

The potential benefits and risks arising from the dissemination of electronic registered delivery services.

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by Kazimierz Schmidt



Ministerstwo
Cyfryzacji

The beginning

- Year 2001 - the Law on Electronic Signature (aim: allow to settle **the matter** electronically)
 - Art.5 ust.2: *Data in electronic form bearing a secure electronic signature based on a qualified certificate shall have the equivalent legal effect of a handwritten signature, unless otherwise stated by law.*
 - And what if there are no other rules?



Why I bought the e-signature

Article 58. 2 Law on Electronic Signature :

„ Within four years from the date of entry into force of the Act [\[1\]](#), public authorities allow clients of certification services submit an application and other activities in electronic form, where the law requires submitting them in a particular form or by a specific pattern”

*[1] since half **2006** r. (after deadline was extended to 1 May 2008).*

It was related to the start of special platform for public e-services called *ePUAP* (because it was necessary to let me submit an application in electronic form).

Ośrodek Zarządzania Kluczami

Potwierdzenie wydania certyfikatu

Warszawa, 31

W dniu 31 lipca 2008 r. w Ośrodku Zarządzania Kluczami

Numer seryjny certyfikatu: 7D0B

Identyfikator subskrybenta:
CN=Kazimierz Schmidt, C=PL

Identyfikator subskrybenta zgodny z RFC2253:
CN=Kazimierz Schmidt, C=PL

Data ważności certyfikatu:

Zastosowanie:

Identyfikator subskrybenta zgodny z RFC2253:
CN=Kazimierz Schmidt, C=PL

Data ważności certyfikatu:

ważny od 2008-08-01 10

ważny do 2010-05-04

czalność, szyfrowanie

14ff80714251d547c

0ca2f4aa6051d9582e85ecf44a34a1fc

Operator ORK

zam odbiór certyfikatu o wyżej wymienionych parametrach,

2-08-2008 data

imię i nazwisko (czytelnie)

I became a client of certification services and ... waited for giving the possibility to e-applications

I like comfort, and I am lazy so ...

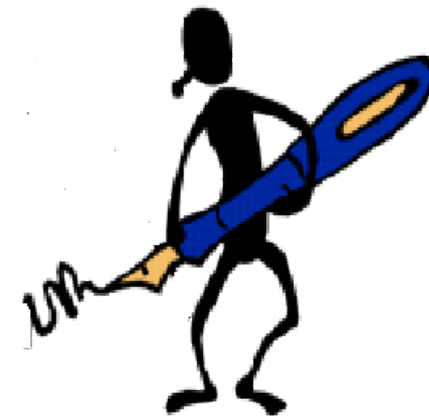
- First of all, it seemed to me that I had to simply sign the same text that I would normally print out. But instead of "print" in the text editor I click on the "sign." And that's all.
- **And papers ends**
- It turned out, that it does not work that way



Why was it impossible to sign it that way?

- I learned then that I do not have to make **enveloped signatures**, in order to make sure others knew I signed it,
- I could make **enveloping signatures** and **detached signatures** too,
- I have also learned how to verify the e-signatures created by somebody else

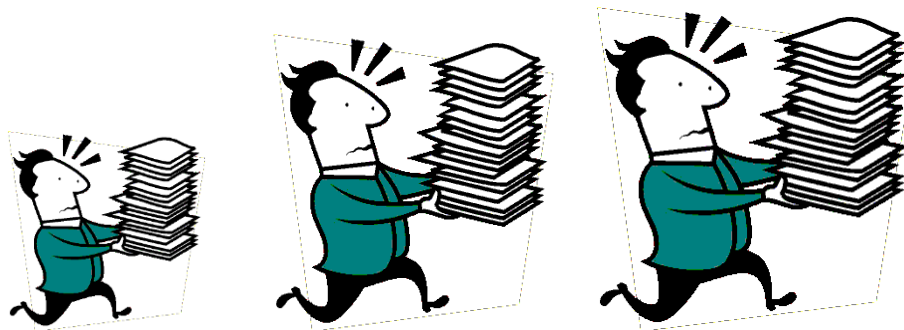
But others have not learned



It turned out, that it does not work too

Although, I could sign anything that could be saved as a computer file, **nobody wanted to receive something like that, and I had no way to change it.**

