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# On The Comprehensive Regulation of the Sphere of Public Documents in Poland

## Abstract

This paper offers an analysis of a draft bill on Public Documents together with implementing acts. It focuses, in particular, on the key regulations concerning the list of public documents and their classification, on the process of document specimen design as well as on the exclusivity granted to the producer of blank forms of documents of the first category, examining the impact of the analysed regulations on the system of public document security. The analysis leads to a conclusion that the draft bill has some essential drawbacks which may make the law in question inconsistent with EU law and reduce the level of public document security. These drawbacks have been identified and appropriate corrections have been suggested.

**Keywords:** public documents, identification security, national security, PWPW, monopoly

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## Introduction

Source literature has long called for a legal act that would regulate the area of public documents in Poland in a comprehensive manner.<sup>3</sup> The main reasons behind such calls include:<sup>4</sup>

- 1) no consistent vision and a rational, organised procedure when it comes to designing document specimens (and securing them), selecting the producer of public documents, supervising the emitted documents, and supervising documents that have become invalid,
- 2) no proper supervision over the full value chain of a document and over its lifecycle,
- 3) no standards in the area of managing considerable sets of public documents.

The lack of regulations in question results in a range of negative practical consequences. In both legal and economic circulation we can find, after all, public documents designed by their issuers against the fundamental principles of designing documents and insufficiently or inappropriately secured against the threat of being counterfeited or altered. Moreover, there are initiatives to design new documents, the design of which is actually already flawed as described above.<sup>5</sup> It is also necessary to point to the prevailing high number of offences against the credibility of documents, property, and economic turnover.

In this context, introducing a legal act regulating the area of public documents seems to be a rational and necessary measure. The legislative initiative taken in that scope shall thus be considered a welcome effort. However, the content of the

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<sup>3</sup> R. Lewandowski, *O potrzebie regulacji sfery dokumentów publicznych*, [in:] R. Cieśla (ed.), *Zagadnienia dowodu z ekspertyzy dokumentów*, Wrocław 2017, pp. 289–302; idem, *Bezpieczeństwo państwa a bezpieczeństwo dokumentów publicznych i banknotów*, [in:] M. Goc, T. Tomaszewski, R. Lewandowski (eds.), *Kryminalistyka – jedność nauki i praktyki. Przegląd zagadnień z zakresu zwalczania przestępczości*, Warszawa 2016, pp. 290–291, 297–298; M. Goc, *O potrzebie uregulowań prawno-organizacyjnych problematyki dokumentów publicznych*, „Człowiek i Dokumenty” 2009, 13, pp. 7–12; *Projekt ustawy o dokumentach publicznych*, „Człowiek i Dokumenty” 2006, 3, p. 7.

<sup>4</sup> R. Lewandowski, *O potrzebie regulacji...*, p. 291.

<sup>5</sup> An example can be the design of the health insurance card of 2015; see: R. Lewandowski, *Analiza nowej koncepcji elektronicznej karty ubezpieczenia zdrowotnego*, „Polski Przegląd Nauk o Zdrowiu” 2016, 3(48), pp. 308–313.

government's draft bill on public documents with the drafts of the implementing acts of 20 December 2017<sup>6</sup> causes some serious reservations regarding the substance.

The draft bill of the act in question comprises 12 chapters including the following:

- 1) general provisions,
- 2) categories and minimum measures to secure public documents against being falsified,
- 3) design guidelines for public documents specimens,
- 4) producing blank forms of public documents,
- 5) controlling the producers of blank forms of public documents,
- 6) obligations of an issuer of a public document and a public functionary,
- 7) principles of storage of public document blank forms and public documents,
- 8) Public Document Register,
- 9) committee for public documents,
- 10) penal provision,
- 11) amendments to the existing provisions,
- 12) transitional, adjustment, and final provisions.

## General provisions

The framework of the subject matter of the draft bill defined in such a manner does not raise any questions and is compliant with the calls made by scientific and expert environments.<sup>7</sup> A significant part of the general provisions covered in chapter 1 includes definitions of the terms used in the draft bill, including Article 1, section 2, which deserves particular attention as it defines the notion of the system of security of public documents as: designing, producing, storing, and verifying the authenticity of public documents as well as initiating changes in the measures applied to secure public documents against acts of falsification based on an analysis of cases of such documents being falsified, improving the level of education in the area of knowledge about public document security, and cooperation with international institutions and organisations dealing with public document security. The attempt to include the notion of the full document lifecycle in the definition of the system of security of public documents is surely praiseworthy. But it is still necessary to stress that the definition fails to cover an important stage of the cycle in question, i.e. the stage of managing documents withdrawn from circulation (when they e.g. have

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<sup>6</sup> Sejm paper no. 2153.

