dalszego-prowadzenia-postepowania-administracyjnego-na-podstawie-przepisow-przejscyjnych/>, accessed on 15 October 2022). Intertemporal issues related to the amendment to the Code of Administrative Procedure, including adaptation of the delivery procedure in the Code of Administrative Procedure to the legal framework set out in the Act is discussed in detail in the article: Cebera, A., *Podwójny reżim prawny doręczeń elektronicznych w postępowaniu administracyjnym jurysdykcyjnym w okresie przejściowym po nowelizacji k.p.a.*, in print.

¹² Pursuant to Article 158(1) of the Act, during the period from the day the Act enters into force until the day preceding the obligation to apply this Act, as referred to in Article 155, the applicable provisions are Article 39, Article 39¹, Article 40(4) and Article 46 (4)–(9) of the Act amended in Article 61 (the Code of Administrative Procedure) in the current wording, in relation to deliveries by public entities as referred to in Article 105 of the Act (public entities as referred to in the Act of 17 February 2005 on Computerisation of Public Entities) to non-public entities within the meaning of this Act, made in the ICT system of the public authority.

¹³ It should also be emphasised that the electronic delivery under the Act, as opposed to the electronic delivery procedure regulated by the Code of Administrative Procedure as it existed prior to 5 October 2021, is universal in the sense that, as a rule, all public entities within the meaning of Article 2(6) of the Act, and therefore not only public administration bodies, but also, for example, courts or prosecutor’s offices – will deliver correspondence with proof of mailing and receipt in a standardised manner, i.e., subject to the exceptions provided for in the Act, using the public service of registered electronic delivery to an electronic delivery address.

¹⁴ In relation to provisions of the Act of 29 August 1997, The Tax Ordinance Act (Journal of Laws 2021, item 1540 as amended; referred to as: o.p.) Pietrasz, P., ‘Zasady doręczania pism i wnoszenia podań drogą elektroniczną w postępowaniu podatkowym prowadzonym przez samorządowy organ podatkowy w tzw. okresie przejściowym’, *Samorząd Terytorialny*, 2022, No. 5, p. 10.

¹⁵ See also Kmiecik, Z., ‘Polska kodyfikacja postępowania administracyjnego a technika prawotwórstwa’, *Państwo i Prawo*, 2020, No. 6, p. 57; Cebera, A., Firlus, J.G., ‘Jakość techniczno-legislacyjna regulacji kodeksowej na przykładzie przepisów normujących nakładanie lub

with the participation of public entities.¹⁶ In view of the above, in order to apply both the Code of Administrative Procedure and the Act, we suggest that the latter be interpreted systemically, i.e. taking into account specific regulations, including those contained in acts regulating individual proceedings with the participation of public entities.¹⁷

2. INDIVIDUAL DELIVERY MODES

2.1. INDIVIDUAL DELIVERIES – OVERVIEW

It should be emphasised that there is no need to apply the delivery provisions if a given procedural act is not subject to externalisation, e.g. an internal official letter,¹⁸ or where it should be externalised, but according to applicable law this does not have to be done in writing. It may be the case that a specific procedural act is communicated orally to a party or a participant in proceedings with the rights of a party (e.g. Article 109 § 2 of the Code of Administrative Procedure). Then, there is no delivery because this term is applicable only to documents. However, if delivery is needed, it is necessary to determine which provisions will apply – those relating to individual deliveries or public announcements (Articles 49–49b of the Code of Administrative Procedure). The amendment adjusting the delivery procedure to the provisions of the Act covers only the former, which is justified by its material scope covering the regulation of the model of the public service of registered electronic delivery and the public hybrid service.¹⁹ Therefore, only individual deliveries will be analysed further, and only to the extent that the amendment affected their form or importance.

We should also note that the amendment did not modify the essence of the principle of officiality *per se*.²⁰ The authorities conducting administrative proceedings are still obliged to deliver letters to the parties and other participants *ex officio*, but with different emphasis on how they should perform this procedural activity.²¹ The provisions

wymierzanie administracyjnych kar pieniężnych oraz tryb europejskiej współpracy administracyjnej', in: Jakimowicz, W., Krawczyk, M., Niżnik-Dobosz, I. (eds), *Fenomen prawa administracyjnego. Księga jubileuszowa Profesora Jana Zimmermanna*, Warszawa, 2019, *passim*.

¹⁶ In this spirit, cf. Sejm Paper, No. 239, p. 10.

¹⁷ In this spirit, Wilbrandt-Gotowicz, M., in: *Doręczenia...*, *op. cit.*, p. 65.

¹⁸ The term "official and non-official letter" is used in the sense proposed by M. Kamiński (Kamiński, M., in: Woś, T. (ed.), *Postępowanie administracyjne*, Warszawa, 2017, pp. 238 et seq.; see also Kamiński, M., in: Łaszczyca, G., Matan, A. (eds), *Czynności procesowe w postępowaniu administracyjnym ogólnym, Tom II, Część 3*, Warszawa, 2021, pp. 37–38).

¹⁹ Hereinafter referred to in this study also in the abbreviated form: "PUH".

²⁰ For more on the officiality rule see: Łaszczyca, G., *Zasada oficjalności doręczeń i zasada jednego doręczenia. Podmioty doręczające*, in: Łaszczyca, G., Matan, A. (eds), *Czynności procesowe w postępowaniu administracyjnym ogólnym. Tom III. Część 3*, Warszawa, 2021, pp. 696–698.

²¹ Similarly, Kościuk, D.J., 'Realizacja zasady oficjalności doręczeń w postępowaniach administracyjnych po wejściu w życie ustawy o doręczeniach elektronicznych', *Przegląd Ustawodawstwa Gospodarczego*, 2021, No. 8, p. 41.

of the Code of Administrative Procedure applicable before 5 October 2021 allow to distinguish basic and supplementary modes of individual deliveries, with a strictly defined hierarchy. When it is impossible to use the basic mode (e.g., to deliver to an electronic delivery address), it is necessary to use the 1st degree supplementary mode and deliver using the public hybrid service. Only when it is impossible to deliver using the latter, the authority is entitled to deliver documents using registered mail. In the new normative space, what used to be the default basic mode has, therefore, become the *ultima ratio* mode. Thus, it can be used only when it is impossible to use other delivery methods. In the next part of this analysis, we will discuss not only delivery methods, but also factual and legal reasons for withdrawing from delivery modes placed higher in the hierarchy in favour of lower degree procedures.