To deliver specific content to the entity X, I needed the address of the entity and legally recognized method of service



Instead of a signature (banking services)

- It turned out that banking services do not require signature, **electronic identification** is good enough.
- In rare instances when dealing with companies, the signature was also unwanted.
- The last chance was the activation of law - forcing public authorities to allow me to bring a formal request to an authority in an electronic form, signed electronically.



Y2010 - e-delivery **to the** public administration (Code of Administrative Procedure)

- **[pol] Art. 63. § 1.** Podania (żądania, wyjaśnienia, odwołania, zażalenia) mogą być wnoszone pisemnie, telegraficznie, za pomocą telefaksu lub ustnie do protokołu, a także za pomocą innych środków komunikacji elektronicznej **przez elektroniczną skrzynkę podawczą organu administracji publicznej utworzoną na podstawie ustawy z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne**
- **[eng] Art. 63. § 1** *Applications (request, explanations, appeals, complaints) may be submitted in writing, by telegraph, fax or verbally into the record as well as other means of electronic communication **by electronic inbox of public authority established under the Act on ITC technologies in entities performing public tasks***

It is simple – you should know the electronic inbox address



It's not just e-mail box

e-delivery **by the** public administration (Code of...)

- **[pol] Art. 39¹** §1 Doręczenie pism następuje za pomocą środków komunikacji elektronicznej w rozumieniu art. 2 pkt 5 ustawy z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną (Dz. U. z 2013 r. poz. 1422 oraz z 2015 r. poz. 1844), jeżeli strona lub inny uczestnik postępowania spełni jeden z następujących warunków (...)
- **[eng] Art. 39¹** §1 *Delivery by means of electronic communication (...) takes place if a party or other proceedings participant meets one of the following conditions:*
 - 1) *submit application in electronic document by the electronic inbox of public authority;*
 - 2) *ask the public authority for such delivery and notify the public authority of its **electronic address**;*
 - 3) *agrees for delivery by means of electronic communication and notify the authority of public administration of its **electronic address***



This is a simple e-mail box

determine "whether you can ..."

e-delivery **by the** public administration (Code of...)

- **[pol] Art. 46 § 4** W celu doręczenia pisma w formie dokumentu elektronicznego organ administracji publicznej przesyła na adres elektroniczny adresata zawiadomienie zawierające: (...)
- **[eng] Art. 46 § 4** *In order to deliver the electronic document, public authority sends to the **electronic address of the addressee, a notice** containing:*
 - 1) *an information that the recipient can receive a letter in the form of electronic document;*
 - 2) *an indication of the **electronic address** from which the recipient can receive the letter, and where he should confirm a delivery;*
 - 3) *instruction on how to receive the letter, and in particular how to identify at **electronic address** in the ICT system of public administration, and information about the obligation to sign the official receipt of delivery*

determine "how to do it"

retrieved from the link designated by the Authority

Regulation of the Prime Minister (14 September 2011) on creation and delivery of electronic documents (...)

- [pol] §8. 3 Doręczenia dokonywane za pomocą ePUAP uważa się za dokonane przez podmiot publiczny lub do podmiotu publicznego, który utworzył na ePUAP elektroniczną skrzynkę podawczą (...)
- [eng] §8. 3 *Delivery made using ePUAP, deemed to be made **by the** public entity or **to the** public entity that created on ePUAP electronic Inbox. (...)*
- [pol] § 17. 1 Pisma wnoszone za pomocą elektronicznej skrzynki podawczej sporządza się w formacie danych XML na podstawie wzorów dokumentów elektronicznych umieszczonych w centralnym repozytorium lub lokalnym repozytorium.
- [eng] § 17. 1. *Letters submitted via electronic delivery inbox should be prepared in XML format, and based on the patterns of electronic documents placed in a central repository or a local repository.)*