<sup>7</sup> R. Lewandowski, *O potrzebie regulacji...*, p. 293.

expired). This is a very important link because criminological practice proves that such type of documents can be altered, becoming an additionally perfect source of production materials for counterfeiters.<sup>8</sup> Even though Article 45, section 4 guarantees that documents that have expired will be stored in the Public Document Register<sup>9</sup> there is no obligation to return documents that have become invalid, nor are there any restrictions imposed or any inspections to be carried out by the police in the event of suspiciously frequent reported loss of particular documents. Another flaw of the quoted definition is its enumerative indication of specific reasons to initiate changes in the security measures applied in the documents in question. The provision at issue provides for initiating such changes based on 3 prerequisites:

- 1) analysis of cases of falsification,
- 2) improvement of the level of education,
- 3) international cooperation.

Meanwhile, this 3-element set of prerequisites to initiate changes in the manner of securing public documents is not only non-exhaustive but also includes one wrong prerequisite. After all, we cannot consider education in the area of knowledge about public document security a reason to change the way in which public documents are secured. Such education is important, of course, but its purpose is completely different than that defined in Article 1, section 2. It is rather science, knowledge, and technological development that could foster initiatives in the field of new, better measures to secure documents against being falsified.

Another important term defined in the draft bill is public document, understood as a document used to identify people and objects or to confirm the legal status or the rights of the holder of such a document, secured against being counterfeited and produced according to the specimen defined in the generally applicable law (Article 2, section 1, item 2). According to the draft bill, a public document is also a document whose graphic design and form have been approved by an entity performing public tasks, authorised on the basis of separate regulations; compliant

<sup>8</sup> E. Jakielaszek, Ł. Cymerman, *Model procesu globalnego zarządzania tożsamością*, "Człowiek i Dokumenty" 2013, 30, pp. 9–10; T. Luźnia, R. Łuczak, *Falszerstwa polskich dowodów osobistych poprzez wymianę fotografii. Część II – współcześnie*, "Człowiek i Dokumenty" 2013, 30, pp. 37–44; K. Ślaski, *E-dokumenty – nowe wyzwania dla ekspertów*, "Człowiek i Dokumenty" 2011, 21, pp. 23–24; idem, *Falszerstw dokumentów w praktyce Straży Granicznej*, "Człowiek i Dokumenty" 2006, 2, p. 14.

<sup>9</sup> Special provisions specify the procedure applied when dealing with such a document. For instance – § 10, section 8 of the Minister of Infrastructure and Construction's regulation of 24 February 2016 on issuing documents validating an individual's driving rights states that the authority issuing a driving licence or permit invalidates the driving licence or permit used by an individual so far by cutting off the document's left corner of at least 1 cm<sup>2</sup>, returns it to the person in question, and enters the relevant data in the application form and in the ICT system.

with the requirements for the blank form of such a document as defined in separate regulations of the generally applicable law (Article 2, section 2). Public documents also include writs of execution; certified copies of legally binding court decisions;<sup>10</sup> court-issued certified copies of certificates or documents of authorisation confirming the entitlement to represent a given person, to perform a legal act or to manage certain property; certified copies of court decisions issued to make writs of execution enforceable;<sup>11</sup> extracts, certified copies, and excerpts of documents involving the performance of a notarial act (Article 2, section 3). Identical blank forms are used in the case of these documents.

The draft bill also defines the notion of the blank form of a public document as a non-personalised or non-individualised public document (Article 2, section 1, item 1), i.e. a document before its blank form is filled in with the data of a person (e.g. personal data) or before the blank form's producer fills it with distinctive features that make it clearly different from blank forms of the same type (e.g. an individual code or number). Moreover, the draft bill defines the term of the public document's issuer, replica, and specimen. Including the above definitions into the draft bill shall be considered a positive act as these definitions organise and standardise the terminology in use. Chapter 1 also names the minister in charge of internal affairs (hereinafter: MIA) as the entity responsible for the policy of security of public documents and for making sure that a public document security system is in place (Article 1, section 4). This is a highly significant provision as it is a departure from the current wrong practice of no coordination of the area of public documents by state authorities. The MIA's duties are presented in detail in Article 3, section 1 as follows:

- 1) participation in the procedure of designing public documents specimens,
- 2) analysing cases of document falsification,
- 3) initiating changes in document security measures,
- 4) assessing the quality of the issued documents,
- 5) monitoring the changes taking place globally in the area of document security,
- 6) working with international institutions and organisations dealing with document protection and security,
- 7) publishing information about document specimens in the Public Document Register,

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<sup>10</sup> Applies to decisions acknowledging the acquisition, existence or expiry of a right, or concerning an individual's marital status.