2.2. BASIC MODES OF INDIVIDUAL DELIVERIES

Article 39 § 1 of the Code of Administrative Procedure stipulates that the public administration body shall deliver letters to the electronic delivery address,²² unless the delivery is made to an account in the body's ICT system or at the body's place of establishment. Under Article 39 of the Code of Administrative Procedure, the default delivery method in the basic mode is delivery based on the public service of registered electronic delivery (PURDE) to an electronic delivery address (ADE). Apart from the default method, in Article 39 of the Code of Administrative Procedure, the legislator provided two exceptions, which are additional delivery methods, i.e. delivery to an account in the authority's ICT system or at its place of establishment. The basic mode, however, does not provide for the possibility of delivering letters through employees or other authorised persons or bodies.

2.2.1. DELIVERY TO AN ELECTRONIC DELIVERY ADDRESS USING PURDE

In the new delivery procedure, the default delivery method in the basic mode is delivery to an electronic delivery address (ADE),²³ i.e. delivery using the public service of registered electronic delivery (PURDE). Article 2(8) of the Act stipulates that the public registered electronic delivery service is a registered electronic delivery service, as referred to in Article 3(36) of Regulation 910/2014, provided by a designated operator, and therefore a service that enables data to be sent between third parties electronically, providing evidence related to the processing of the transmitted data, including proof of sending and receiving the data,

²² Also referred to in this document as "ADE".

²³ Article 2(1) of the Act stipulates that the electronic delivery address is the electronic address referred to in Article 2(1) of the Act of 18 July 2002 on the Provision of Electronic Services (Journal of Laws of 2020, item 344), of an entity using a public service of registered electronic delivery or a public hybrid service or a qualified service of registered electronic delivery, ensuring clear identification of the sender or recipient of the data sent using these services.

and protecting the transmitted data from the risk of loss, theft, damage or any unauthorised alteration. A characteristic feature of the public electronic delivery service is the fact that this service is provided by a designated operator.²⁴ Registered electronic deliveries are trust services within the meaning of the eIDAS Regulation – Article 38(3) of the Act specifies that the designated operator providing public service of registered electronic delivery, ensures:

- 1) identification of the sender before sending the data;
- 2) identification of the addressee before delivering the data;
- 3) secure mailing and receipt of data with an advanced electronic seal in a way that prevents undetectable data changes;
- 4) notification sent to the sender and the addressee regarding any change in data necessary for the purpose of sending or receiving data; and
- 5) indication of the date and time of sending, receipt, and any change of the data, using a qualified timestamp.

For this reason, the additional reservation referred to in Article 39 § 1 of the Code of Administrative Procedure, stipulating that delivery to an electronic delivery address takes place “against receipt”, is redundant because the elements that constitute its substantive components are carried out under PURDE, e.g. by indicating the date and time of receipt, using a qualified electronic timestamp.²⁵

It should also be noted that PURDE delivery, despite ensuring identification of the sender and the addressee, does not release the authority from affixing the letter with an electronic signature or seal. The PURDE delivery concerns letters fixed in electronic form, to which, pursuant to Article 14 § 1a of the Code of Administrative Procedure, the authority shall affix a qualified electronic signature, trusted signature, personal signature or a qualified electronic seal with the indication in the body of the letter of the person affixing the seal, subject to Article 14 § 1b of the Code of Administrative Procedure.

The authority makes deliveries to ADE; however, it should be noted that this address not only does not constitute an e-mail address, but is also incompatible with ordinary mailboxes intended for creating and sending e-mails – therefore it is not possible to send an e-mail to ADE and vice versa. At the moment, accounts and inboxes on the ePUAP platform are also incompatible with ADE and PURDE (or qualified service), and therefore it is not possible to send messages from ePUAP accounts to ADE and vice versa.²⁶ To put it simply, these restrictions correspond to the fact that it is not possible to send an e-mail to a landline telephone number and vice versa.

²⁴ A similar trust service within the meaning of the eIDAS Regulation is the qualified electronic delivery service (hereinafter also referred to in the abbreviated form: “qualified service”), which is provided by entities other than the designated operator. It should be emphasised, however, that public entities are obliged to make registered electronic deliveries with the participation of the designated operator, and thus use the public service of registered electronic delivery (PURDE), as confirmed, i.a., by Article 4(1) of the Act.

²⁵ See also Article 42 of the Act on Electronic Deliveries.

²⁶ The purpose of the changes is, among others, to shut down the ePUAP platform completely, which will be functioning only in the transitional period, i.e. during the period of sequential implementation of the provisions of the Act; this is related, among others, to the so-called rule

An electronic delivery address (ADE) is a string of characters intended for the implementation of registered electronic delivery service (i.e. PURDE and qualified service), which allows to receive and send correspondence by electronic means. This address has the following structure: AE:PL-XXXXX-XXXXX-YYYYY-ZZ, where 'AE' is the type of identifier, meaning an electronic address; 'PL' is the country code in accordance with the ISO 3166 standard; 'X' is a digit; 'Y' is a letter; and 'ZZ' are digits representing the checksum.²⁷

Another issue to be considered is the need to determine where the authority conducting the case proceedings should obtain the ADE of the party or participant with the rights of a party. Article 39¹ of the Code of Administrative Procedure specifies that in the case of delivery in the manner referred to in Article 39 § 1, letters shall be delivered to the party or other participant in the proceedings to the electronic delivery address entered in the BAE²⁸ referred to in Article 25 of the Act, and in case of a representative – to the electronic delivery address indicated in the application.