Summary (present situation in public administration)

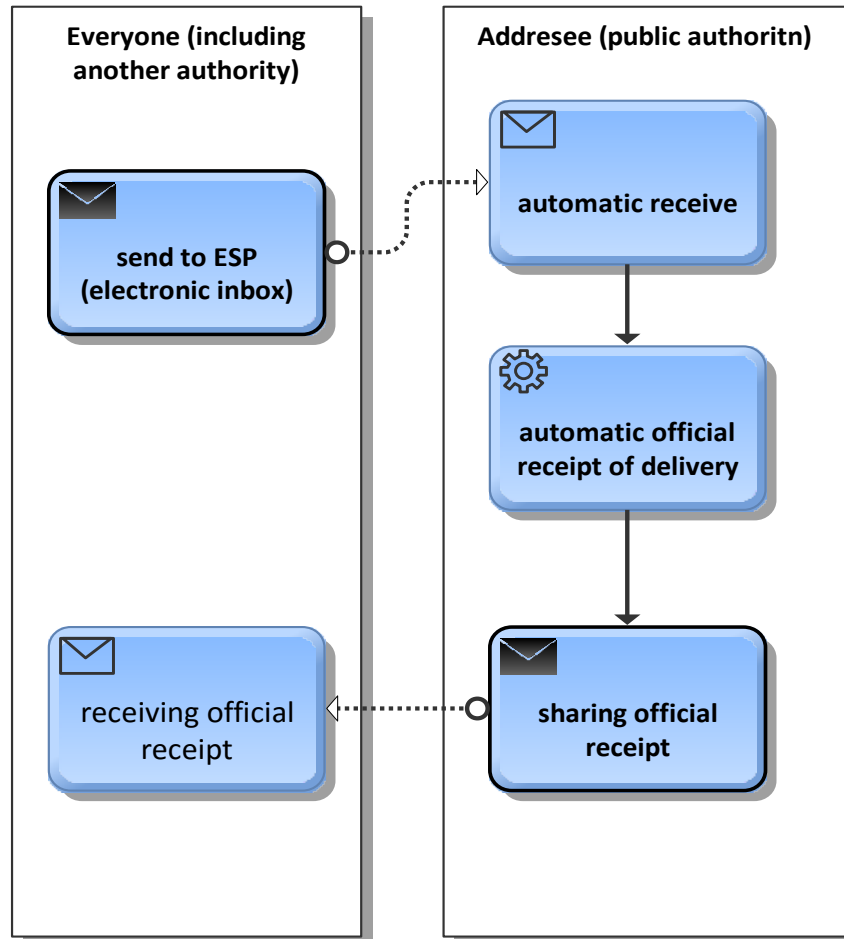
- Delivery to the authority
 - standard electronic delivery inbox (it is not common email box)
 - formally announced XML Scheme (XSD)
 - available form for the creation and delivery of proper XML documents
- Delivery by the authority
 - delivery takes place in the ICT system of public authority
 - fiction receipt (presumption of the delivery)
 - formally announced XML Scheme not necessary

These requirements designed to ensure the possibility of automating the business process - proved to be difficult in practice