<sup>11</sup> Applies to decisions other than those listed in Article 777 § 1, item 1 and 1<sup>1</sup> of the Code of Civil Procedure when they concern writs of execution of non-court origin.

- 8) taking action aimed at improving the level of education in the field of knowledge about the possibilities and ways of identifying fake documents,
- 9) controlling the producers of document blank forms.

The MIA carries out the abovementioned duties through a new body (defined in the draft bill), i.e. the Committee for Public Documents.

Article 59 of chapter 10 of the draft bill includes a penal provision according to which anyone who produces, offers, sells or stores a replica of a public document with the intention to sell it is subject to a fine, to restriction of freedom or to imprisonment of up to 2 years. It is a significant penal sanction that should be helpful in eliminating the pathology related to the market presence of replicas of e.g. driving licences or national ID cards, used frequently for criminal purposes.

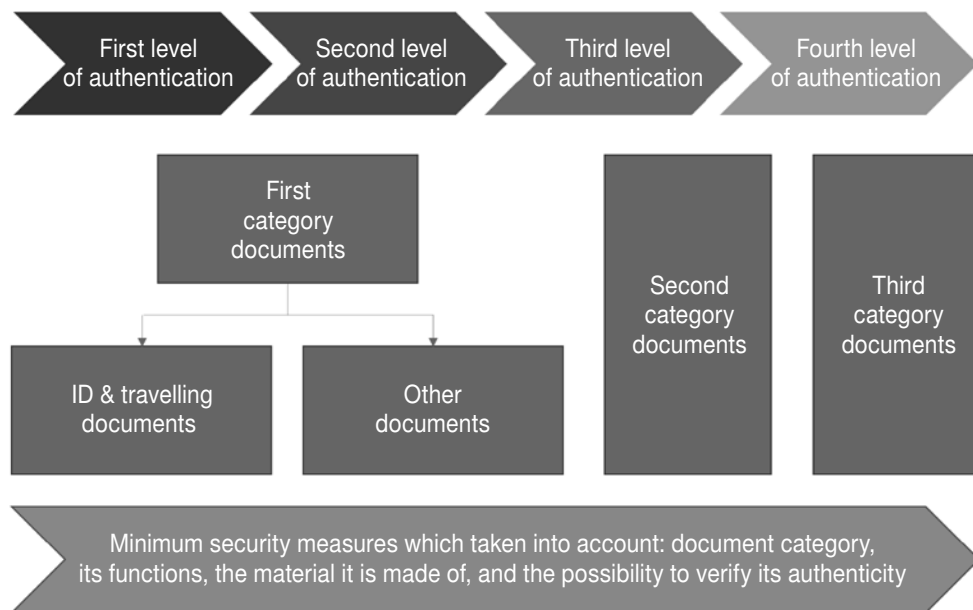
## Public documents

The draft bill with the implementing acts related thereto enumerates the public documents subject to the regulations under discussion. According to what has been called for in the source literature, the documents have been divided into 3 categories (first, second, and third) based on the impact of the analysed documents on the level of state security<sup>12</sup> (first category: very big impact; second category: big impact; third category: medium impact). The above categorisation is based on the level of security measures applied in documents and on the required procedures related to the production of blank forms of documents of a given type. The documents, the alteration or falsification of which carries the highest risk for the security of the state and its citizens, especially including identification risk,<sup>13</sup> should be secured according to the related falsification threats and to the purpose a given document serves in the legal or economic circulation. Documents confirming an individual's identity and travel documents have the biggest impact on the state's public and economic security,<sup>14</sup> and these are documents included mostly in the first category. The system of the classification of documents is provided in Fig. 1.

<sup>12</sup> E.g. R. Lewandowski, *O potrzebie regulacji...*, pp. 296–297.