Let us start with the first variant, i.e. the obligation to deliver letters to the address entered in the BAE. In order to satisfy the above criterion, before sending a letter in the case, the authority conducting the proceedings will be obliged to verify whether the letter addressee (e.g. a party to the proceedings) is in the database, and if that is the case, it is obliged to deliver the letter via PURDE to the address indicated in the database. It should be noted that by entering an electronic delivery address into the BAE, a given entity (e.g. a party) submits the so-called digital declaration.²⁹ Article 7 of the Act stipulates that entering an electronic delivery address into the BAE is tantamount to a request for delivery of correspondence by public entities to this address. Moreover, on 5 October 2021, the legislator changed Article 41 § 1 of the Code of Administrative Procedure which previously stated that: "In the course of the proceedings, the parties and their representatives and attorneys are obliged to notify the public administration body of any change of their address, including electronic address", by removing the phrase "including electronic address", considering it redundant.³⁰ In other words, before sending an electronic document, the public entity will verify whether the addressee wishes to receive correspondence in electronic form.³¹ In the draft amendment

of equivalent effects from Article 147 of the Act. According to Article 148(1) of the Act, the correspondence collected in ePUAP is available to the owner of the account or the inbox in ePUAP in a way that allows to view, copy and delete it until 30 September 2029. After this deadline, the minister competent for computerisation removes user accounts and electronic inboxes with their content from ePUAP (Article 148(2) of the Act). This date is a derivative of the last date for updating the obligation to apply the Act (cf. Article 155 of the Act).

²⁷ Address example: AE:PL-12345-67890-ABCDE-12, source: <https://www.gov.pl/web/e-doreczenia/pytania-i-odpowiedzi>, accessed on 5 November 2022.

²⁸ The database of electronic delivery addresses, also referred to as: "BAE".

²⁹ Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 143.

³⁰ However, it should be emphasised that the above assumption that the obligation to inform about a change of electronic address is redundant does not take into account the several-year transitional periods referred to in Article 155 of the Act, so it is difficult to consider it to be justified.

³¹ Sejm Paper No. 239, p. 32.

explanatory memorandum, the legislator explains that checking and finding ADE should not be burdensome for public entities. He further underlines that a similar solution exists in health insurance, where it is required to verify each time that a patient using health services of the National Health Fund has health insurance, not only in the case of a single doctor's appointment, but also on a daily basis if the patient is admitted to the hospital.³² However, given the fact that in jurisdictional proceedings the authority may need to deliver one letter to several, several dozen or even several hundred entities,³³ one may doubt the above assurances.

One of the advantages of this solution, however, is that the database is integrated with other databases and registers, such as the PESEL register, which in the long run may eliminate underlying causes of a number of deficiencies in qualified administrative decisions.³⁴ Article 27 of the Act stipulates that in the event of a change in the PESEL register regarding: PESEL number, first or last name of a non-public entity being a natural person and the administrator of the delivery box, the data is automatically updated in the BAE. In parallel, if the death of a natural person or a delivery box administrator has been recorded in the PESEL register, this information is automatically sent to the BAE. Similar solutions have been designed for the National Court Register (Article 31(1) of the Act) and the Central Business Register and Information Service (Article 31(2) of the Act).

However, lack of any address in the database does not lead to an automatic transition to the 1st and 2nd degree supplementary delivery modes, including the public hybrid service (PUH). In the case of a specific group of entities which are not obliged to have ADE in the BAE (entities other than those indicated in Article 9 of the Act), it is possible to have an ADE without entering it into the database, and thus without submitting the so-called digital declaration referred to in Article 7 of the Act. This address must then be associated with the qualified registered electronic delivery service (qualified service) and not the service provided by the designated operator (PURDE). Creating ADE associated with PURDE is connected with an automatic entry in the database, and consequently with the submission of a digital declaration. Thus, in this situational variant, the authority makes a delivery to the electronic delivery address associated with the qualified service of registered electronic delivery used to submit the application.

It should also be noted that in the case of a representative, the authority delivers documents to the electronic delivery address indicated in the application. Therefore, the above is an exception to the rule of delivery of documents to the address entered in the database because in this regard priority is given to the ADE indicated in the application,³⁵ even if the entity also has an address in the BAE. This solution, despite some controversies, seems to be justified. While, as a rule, pursuant to Article 32(1) of the Act, only one ADE may

³² Sejm Paper No. 239, p. 32.

³³ Unless the authority has legal grounds and will deliver documents by public announcement, and therefore will not deliver letters individually under Article 39 of the Code of Administrative Procedure.

³⁴ For example, if the addressee is a deceased natural person.

³⁵ Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 450.

be entered in the database, there are no legal obstacles to having several addresses not listed in the BAE. Moreover, the entities enumerated in Article 32(2) of the Act³⁶ (e.g. an attorney or legal adviser) enter the electronic delivery address for the purposes of business activity, professional activity or official duties in the database, regardless of the ADE in the BAE unrelated to business activity, professional activity or official duties. This means that the listed entities may have more than one address in the database, which could generate a number of errors when the authority marks a specific address.

Interpretation dilemmas arise in the case where the representative does not provide this address in the application. According to the first position presented by M. Wilbrandt-Gotowicz, delivery should then be made to the address from which the application was sent, and if the application was submitted in paper form, to the ADE entered in the BAE.³⁷ Agreeing with the above, it should only be added that in the absence of ADE in the database, correspondence should be delivered to the representative in accordance with the supplementary procedures of the first and second degree³⁸ – because not all representatives are obliged to dispose of an ADE, including an electronic delivery address entered in the BAE. However, P. Przybysz has a different view on this issue, pointing out that the entity obliged under the Act to have an ADE provides this address when taking the first action in the case, and if this address is not provided, then the application has a formal defect, and the entity is subject to Article 64 § 2 of the Code of Administrative Procedure.³⁹ However, it should be underlined that the entities indicated in Article 9(1) of the Act are required not only to have an ADE, but also to have an address entered in the BAE. Requesting these entities to supply the address would therefore constitute an unjustified procedural formalism, as the authority has access to the BAE. In addition, there is no provision that would require representative to provide ADE with their first procedural act, even when he/she is required to have an address entered in the database. It is worth emphasising that formal deficiencies of the application within the meaning of Article 64 of the Code of Administrative Procedure may only occur when specific requirements are stated explicitly in generally applicable law.⁴⁰

As far as determining the delivery date is concerned, Article 39⁴ of the Code of Administrative Procedure should be noted here, which stipulates that in the case of a registered electronic delivery Article 42 of the Act applies to determine the delivery date. This means that in the case of delivery of correspondence by a public entity using PURDE:

³⁶ I.e. a natural person who is an entrepreneur entered in CEIDG and an advocate, legal advisor, tax advisor, restructuring advisor, notary, patent attorney, attorney at the General Prosecutor's Office of the Republic of Poland, and court bailiff.