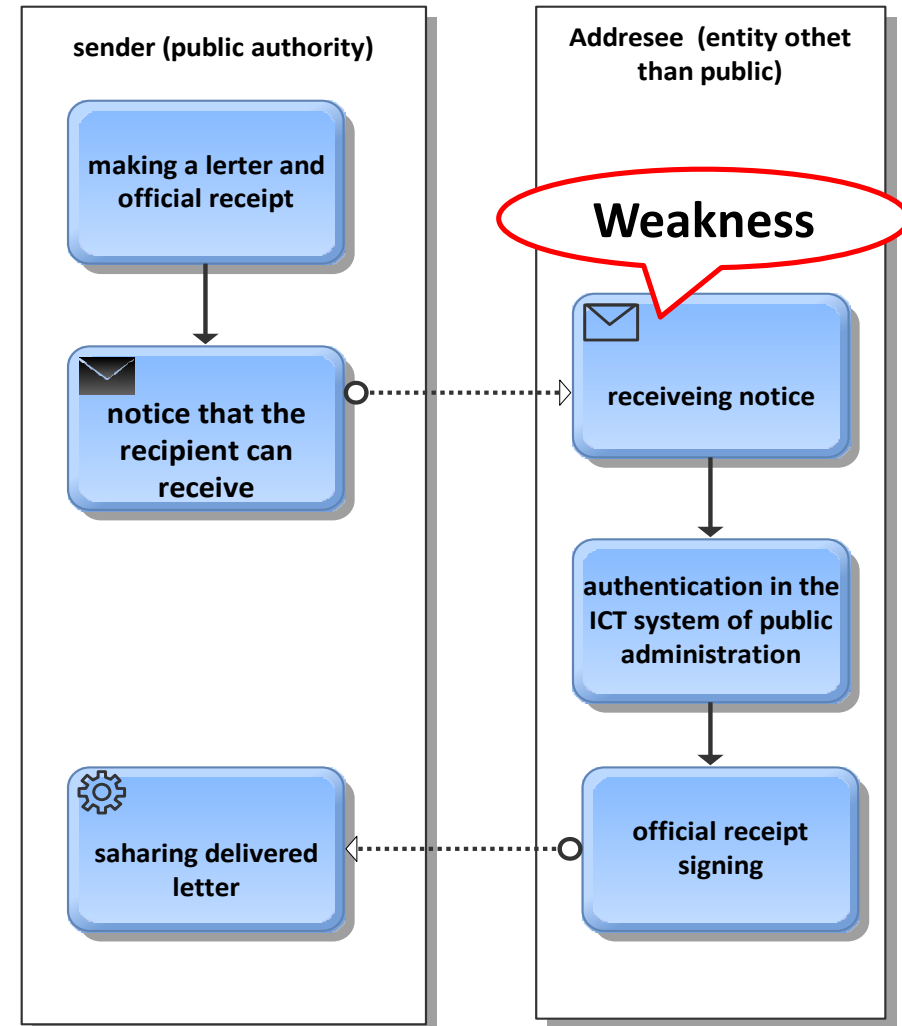


Simplified scheme

delivery to authority



delivery by authority



**Now I can use my electronic signature if
I can create proper XML document, sign it
and deliver to proper electronic box ready
for receiving**

It is not very easy in practice but possible



Courts (still no way to deliver?)

- It turned out that I cannot turn to the courts electronically, because the procedures do not provide the possibility of using an electronic signature.
- Recognition and verification of the electronic signature as an evidence is quite different from using it in court formal procedures.

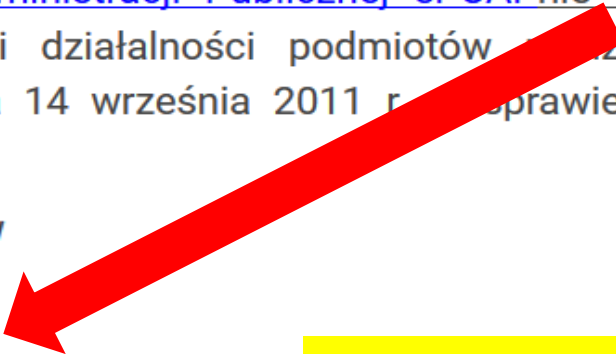


The district court (typical information on the webpage)

- > Informujemy, iż w związku z brakiem systemu teleinformatycznego obsługującego postępowanie sądowe, o którym mowa w art 125§2¹ Ustawy z dnia 17 listopada 1964 r. - Kodeksu postępowania cywilnego (Dz.U.2014.101 j.t) w chwili obecnej nie ma możliwości wnoszenia do Sądu Okręgowego w Warszawie pism procesowych w formie elektronicznej.