<sup>13</sup> R. Lewandowski, T. Goliński, *Nielegalna migracja a bezpieczeństwo identyfikacyjne*, [in:] M. Tomaszewska-Michalak, T. Tomaszewski (eds.), *Dokumenty a prawo. Prawne oraz praktyczne aspekty korzystania z dokumentów i e-dokumentów*, Warszawa 2015, pp. 112–113.

<sup>14</sup> R. Lewandowski, *Analiza Koncepcji wdrożenia polskiego dowodu osobistego z warstwą elektroniczną*, "Przegląd Bezpieczeństwa Wewnętrznego" 2017, 16, pp. 217–218.

**Figure 1.** Classification of public documents

Source: authors' own work based on the draft bill on Public Documents (Sejm paper no. 2153).

Table 1 includes first category public documents. They are enumerated in Article 5, section 2 of the draft bill. Their analysis shows that they include both those of the greatest importance from the point of view of national security and concerning mainly confirming one's identity (e.g. national ID cards, certified copies of vital records), international travel (e.g. passports, seaman's books), those significant from the point of view of public order and security (e.g. official ID cards of functionaries of state services), confirming one's legal status (e.g. extracts and certified copies of documents covering selected notarial acts, certified copies of court decisions) as well as those less important from the point of view of state security, such as documents entitling individuals to take advantage of special social benefits (e.g. cards confirming one's disability or the degree of one's disability). There is therefore a question as to whether the range of first category documents is not too broad. It seems that it would be reasonable to limit the first category documents to items 1–9, 15–22 and 26–32 at most, moving the remaining documents to the second category.

**Table 1.** First category public documents

No.	First category documents	No.	First category documents
1	national ID card	17	military personal documents issued to regular soldiers
2	passport documents	18	ID cards issued to regular soldiers and to soldiers serving as candidates
3	seaman's book	19	ID cards issued to soldiers engaged in active military service and to persons serving at militarised units assigned to the Polish Armed Forces, to civil first aid/medical staff of the Polish Armed Forces, to civil persons accompanying the Polish Armed Forces, to the staff of the Polish Red Cross and other voluntary aid organisations, to civil persons carrying out ministry services, and to other persons specified in international law
4	certified copies of vital records, certificates of one's data entered or not entered in the register of vital records, marital status certificates, certificates of no impediment to marriage	20	passport entry confirming the status of a person referred to in Article 3.3 of the agreement between the Parties to the North Atlantic Treaty regarding the status of their forces
5	Polish identity document for foreigners, local border traffic permit, residence card, Polish travel document for foreigners, temporary Polish travel document for foreigners, permit for tolerated stay	21	visa sticker
6	documents confirming the function held by members of diplomatic missions and consular offices of foreign countries and documents identifying the status of members of their families	22	Polish Charter (PL: Karta Polaka)
7	EU citizen permanent residence card	23	official card confirming one's disability or the degree of one's disability
8	EU citizen family member permanent residence card	24	right to pursue the profession of a medical doctor
9	temporary certificate of foreigner's identity, Geneva passport, residence card	25	right to pursue the profession of a dentist
10	writs of execution	26	driving licence
11	binding court decisions acknowledging the acquisition, existence or expiry of a right, or concerning an individual's marital status	27	professional vehicle registration card and vehicle registration card
12	court-issued certified copies or certificates confirming one's right to: represent a given person, perform a legal act or manage property	28	vehicle history card



13	certified copies of court and court referendary decisions issued to make writs of execution enforceable other than those listed in Article 777 § 1, item 1 and 11 of the Code of Civil Procedure when they concern writs of execution of non-court origin	29	temporary permit
14	extracts, certified copies, and excerpts of documents covering selected notarial acts and protests	30	digital tachograph card
15	aircraft member certificate	31	ADR certificate
16	military personal documents issued to persons listed in military records	32	official ID cards of: the police, Border Guard (PL: SG), State Protection Service (PL: SOP), Internal Security Agency (PL: ABW), Foreign Intelligence Agency (PL: AW), Central Anti-Corruption Bureau (PL: CBA), Military Counterintelligence Service (PL: SKW), Military Intelligence Service (PL: SWW), prison (PL: SW), customs and fiscal (PL: SCS) officers, National Revenue Administration (PL: KAS) employees, Inspectorate of Road Transport (PL: ITD) inspectors, Military Gendarmerie officers

Source: authors' own work based on Article 5, section 2 of the draft bill on Public Documents (Sejm paper no. 2153).