³⁷ Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 450.

³⁸ *Ibidem*.

³⁹ Przybysz, P., *Kodeks postępowania administracyjnego. Komentarz aktualizowany*, LEX/el., 2022, Article 39(1), Lex/el, nb 4.

⁴⁰ See judgment of the Voivodship Administrative Court in Kraków of 16 October 2019, III SAB/Kr 142/19, LEX No. 2738920.

- 1) Delivery to a non-public entity takes place at the time of receipt of correspondence indicated in the proof of receipt, i.e. after receipt of correspondence sent to the ADE of the non-public entity. "Receipt of an electronic document"⁴¹ is understood as any action of the addressee who has an electronic delivery address which allows them to dispose of the document sent to this address and read its content (Article 41(2) of the Act). On the other hand, for situations when the non-public entity does not collect the document, the legislator uses fictitious delivery,⁴² because the correspondence is deemed to have been delivered on the day following the 14-day period from the date indicated in the confirmation of receipt of the correspondence to the electronic delivery address of the non-public entity. The receipt of an electronic document at the electronic delivery address is understood as existence of technical conditions enabling the addressee to receive the document (Article 41(3) of the Act). According to the literature, the presumption of delivery may be rebutted if the addressee proves that, despite receiving the letter, they had no objective possibility to read it for reasons beyond their control.⁴³ It will be the case if, for instance, the file is corrupted, and it is not possible to reproduce its content.
- 2) Delivery to the public entity at the time indicated in the proof of receipt: receipt of correspondence, i.e. after receipt of correspondence to the electronic delivery address of the public entity within the meaning of Article 41(3) of the Act.

The above results in a different approach to public and non-public entities in determining the moment of delivery of a given letter.⁴⁴ While in relation to the former it is the moment of receipt of the letter by ADE, in relation to the public entity, apart from its receipt by ADE, such entity is required to collect it, unless fictitious delivery is applicable under Article 41(1)(3) of the Act.

In addition to the above, it should be added that failure to perform PURDE constitutes failure of the addressee to familiarise himself/herself with the contents of the data after 24 hours, confirmed by mailing proof, for reasons attributable to the designated operator (Article 55(4) of the Act).

2.2.2. DELIVERY TO THE AUTHORITY'S ICT SYSTEM ACCOUNT

Following amendment of 5 October 2021, another amendment to Article 39 § 1 of the Code of Administrative Procedure entered into force on 7 July 2022.⁴⁵ Its main purpose was, *expressis verbis*, to provide for the possibility to make deliveries

⁴¹ The concept of a "document recorded in electronic form" used by the Code of Administrative Procedure is included in the scope of the term "electronic document" used in the Code. For more on electronic documents see Sejm Paper No. 239, p. 89, and Biskup, R., Ganczarz, N., 'Komunikacja elektroniczna w postępowaniu administracyjnym', *Państwo i Prawo*, 2008, No. 1, p. 63.

⁴² Czaplicki, K., Światała, K., in: Wilbrandt-Gotowicz, M. (ed.), *Doręczenia elektroniczne. Komentarz*, Warszawa, 2021, p. 333.

⁴³ Czaplicki, K., Światała, K., in: *Doręczenia...*, op. cit., p. 334.

⁴⁴ *Ibidem*, p. 333.

⁴⁵ Pursuant to Article 1 of the Act of 8 June, 2022 amending certain acts to automate the handling of certain matters by the National Revenue Administration (Journal of Laws of 2022, item 1301).

to accounts in ICT systems. The draft amendment explanatory memorandum underlined that the main purpose was to automatise certain procedures of the National Revenue Administration (KAS) using KAS ICT systems (e-Tax Office).⁴⁶

The normative change was justified i.a. by Article 3(1)(d) of the Act, which states that the Act on Electronic Deliveries does not apply (and therefore, deliveries using PURDE and PUH do not apply) if separate provisions envisage delivery of correspondence using technical and organisational solutions other than the electronic delivery address, in particular to accounts in ICT systems. The draft amendment explanatory memorandum explains that due to the conditional nature of the exclusion referred to in Article 3(1) of the Act, it is applicable after determining that there is a separate technical solution which could be used to deliver documents under various procedures to a person using this solution.⁴⁷ In other words, the exclusion in question is open – it refers to specific provisions that establish technical and organisational solutions enabling exchange of correspondence, the result of which is delivery to accounts in ICT systems.⁴⁸ If there are no specific provisions, there is no exclusion from the Act and deliveries using PURDE or PUH apply. In order to avoid doubts, in Article 39 § 1 of the Code of Administrative Procedure, it was expressly stipulated that delivery is possible to an account in the ICT system. In the presented situational variant, as a rule, we do not apply the provisions on electronic deliveries to make deliveries in this system. The exclusion referred to in Article 3(1)(d) of the Act is comprehensive, which means that the entire Act is not applicable.⁴⁹

Examples of an ICT system⁵⁰ include the e-Tax Office mentioned in the explanatory memorandum for the amendment but, most importantly, the electronic platform for public administration services (ePUAP) referred to in Article 3(13) of the Act, which is defined as an ICT system for public institutions to provide services through a single Internet access point.⁵¹ Therefore, the above normative change raises serious doubts. Given the fact that not only the e-Office, but also the ePUAP platform is an ICT system providing public services, does the new provision of Article 39 §

⁴⁶ Sejm Paper No. 2138, p. 1 et seq.

⁴⁷ Sejm Paper No. 2138, p. 3.

⁴⁸ Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 124.