Jednocześnie uprzejmie informujemy, że wniesienie pozwu, wniosku i wszelkich innych pism procesowych do Sądu Okręgowego w Warszawie za pośrednictwem [Elektronicznej Platformy Usług Administracji Publicznej ePUAP](#) nie wywoła skutków prawnych. Zgodnie z ustawą z dn. 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne (Dz.U.2014.1114j.t.) oraz rozporządzeniem Rady Ministrów z dnia 14 września 2011 r. w sprawie sporządzania i doręczania

pism procesowych do Sądu Okręgowego w
[rej ePUAP](#) nie wywoła skutków prawnych.
dmiotów realizujących zadania publiczne
1 r. w sprawie sporządzania i doręczania

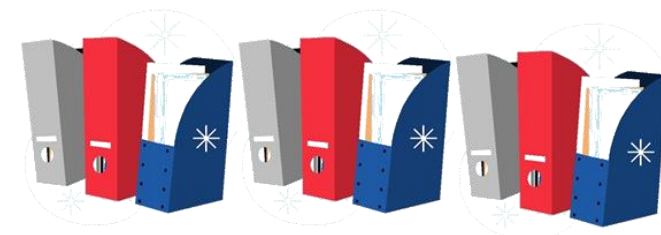


**No system
– no possibility**

Supreme Court ruling

- Postanowienie Sądu Najwyższego z dnia 26 marca 2009 r. I KZP 39/08, które w sentencji stwierdza że: „Nie wyłącza to możliwości procesowego w postaci wniesienia środka odwoławczego i zażalenia procesowe strony, przesłane w formie dokumentu elektronicznego, zgodnie z wymogami ustawy z dnia 22 marca 2001 r. o podpisie elektronicznym (Dz. U. z 2001 r. Nr 63, poz. 1450 ze zm.), albowiem zarówno w procedurze w postępowaniu cywilnym, jak i w procedurze karnej taka forma czynności procesowych nie jest przewidziana .
- zob. <http://www.snsn.pl/sites/orzecznictwo/Orzeczenia1/I%20KZP%2039-08.pdf>

Using e-signature in criminal procedure is not allowed



Resolution of the Supreme Administrative Court

- Uchwała I OPS 10/13 z dnia 2014-05-12
- „W aktualnym stanie prawnym w postępowaniu sądowoadministracyjnym – z uwagi na art. 101 § 1 ustawy z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi (Dz. U. z 2012 r., poz. 270 ze zm.) – dopuszczalne wniesienie do sądu pisma opatrzonego podpisem elektronicznym w rozumieniu art. 3 § 1 ustawy z dnia 18 września 2001 r. o podpisie elektronicznym (Dz. U. z 2001 r., poz. 262), w tym także za pośrednictwem organu administracji publicznej, za pomocą środków komunikacji elektronicznej”
- zob. <http://orzeczenia.nsa.gov.pl/doc/3B9507769E>

Using e-signature in administrative court procedure is not allowed

New in 2016 (Art. 125. §2 Code of Civil Procedure)

[pol] § 2¹. Jeżeli przepis szczególny tak stanowi albo dokonano wyboru wnoszenia pism procesowych za pośrednictwem systemu teleinformatycznego, pisma procesowe w tej sprawie wnosi się wyłącznie za pośrednictwem systemu teleinformatycznego. Pisma niewniesione za pośrednictwem systemu teleinformatycznego nie wywołują skutków prawnych, jakie ustawa wiąże z wniesieniem pisma do sądu, o czym sąd poucza wnoszącego pismo.

[eng] § 21. If a particular rule so provides, or has been chosen submitting a letter via a special electronic delivery system for procedural documents, the pleadings in this case shall only be submitted that way (.)

No system – no possibility to deliver

eIDAS* electronic registered delivery services - a chance for a change?

- eIDAS creates a new quality: third trusted party
- eIDAS art. 3 pt. 36 „*‘electronic registered delivery service’ means a service that makes it possible to transmit data between third parties by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage or any unauthorised alterations;*

In 2008, such a service would be an excellent complement to the electronic signature? But today?