According to the draft bill, first category public documents also include: certified copies, extracts, duplicates, and duplicate copies of the abovementioned documents.

Second category documents are documents other than those listed above, but ones that remain significant to the state's security, to economic and legal security, including especially documents concerning firearms, international carriage of dangerous goods, confirming one's completion of higher or specialised education, and certificates of secondary education (Article 5, section 4). Second category public documents also include: certified copies, extracts, duplicates, and duplicate copies of the abovementioned documents. The list of these documents is not included in the act, but in the implementing regulation issued by the Council of Ministers. Table 2 includes the list of second category documents based on the draft regulation.

The list of second category documents raises no reservations except for the fact that the permit to drive trams, issued on the basis of Article 16 of the Act of 5 January 2001 on Vehicle Drivers has been included – probably by mistake – in both the list in question (§ 2, section 1, item 25) and in the list of third category documents (§ 3, section 1, item 33).

**Table 2.** Second category public documents

No.	Second category documents	No.	Second category documents
1	European Firearms Pass	13	ADN certificate
2	Permit to import firearms and ammunition from abroad and export firearms and ammunition abroad	14	certificate of secondary education, annex to certificate of secondary education, and certificate of the results obtained as part of the 'matura' [matriculation] examination
3	weapon owner's card	15	diploma of higher education
4	certificate of entitlement to purchase firearms or ammunition	16	right to pursue the profession of a pharmacist
5	card of entitlement to own a weapon	17	right to pursue the profession of a physiotherapist
6	firearms certificate	18	right to pursue the profession of a nurse or midwife
7	firearms registration card	19	specialist nurse diploma, specialist midwife diploma
8	certificate substituting a firearms licence and entitling foreigners to export firearms and ammunition	20	certificate of the right to pursue the profession of a veterinary surgeon
9	certificate substituting a firearms licence and entitling individuals to export firearms and ammunition	21	veterinary specialist title diploma
10	permit to export firearms or ammunition outside the Republic of Poland	22	registration card of vehicles used by State Protection Service (PL: SOP), the police, Internal Security Agency (PL: ABW), Foreign Intelligence Agency (PL: AW), Central Anti-Corruption Bureau (PL: CBA), Border Guard (PL: SG), Military Intelligence Service (PL: SWW), Military Counterintelligence Service (PL: SKW), National Revenue Administration (PL: KAS) employees, customs and fiscal (PL: SCS) officers
11	train driving licence and complementary certificate	23	permit to drive trams*
12	ADN certificate of approval for ships carrying certain dangerous goods		

\* The permit to drive trams has been included (probably by mistake) in the lists of both second and third category documents.

Source: authors' own work based on the draft of the Council of Minister's regulation on the list of public documents, appended to the draft bill on Public Documents (Sejm paper no. 2153).

The last category of public documents is category three including documents other than those listed in category one and two, naming especially: concessions,

permits, licences and certificates related to transportation safety, documents proving one's professional qualification, education certificates, primary/secondary/tertiary education student cards, and documents authorising individuals to take advantage of various price concessions (Article 5, section 5). Third category public documents also include: certified copies, extracts, duplicates, and duplicate copies of the abovementioned documents. The list of these documents is not included in the Act either, but in the implementing regulation issued by the Council of Ministers. Table 3 includes the list of third category documents based on the draft regulation.

**Table 3.** Third category public documents

No.	Third category documents	No.	Third category documents
1	permit to operate as a carrier by road	29	permit to provide occasional carriage services in international road transportation
2	driver's certificate	30	permit to provide shuttle carriage services in international road transportation
3	community licence and an extract therefrom	31	permit to provide regular coach or bus carriage services between member states
4	community licence to operate as a carrier by road	32	permit to drive an emergency vehicle or an armoured cash transport vehicle
5	community licence to provide international bus transportation services to people	33	permit to drive trams*****
6	licence to provide domestic road transportation services in the area of transporting people by a passenger car	34	selected documents issued on the basis of the Act of 3 July 2002 – Aviation Law
7	licence to provide domestic road transportation services in the area of transporting people by a passenger car intended to carry more than 7 and less than 9 persons	35	documents of authorisation to enter railway areas
8	licence to provide road transportation services in the area of freight forwarding	36	licence to provide passenger or freight transportation services by rail or to provide traction services
9	licence to provide domestic road transportation services in the area of transporting people by taxicab	37	licences and certificates of professional qualification in inland navigation
10	licence to provide domestic road transportation services for people	38	vessel safety documents
11	licence to provide domestic road transportation services for goods	39	registration document of an inland navigation vessel