⁴⁹ *Ibidem*, p. 116. Therefore, it is impossible to agree with the statement expressed in the explanatory memorandum of the draft amendment that: "Delivery of letters to ICT system accounts, by its very nature, does not actually cause a general exclusion of the application of the provisions of the Act of November 18, 2020 on Electronic Deliveries, but rather it affects the hierarchy of deliveries specified in Article 39 § 1 of the Code of Administrative Procedure if relevant conditions (opportunities) arise to make such deliveries" (Sejm Paper No. 2138, p. 3). If the purpose of the legislator was actually to make a specific exemption, and not a comprehensive one, they should do so in the form of exclusions referred to in Article 6 of the Act, defining its objective and subjective scope.

⁵⁰ Article 3(3) of the Act on Computerisation of Activities of Entities Performing Public Tasks of 17 February 2005 (consolidated text, Journal of Laws of 2021, item 2070; hereinafter referred to as: "UOI Act") stipulates that an ICT system is a group of IT equipment and software ensuring the processing, storage, as well as sending and receiving data via telecommunications networks using a terminal device appropriate for a given type of telecommunications network within the meaning of the Act of 16 July 2004 – Telecommunications Act.

⁵¹ See enumeration of other examples of ICT systems prepared by Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., pp. 125–127.

1 of the Code of Administrative Procedure mean that even after updating the obligation to make deliveries using PURDE and PUH until September 30, 2029 (Article 148(1) of the Act), i.e. until the last day of operation of the ePUAP platform – public authorities will be able to use this communication channel, given the exclusion referred to in Article 3(1)(d) of the Act? If this is the case, and the literal content of the provisions referred to above seems to prove it, then the actual implementation of electronic deliveries using PURDE will be postponed until nearly the end of 2029. Was this really the purpose of the change made by the legislator in connection with the implementation of the E-Tax Office?

Another issue related to possible deliveries to accounts in the ICT system is the mismatched scope of Article 39⁴ of the Code of Administrative Procedure. This provision stipulates that in the case of deliveries referred to in Article 39 § 1, Article 42 of the Act is applied to determine the delivery date.⁵² However, as we already pointed out, pursuant to Article 3(1)(d), the Act does not apply to deliveries to accounts in ICT systems.

2.2.3. DELIVERY AT THE AUTHORITY'S PLACE OF ESTABLISHMENT

Delivery at the authority's place of establishment may take place when the entity authorised to collect the letter is at of the authority's place of establishment.⁵³ This delivery method is closely related to the form of the procedural act, therefore only paper documents may be delivered using this method. It should also be noted that, in the basic mode, the legislator did not provide for the possibility of delivery outside the authority's place of establishment, made by its employees or by other authorised persons or authorities.

2.3. SUPPLEMENTARY METHODS OF INDIVIDUAL DELIVERIES – 1ST AND 2ND DEGREE

It will not always be possible to use basic delivery modes due to factual limitations (e.g. the addressee does not have an ADE, there are technical limitations related to the file size and format⁵⁴) or legal limitations (e.g. the addressee is imprisoned, the letter

⁵² This problem is also pointed out by Sibiga, G., 'Jak nie informatyzować administracji', *Rzeczpospolita*, 17 July 2022

⁵³ Article 42 § 2 of the Code of Administrative Procedure states that letters may be delivered to natural persons also at the premises of the public administration body, unless special provisions provide otherwise. Cf. Gołęba, A., 'Komentarz do art. 42', in: Knysiak-Sudyka, H. (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, Lex/el., 2019, marginal ref. 4.

⁵⁴ Preparation of a letter recorded in paper form by the authority does not constitute by itself a reason to withdraw from delivery to ADE. The form of the procedural act should be correlated with the delivery method required by law. It should be emphasised that Article 4 of the Act in conjunction with Article 155 of the Act establishes a legal obligation towards public entities, not a right: "The public entity shall deliver correspondence with proof of mailing or receipt using the public service of *registered electronic delivery* to the electronic delivery *address* listed in the electronic address database." A different interpretation regarding provisions of the Code of Administrative Procedure and the Act would mean that the authority may waive this

contains classified information). The exclusions are presented in section 3 below. At this stage of our analysis, it should be highlighted that when it is not possible to deliver correspondence in the basic mode or there is no legally effective obligation to do so (via methods referred to in Article 39 § 1 of the Code of Administrative Procedure), the public administration body should consider whether supplementary delivery methods apply under Article 39 § 2 and 3 of the Code of Administrative Procedure. The legislator has envisaged two groups of supplementary modes, where the second-degree supplementary mode is applicable only when delivery in the first-degree supplementary mode is not possible. These provisions should, therefore, be applied in a specific order.

Article 39 § 2 of the Code of Administrative Procedure, which regulates the 1st degree supplementary mode, stipulates that if delivery is not possible, as referred to in Article 39 § 1 of the Code of Administrative Procedure (in the basic mode), the public administration body delivers letters with proof of receipt:

- (a) using a public hybrid service;
- (b) by its employees or by other authorised persons or bodies.

The second-degree supplementary mode regulated under Article 39 § 3 of the Code of Administrative Procedure is applicable only when it is not possible to use the basic modes and delivery via a public hybrid service. This is the case, for example, when it is necessary to send maps larger than A4.⁵⁵ In the described situational variant, depending on the choice of the authority, delivery is then made either by registered mail⁵⁶ or by its employees or by other authorised persons or bodies. The main difference between the 1st and 2nd degree supplementary mode, therefore, comes down to whether the delivery takes place in the form of a public hybrid service or registered mail, hence they can be referred to as “default”. Let us note that the possibility of delivery by employees or other authorised persons or authorities is provided for in both mode I and mode II, which confirms their accessory nature.⁵⁷

Delivery with the use of a “traditional” registered letter has been and will be the basic default mode, until updating the obligation to use the new delivery procedure by a given public entity. Hence, this procedure is not only well known in practice, but has also been described exhaustively in the literature.⁵⁸

Therefore, we can immediately move on to the closer characteristics of PUH. Article 2(7) of the Act defines it as a postal service, referred to in Article 2(1)(3) of the Postal Law, provided by the designated operator, if the sender of the letter

obligation by drawing up letters only in paper form. Differently: Wróbel, A., *Komentarz do Kodeksu Postępowania Administracyjnego, Komentarz do art. 39*, Lex/el., 2022, marginal ref. 10.