**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*

Different ways of delivery service

- Delivery address managed by a third party
 - I know recipient address, I can use common standard of service (eg. email, but also sms).
 - I know the recipient address on the site provided by third party (like ePUAP or Facebook)
- Delivery address managed by the addressee (service managed by the addressee)



Delivery address managed by the addressee (service managed by the addressee)

- Create an account :
 - You can use common electronic identification means
 - You can use electronic signature (sign application to open an account)
 - You can use electronic identification scheme managed by me.
- Examples: account in banking system, account in telecom system, account in fashion distribution network, etc i.e. account in public administration system?



Important

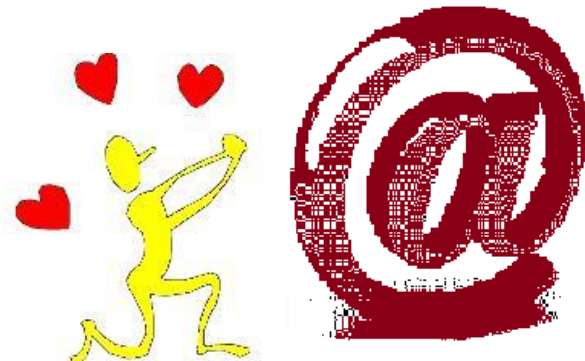
- When the delivery is possible only in my system:
 - only I decide in which cases it is accessible.
 - In other words - **you can do only things allowed by me** (no special services - no possibilities)
- When the service is under the general delivery system it could be possible to deliver any content.
 - **It is convenient for senders** because they do not have to go to the post office, where there is no e-services for a particular case
 - **It poses a threat to the recipients**, they will get a huge amount of unwanted correspondence (visit the post office requires effort)



Chance for a change ?

It should be emphasized that the absence of a general system of e-service causes sophisticated services (important and necessary) or ... traditional registered paper mail

eIDAS creates an opportunity to replace the traditional registered mail to an electronic registered letter



e-identification / trust services?

- Electronic identification in online services works in practice (bank account, Facebook, Google, Amazon, Allegro, Orange, T-Mobile, Plus etc.)
- Using traditional registered paper letter **I can send effectively any content** to any recipient whose address I know
- Using electronic identification means in online services that I can send effectively **only what is allowed**
 - **It is very good** because the service is based on a special electronic form that lets to avoid errors, and data can be automatically processed.
 - **It is also wrong** because it causes a demand for an infinite number of e-services dedicated to certain activities (no dedicated e-service = go to the post office)



If necessary – how to?

- Recommended standards or recommended providers?
- Natural behaviour of providers: *choose our solution - it is the best*
- Do we have to replace account at one platform by account at another?
- Or is it still possible to fix specified standard, and anyone can set up an account where he wants - to provide the address for qualified electronic registered delivery service?



Problem – lack of a standard

- eIDAS article 44. 2 - *The Commission may, by means of implementing acts, establish reference numbers of standards for processes for sending and receiving data. Compliance with the requirements laid down in paragraph 1 shall be presumed where the process for sending and receiving data meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)..*

It is important not only for the cross-border delivery.
It is a chance to "bridge the gaps" between the dedicated e-services
and the traditional paper correspondence.

How to provide the address for e-delivery (proposals for discussion in Poland)

- For public entities it should be mandatory (address information accessible for all in *Public Information Bulletin*)
- For companies it should be possible or mandatory (address information accessible for all in public registers)
- For natural person it should be possible (address information accessible only with the consent of the holder)

And what about the cross-border services?



I realize that services expected by smartphone owners are a bit different (click here, or move it closer and the problem solved).

But I still think it is not too late for the general e-delivery service requiring skills to write a few sentences

In my opinion such a service is needed because I think it is impossible and not necessary to do special apps for any people's activities.

Sometimes simplest solution gives better results.



**Sometimes simplest
solution gives better
results.**



Thank you for your attention

Kazimierz.Schmidt@mc.gov.pl



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