12	permit to provide regular carriage services for people in domestic road transportation	40	diplomas and certificates proving the professional qualification of marine crew members
13	permit to provide regular special carriage services for people in domestic road transportation	41	certificate of the nature, period, and type of activity performed in the Republic of Poland
14	certificate to provide mass public transportation services	42	phytosanitary certificates
15	carriage notification confirmation	43	Big Family Card
16	driver's professional qualification certificate*	44	primary/secondary/tertiary education student card
17	licence card of an instructor teaching persons seeking to obtain driving rights	45	certificates of completion of primary and secondary education, certificates proving one's professional qualification, diplomas proving one's professional qualification, and certificates of completion of an art school and diplomas issued by such a school
18	certificate of registration in the records of driving school teachers**	46	certificate of lower secondary school examination results, certificate of 8th-grader examination results, certificate of external examination results
19	licence card of driving examiner***	47	professional identity card of a teacher, fireman, nuclear supervision inspector, senior citizen and pensioner, driving instructor, driving examiner, officer and employee of the prison service (PL: SW)
20	certificate of registration in the records of driving instructors of teachers of a driving school****	48	investigator licence
21	permit for oversize load travel	49	certificate of holding professional qualification in the area of real estate valuation
22	certificate for carriage by road for own account	50	parking cards
23	certificate for international carriage by road for own account	51	certificate of registration as a qualified security guard and a qualified technical protection worker
24	certificate proving a vehicle's fulfilment of the relevant safety requirements or conditions of roadworthiness	52	permits and documents authorising to import and export intoxicants and psychoactive substances
25	European Conference of Ministers of Transport (ECMT) permit	53	driver's professional qualification certificate
26	international certificate for carriage of goods	54	international driving licence

27	passenger waybill to provide shuttle and occasional carriage services in international road transportation	55	identity card issued by the National Bailiff's Council (PL: Krajowa Izba Komornicza)
28	permit to provide regular and special carriage services in international road transportation		

\* The driver's certificate of professional competence referred to in Article 39c, section 1 and Article 39e, section 1 of the Act on Road Transport is included (by mistake) two times in the list of third category documents: in § 3, section 1, item 16 and item 59.

\*\* The certificate of registration in the records of driving school teachers referred to in Article 38, section 2, item 1 of the Act on Road Transport is included (by mistake) two times in the list of third category documents: in § 3, section 1, item 18 and item 61.

\*\*\* The licence card of driving examiner referred to in Article 38, section 62, item 1 of the Act on Road Transport is included (by mistake) two times in the list of third category documents: in § 3, section 1, item 19 and item 62.

\*\*\*\* The certificate of registration in the records of driving instructors, issued on the basis of Article 117, section 3, item 1 of the Act on Road Transport, is included (by mistake) two times in the list of third category documents: in § 3, section 1, item 20 and item 63.

\*\*\*\*\* The permit to drive trams has been included (probably by mistake) in the lists of both second and third category documents.

Source: authors' own work based on the draft of the Council of Minister's regulation on the list of public documents, appended to the draft bill on Public Documents (Sejm paper no. 2153).

The list of third category public documents does not raise any significant reservations either except for the issue of mistakes involving featuring the same documents twice in the list, as shown in Table 3. An analysis of documents assigned to particular categories and of the purpose they serve in the legal and economic circulations shows that their impact on the state's security and on the security of the existing economic and legal circulation has been determined and assigned correctly.

The draft bill also addresses the minimum security measures applied to documents of particular categories to secure them against being falsified. The minimum security measures should take the following four factors into account: a given public document's category, its function, the material it is made of, and the possibility to verify its authenticity (Article 7, section 1). These factors are identified correctly because the security level should result mostly from the threats the falsification of a given document carry to the security of the state. The relationship in question has been expressed by assigning particular documents (e.g. based on the purpose they serve) to one of the three categories discussed above. The material a given document is made of, especially the base (e.g. screened paper, polycarbonate), affects the selection of particular security measures. Finally, the type of the applied security measures needs to be correlated with the needs in the field

of authentication, also performed – in many cases – by persons without professional qualification to do so.<sup>15</sup> This is why authentication involves four levels (Article 7, section 4):

- 1) basic, without the use of technical equipment,
- 2) intended for the staff of public entities, performed with the use of commonly available facilities,
- 3) intended for experts of specialised criminology laboratories,
- 4) intended for experts of an entity appointed by the MIA.