⁵⁵ See Regulations for the provision of public registered electronic delivery services and public hybrid services Chapter III § 5 et seq. (<https://bip.poczta-polska.pl/wp-content/uploads/Regulamin-świadczenia-PURDE-i-PUH-v.1.0.pdf>; accessed on 12 November 2022).

⁵⁶ I.e. the letter referred to in Article 3(23) of the Act of 23 November 2012 – Postal Act (Journal of Laws of 2022, item 896 and 1933), hereinafter “the Postal Law”.

⁵⁷ In Article 39(2) and (3), the legislator did not use the word “unless”, as they did in Article 39 § 1 of the Code of Administrative Procedure.

⁵⁸ See Gołęba, A., *Komentarz do art. 39*, in: Knysiak-Sudyka, H. (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, Lex/el., 2019.

is a public entity. Article 2(1)(3) of the Postal Law specifies that postal service constitutes a domestic or international commercial sending of postal items by means of electronic communication, if at the stage of receiving, transporting or delivering an information message it takes the physical form of a letter item. The above shows that the PUH service is characterised by three constitutive elements:

- (a) it is a postal service provided only by the designated operator (Article 45(1) of the Act);
- (b) only a public institution may be the sender; and
- (c) the service consists in converting the information message received by means of electronic communication into the form of a “traditional” letter. In other words, the designated operator converts an electronic document sent by a public entity from an electronic delivery address into a letter in order to deliver this correspondence to the addressee (Article 46(1) of the Act).

The Act regulates the basic rules of providing Public Hybrid Services (PUH). The most important rules are as follows:

- (a) confidentiality rule – conversion of electronic documents should be automatic, ensuring secrecy of correspondence⁵⁹ at every stage of the service (Article 46(1) of the Act). The draft amendment explanatory memorandum underlined that all transformation activities would be carried out while ensuring secrecy of correspondence;⁶⁰
- (b) diligence rule – as part of the conversion referred to in Article 46(1), the designated operator shall ensure that the electronic document is printed with due diligence and technical quality, in accordance with the minimum requirements specified on the basis of Article 48, allowing the addressee to read the content of their correspondence without the need to verify this content with the electronic document (Article 47(1)(1) of the Act);
- (c) compliance rule – as part of the conversion referred to in Article 46(1), the designated operator shall ensure compliance of the content of the printed electronic document and the document containing the result of verification of the electronic signature or seal with the content of the corresponding electronic documents (Article 47(1)(12) of the Act);
- (d) rule of equal legal force – printouts of documents referred to in Section 1 have the power equal to the power of the documents from which they were made (Article 47(2) of the Act);
- (e) regularity rule – obligation to provide PUH services with a frequency ensuring delivery of letters at least on every working day and not less than 5 days a week, except public holidays (Article 45(2)(5) of the Act);
- (f) accountability rule – obligation to provide PUH services in a way that ensures that the sender of the electronic document (i.e. a public entity) obtains a proof of receipt of the registered letter, as referred to in Article 3(23) of the Postal Law (Article 45(2)(6) of the Act). In addition, the designated operator provides confirmation of the date and time of the electronic document conversion (Article 46(2) of the Act). The designated operator sends the letter referred to in Section 1 with

⁵⁹ Postal secrecy is regulated in Article 41 of the Postal Law.

⁶⁰ Sejm Paper No. 239, p. 21.

an attached printout of the document containing the result of the electronic signature or seal verification or proof that the integrity and origin of the electronic document from the public entity have been ensured via electronic identification means (Article 46(3) of the Act).

It results from the above that the final subject of a PUH delivery, pursuant to Article 39 § 2 of the Code of Administrative Procedure, is *de facto* a printout of an electronic document and a document containing the result of the electronic signature or seal verification or proof that the integrity and origin of the electronic document received from a public entity have been ensured via electronic identification means. A printout from an electronic document is not the original of the letter, as it was in the form of a letter recorded in electronic form, and the printout takes the form of a letter recorded in paper form. For this reason, the legislator decided that the legal force of the printout referred to in Article 47(1) of the Act is equal to the force of the documents from which they were made⁶¹ (Article 47(2) of the Act). In the literature, it is pointed out that the legislator did not use the construction of a rebuttable legal presumption,⁶² and therefore the only way to obtain legal protection in the event of a discrepancy between the electronic document and the delivered printouts is to demonstrate that there has been non-performance⁶³ or improper performance⁶⁴ of the PUH.

At this point, it should be emphasised that not all electronic documents can be transformed into letters due to technical reasons, i.e.:

⁶¹ This solution is similar to delivering a printout of a letter pursuant to Article 39³ of the Code of Administrative Procedure, though the conversion is done by the public administration body conducting the proceedings rather than by the designated operator. Cf. Sibiga, G., '»Odwrócona cyfryzacja« w postępowaniu administracyjnym ogólnym po nowelizacji Kodeksu postępowania administracyjnego z 16.4.2020 r.', *Monitor Prawniczy*, 2020, No. 18, *passim*; Łaszczycza, G., 'Przedmiot doręczeń', in: Łaszczycza, G., Matan, A. (eds), *Czynności procesowe w postępowaniu administracyjnym ogólnym. Tom III. Część 3*, Warszawa, 2021, p. 699.

⁶² Czapliski, K., Światała, K., in: *Doręczenia...*, *op. cit.*, p. 350.

⁶³ The Regulation of the Minister of State Assets of 9 August 2021 on the implementation of the public hybrid service in domestic trading (Journal of Laws of 2021, item 1503; hereinafter referred to as the "Regulation on the implementation of PUH") stipulates in § 10 that: "The public hybrid service is considered non-performed if:

(1) the date of delivery, notification of delivery attempt or refusal to accept a letter registered under the public hybrid service included in the electronic document referred to in § 6 is later than 14 days from the date of sending this item, as confirmed by the electronic document referred to in § 5 – subject to Article 55(3) of the Act;

(2) the registered letter delivered under the public hybrid service has been lost.' It is worth noting that Article 55(3) of the Act stipulates that the period referred to in Article 55(2) of the Act (which is repeated in Article 10(1) of the regulation) does not include public holidays.