It needs to be mentioned that the draft bill does not specify, however, the criteria of the MIA's appointment of the abovementioned entity responsible for level four authentication of public documents. No such specification or clear indication of the entity in question is the draft bill's flaw.

Two groups of minimum security measures have been defined for the first category documents. The first group includes confirming an individual's identity and travel documents, and the second – other first category documents. The list of security measures (for all three categories and both first category groups) has been included in a draft regulation appended to the draft bill. The draft regulation on the list of minimum measures to secure public documents against being falsified mentions, however, only two factors taken into consideration when drawing up the list of minimum security measures, i.e. the internal division of the first category and the possibility to authenticate a given document on different levels (§ 1). Meanwhile, as mentioned above, the draft bill provides for 4 such factors. It seems that the reason behind the difference lies in the incorrect wording of the content of § 1 of the draft regulation since the appendix to the regulation alone also includes the classification of security measures based on a document's base and – to some extent – also its purpose; it also assigns particular security measures to three levels of authentication.<sup>16</sup> Minimum security measures are not defined for: writs of execution, certified copies of court decisions, extracts, certified copies, and excerpts of documents involving performance of notarial acts. As for this group of documents, the list of minimum security measures and blank form specimens will be designed by the Minister of Justice in coordination with the MIA and – in relation to notarial documents – by the relevant ministers upon consulting the National Notary Council.

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<sup>15</sup> E. Jakielaszek, *Światowe nowości w zabezpieczeniu banknotów i dokumentów*, "Człowiek i Dokumenty" 2011, 23, p. 19.

<sup>16</sup> Level four is not disclosed.

Moreover, the draft bill did not name the minimum security measures for documents whose specimen and scope of the required security measures has been defined in the provisions of EU law or international law.

## The Committee for public documents and the principles of designing the specimen of a public document

The draft bill in question includes very important provisions regarding the design of document specimens. According to these provisions, the entity responsible for a public document specimen is the document's issuer acting in coordination with the body appointed in the draft bill, i.e. the Committee for public documents (hereinafter referred to as: the Committee). The draft bill therefore establishes a special institution supporting the MIA in managing issues related to public documents (Article 3, section 2). The need for such an institution has been expressed many times in the source literature.<sup>17</sup> The competence of the entity in question concerns, in particular, the participation in the process of designing the specimen of a new type of document and the assessment of the quality of the issued public documents (Article 49, section 2). The process of designing specimens of new types of documents or modified specimens of documents as conceived in the draft bill may be described in the following way (Articles 11–15):

- 1) a request for a specimen of a document is submitted to the Committee by the authorised entity or the issuer, followed by the provision of the necessary information,
- 2) the Team (assembled from the Committee's members) puts forward a set of recommendations regarding including the document into the most appropriate category and e.g. defines the minimum security measures and requirements for document personalisation or individualisation or puts forward a set of recommendations against classifying the document as a public document,
- 3) the Team leader submits the said set of recommendations, discussed with the requesting entity, to the Committee for approval,
- 4) the Committee approves or rejects the received recommendations; in the latter case – the Team is given a set of guidelines to change the submitted recommendations,
- 5) the Team leader provides the requesting entity with the recommendations approved by the Committee,

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<sup>17</sup> E.g. R. Lewandowski, *O potrzebie regulacji...*, p. 300.

- 6) the requesting entity designs – based on the approved recommendations – a draft of the specimen of the requested public document and a detailed description of the security measures to be applied (excluding classified information) and submits them to the Team for approval,
- 7) the issuer provides the Team with a printed sample blank form of the document for the latter to verify its compliance with the design of the specimen and the approved recommendations.

The process described above is seriously flawed. Firstly, it needs to be noticed that the provisions formulated in such a way do not give the Committee the right to take the initiative to introduce changes to the existing document specimens. This can be done by the issuer of a given type of document. Meanwhile, we can still see documents secured against being falsified in an insufficient or inappropriate way in the legal circulation. Failure to grant the Committee the said right may hamper the process of improving the security measures applied in the already existing types of documents. Even though Article 3, section 1, item 3 grants the MIA the general initiative to make changes in the security measures applied to public documents to secure them against being falsified, detailed rules – including those concerning the design of the document specimens – do not determine the way in which the MIA should exercise this right.