⁶⁴ In Article 11 of the Regulation on the implementation of PUH, it is specified that: "The public hybrid service is considered to be improperly performed if:

(1) the printout of an electronic document delivered to the addressee as part of the public hybrid service does not meet the conditions set out in Article 47(1) of the Act;

(2) the printout of the document referred to in Article 46(3) of the Act has not been attached to the printout of the electronic document delivered under the public hybrid service, or this printout has not been made with due diligence and technical quality enabling the addressee to read its content;

(3) the document referred to in Article 6 has not been placed in the sender's delivery box."

- (a) due to their form, in particular when it is a sound or audiovisual recording, 3D graphics, database, software (Article 49(1)(1) of the Act); or
- (b) due to other reasons, if it is impossible to read the entire content of the document after conversion (Article 49(1)(2) of the Act).

If the electronic document cannot be converted, the designated operator immediately informs the sender about this fact using the electronic delivery address (Article 49(2) of the Act). In this situation, the authority conducting the proceedings in the case is obliged to use the 2nd degree supplementary modes, including in particular the traditional registered letter referred to in Article 3(23) of the Postal Law.

Article 46(4) of the Act specifies that unless separate provisions provide otherwise, the date on which correspondence was sent using the public hybrid service is the date of receipt of the electronic document by the designated operator. The designated operator immediately issues an automatic proof of correspondence receipt.

3. EXCLUSIONS

The legislator provided for a number of cases in which the authority is entitled or obliged to withdraw from the basic procedures and/or specific variants of the first- and second-degree supplementary modes. The analysed available normative material allows to distinguish three groups of exclusions, which are discussed below.

3.1. EXCLUSIONS REGARDING PURDE AND PUH DELIVERIES

Exclusions regarding PURDE and PUH deliveries may be mandatory or optional. As far as mandatory exclusions are concerned, the analysis of the available normative material shows that two basic groups of provisions can be distinguished, i.e. general exclusion from the application of the Act in its entirety (Article 3 of the Act) and exclusion from the application of the provisions relating to PURDE and PUH (Article 6 of the Act) while the other provisions of the Act remain applicable.

3.1.1. GENERAL (COMPREHENSIVE) EXCLUSIONS FROM APPLICATION OF THE ACT (ARTICLE 3 OF THE ACT)

Article 3 of the Act contains a list of exclusions from the scope of the Act. They are of a comprehensive nature, i.e. they refer to non-application of the provisions of the Act in its entirety, and not only its parts.⁶⁵ Therefore, general exemptions consist in a complete exclusion from the scope of the Act, resulting not only in the inability to use registered electronic deliveries and public hybrid service, but also in the lack of the obligation to fulfil other requirements provided for in the Act. Considering subject of this study related to administrative jurisdictional proceedings regulated

⁶⁵ Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 116.

by the provisions of the Code of Administrative Procedure, two of these exemptions should be mentioned in particular:

- (a) Article 3(1)(a) of the Act, which states that: “the Act shall not apply to delivery of correspondence: containing classified information”.⁶⁶ Referring the above to the issue of administrative jurisdiction, it should be noted that the authority conducting the proceedings in the case will not be able to use PURDE and PUH when the document to be delivered contains classified information; and
- (b) Article 3(1)(d) of the Act, which states that: “the Act shall not apply to delivery of correspondence, if separate provisions provide for delivery of correspondence using technical and organisational solutions other than the electronic delivery address, in particular to accounts in ICT systems used for court proceedings or document repositories”.⁶⁷

3.1.2. EXCLUSION FROM APPLICATION OF THE PROVISIONS RELATING TO PURDE AND PUH (ARTICLE 6 OF THE ACT)

The exclusion referred to in Article 6 of the Act is not comprehensive. It covers only Articles 4 and 5 of the Act, and therefore excludes the application of the provisions governing PURDE and PUH deliveries rather than the entire Act. Pursuant to Article 6 of the Act, the provisions of Articles 4 and 5 of the Act, which regulate PURDE and PUH, do not apply if:

- 1) The entity requests delivery of the original document drawn up in paper form.
- 2) Correspondence cannot be delivered to an *electronic delivery* address or using a public hybrid service because:
 - (a) it is not possible to prepare and submit a document in electronic form due to separate provisions;
 - (b) it is not possible to use a public hybrid service due to separate provisions;
 - (c) it is necessary to deliver a non-transformable document fixed in non-electronic form or an item;
 - (d) important public interest is involved, related in particular to national security, defence or public order;
 - (e) there are technical and organisational limitations resulting from the volume of correspondence and other reasons of technical nature.⁶⁸

Importantly, the existence of the conditions listed above is assessed by the sender (Article 6(2) of the Act), and therefore in administrative jurisdiction – by the authority conducting the proceedings in the case. It is also noteworthy that the legislator

⁶⁶ See Act of 5 August 2010 on the Protection of Classified Information (consolidated text, Journal of Laws of 2019, item 742).

⁶⁷ See Section 2.2.II *Delivery to an ICT system account of the authority* above.

⁶⁸ The above corresponds to Article 49(1) of the Act which states that: “The designated operator shall not transform an electronic document into a letter if:

- (1) the document cannot be converted into a paper form due to its form, in particular when it is a sound, audiovisual recording, 3D graphics, database, software;
- (2) due to other reasons, after the conversion, it would not be possible to read the entire content of the document”.

reiterated the premise of item (d) in Article 39 § 4 of the Code of Administrative Procedure, where an important public interest, in particular national security, defence or public order, does not absolutely exclude the possibility of using PURDE and PUH, but only makes it possible to withdraw from using them. Therefore, there is a need to assess the mutual relationship between the Act and the Code of Administrative Procedure. It seems that the provisions regulating PURDE and PUH in the Code of Administrative Procedure are *lex specialis* in relation to the model regulations provided for in the Act,⁶⁹ hence they will have to be given priority in this regard.

3) Separate provisions provide for the possibility of making deliveries using methods other than the public service of registered *electronic delivery* or public hybrid service, in particular through employees, and the sender, in specific circumstances, considers a different delivery method to be more effective. Referring the above to administrative jurisdictional proceedings, it should be emphasised that the separate provisions referred to above can be found not only in Articles 39 § 2 and 3 and Article 39³ but also in Article 39 § 1 of the Code of Administrative Procedure to the extent that the letter may be delivered at the authority's place of establishment.⁷⁰ Therefore, it remains to be considered how to interpret the phrase: "in specific circumstances, considers a different delivery method to be more effective". It seems that it refers to specific circumstances arising from a particular case, and therefore not general exclusions but individual *in concreto* exclusions. Therefore, a situational variant can be considered in which the basic default mode, i.e. delivery using PURDE, would be possible because the addressee has ADE, while according to the authority, due to specific circumstances, it is more efficient to have it delivered by its employees or by other authorised persons or bodies, as it would be quicker.⁷¹

As already mentioned, the inclusions in the scope of making deliveries using PURDE and PUH may be obligatory or optional. With regard to the latter, it is worth mentioning Article 39 § 4 of the Code of Administrative Procedure, which stipulates that:

- (a) in the case of delivery of a decision which has been made immediately enforceable by the public administration authority, or a decision that is immediately enforceable by law;
 - (b) in personal matters of officers and professional soldiers;
 - (c) due to an important public interest, in particular national security, defence or public order;
- the public administration body may deliver the decision in the manner specified in Article 39 § 3 of the Code of Administrative Procedure, i.e. by registered mail, referred to in Article 3(23) of the Postal Law or through its employees or other

⁶⁹ In this spirit, cf. Sejm Paper No. 239, p. 10.

⁷⁰ Similarly, Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 142.

⁷¹ Cf. in this spirit Wilbrandt-Gotowicz, M. (in: *Doręczenia...*, op. cit., p. 142), who explains that in the circumstances of a particular case, delivery by employees or other authorised persons or bodies may be faster than with the use of the PUH service, which proves the effectiveness of the former.

authorised persons or bodies. It should be stressed that the above is a right and not an obligation to withdraw from delivery using PURDE and PUH, hence we refer to this exclusion as optional.

3.2. EXCLUSION REGARDING THE POSSIBILITY OF PURDE DELIVERIES

The analysis of the normative material shows that it is possible to distinguish situations where the public entity will not be able to make a delivery using PURDE. This concerns in particular Article 5 of the Act, which states that the public entity delivers correspondence with confirmation of mailing or receipt using PUH, not only when it is not possible to deliver correspondence to the electronic delivery address in accordance with Article 4 of the Act, but also when the entity knows that the natural person with an electronic delivery address is imprisoned. This means that when the authority conducting the proceedings obtains information that a party to the proceedings has been imprisoned, it is obliged to make deliveries without PURDE, even though that party has an address for electronic deliveries. The above exclusion is mandatory.

3.3. EXCLUSIONS REGARDING PUH DELIVERIES

The application of the new delivery procedure does not always mean that the authority will be obliged to use PURDE and PUH in jurisdictional proceedings. The legislator provided for an additional intertemporal regulation in Article 155(6) of the Act, which stipulates that local government units and their associations as well as metropolitan associations and local government budgetary establishments are obliged to apply the provisions of the Act when delivering correspondence using PURDE from the date specified in the communication issued on the basis of Article 155(10) of the Act, and for PUH deliveries – from 1 October 2029. This means that if the authority conducting jurisdictional administrative proceedings is, for instance, a local government unit, then even if it applies the new electronic delivery procedure, it will not be obliged to apply PUH before 1 October 2029 and will have the right to apply the 2nd degree supplementary mode immediately, including in particular delivery using registered mail. The above exclusion is optional.

4. CONCLUSION

One of the purposes of the Act was to address the fragmentation of regulations concerning electronic communication, so by providing model solutions in the field of communication with the participation of public entities the Act was supposed to reverse the phenomenon referred to as fragmentary electronisation.⁷² However,

⁷² Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 34.

the method of implementing new standards in the field of the electronic delivery procedure, subsequent changes regarding new obligations to apply the Act, including in particular the latest amendments to the Code of Administrative Procedure of 7 July 2022, have not been positively reviewed in the literature.⁷³ The analysis of the new procedure for individual deliveries in jurisdictional administrative proceedings, including the interpretative dilemmas that have emerged, and often legislative shortcomings or even legislative errors, seems to show that the values of good governance, which are undoubtedly the purpose of the processes of computerisation of public administration in Poland, have not been achieved.⁷⁴ The quality of the legislation and its instability⁷⁵ seem to support the idea that the real barriers to these processes are, in addition to technical and organisational deficiencies, legal regulations *per se*.⁷⁶

The amendment of Article 39 § 1 of the Code of Administrative Procedure regarding possible deliveries to accounts in ICT systems, and the resulting – perhaps not fully intended – exclusion of the Act, suggests that the legislator has taken a big step back in terms of unifying the rules of communication with the participation of public entities, and has even jeopardised the purpose of the current reform of electronic deliveries.⁷⁷

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⁷³ Sibiga, G., 'Jak nie informatyzować administracji', *Rzeczpospolita*, 17 July 2022.

⁷⁴ Cf. Barthwal, C.P., 'E-governance for good governance', *The Indian Journal of Political Science*, 2003, Vol. 64, No. 3/4, pp. 285–308.

⁷⁵ On the issue of instability of the law regulating the use of electronic means of communication by public entities, see: Wilbrandt-Gotowicz, M., in: *Doręczenia...*, op. cit., p. 33.

⁷⁶ Błażewski, M., 'Antywartości jako bariery rozwoju e-administracji', in: Błaś, A. (ed.), *Antywartości w prawie administracyjnym*, Warszawa, 2016, p. 262.

⁷⁷ Sibiga, S., *Jak nie informatyzować...*, op. cit.

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