Another flaw is the lack of arrangements made at the level of rules regulating the process of designing document specimens if:

- 1) the recommendations have not been arranged between the Team and the issuer or the authorised entity,
- 2) the public document design and the detailed description of the security measures as suggested by the issuer or the authorised entity has not been approved by the Team,
- 3) the sample blank form of the document has been assessed negatively by the Team.

The provisions of the draft bill do not take such situations into consideration. In consequence, the process of designing document specimens may come to a halt because of the lack of provisions regulating the operation of the Team, the Committee or the issuer in the event the signalled issues occur. In the first case, a good solution may be to grant the Committee the right to draw up recommendations to include the requested document into an appropriate category – with these recommendations being binding upon the issuer – and to e.g. define the requirements for the security measures and requirements concerning the personalisation or individualisation of the requested document. In the second case, the issuer (or the



authorised entity) should be obliged to submit a corrected version of the design of the requested public document and of the detailed description of the security measures to be applied within a clearly specified deadline. In the third case, the issuer (the authorised entity) should be obliged to submit a corrected sample blank form of the requested document within a clearly specified deadline.

## **Production of blank forms of public documents and controlling public document producers**

### **First category documents and monopoly**

The draft bill gives monopoly to produce blank forms of first category documents<sup>18</sup> to a company wholly owned by the State Treasury and whose core business is producing document blank forms and sheeted forms, with a seat and a production facility where document blank forms are produced in the Republic of Poland, with a valid, certified, and supervised safety management system proved to be compliant with ISO 14298:2013 (Article 17, sections 1 and 2). Moreover, the draft bill lays down that if it is impossible for the said entity to produce certain first category documents, the blank forms in question may be produced by another entity (Article 17, section 6).

The legal monopoly constructed in such a way raises major doubts. It is especially important to notice that the draft bill does not name the Polish Security Printing Works (PWPW) directly as the company producing first category document blank forms, although it is now the only entity that fulfils the conditions defined in the draft bill. However, not naming PWPW as the sole producer of the group of blank forms in question makes the draft bill flawed because it does not take into consideration situations in which there is more than one entity fulfilling the conditions defined in Article 17. It is therefore necessary to include provisions that would make it possible to select the contractor from among companies who fulfil the said conditions or to simply give the monopoly to PWPW. Also, the draft bill's failure to include a requirement of a clean criminal record of employees of the said sole producer of blank forms shall be considered as something negative, although such a requirement exists for producers of second and third category document blank forms and for first category document blank forms producers named in the event the sole producer is unable to fulfil an order.

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<sup>18</sup> Except for official ID cards of various services, which may be produced by the Internal Security Agency (PL: ABW).

The issue of monopoly is related to the issue of compliance of the drawn up provisions with Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.<sup>19</sup> The said directive concerns awarding public procurement contracts and competitions. It does not apply, however, to public procurement contracts and competitions to an extent to which the protection of the fundamental interest of a given member state in the area of security may not be granted by less invasive means, e.g. by imposing requirements aimed at the protection of the confidential nature of information published by the ordering authorities. Neither does it apply to public procurement contracts nor competitions to an extent to which the application of the directive would oblige a given member state to provide information whose disclosure would be considered by the disclosing member state as against its fundamental interest in the area of security.<sup>20</sup>

It is reasonable to refer in this context to a judgement of the Court of Justice of the European Union (hereinafter: CJEU) issued on 20 March 2018 in case C-187/16 regarding the legal monopoly to produce certain official documents given under an act to an Austrian company Österreichische Staatsdruckerei GmbH (hereinafter: ÖS). The CJEU decided that “by having awarded, without an EU-wide call for tenders, service contracts for the production of chip passports, emergency passports, residence permits, identity cards, credit card-sized driving licences and credit card-sized vehicle registration certificates directly to Österreichische Staatsdruckerei GmbH and by maintaining national provisions which require contracting authorities to award those service contracts directly to that company, without an EU-wide call for tenders, the Republic of Austria has failed to fulfil its obligations (...)”. Interestingly enough, the opinion of the Advocate General regarding the case at issue was presented on 20 July 2017 and included a number of arguments raised by the CJEU in its judgement. The arguments presented by the Advocate General (and by the Commission and CJEU in the course of the case) refer to an Austrian company, but they significantly question the compliance of the provisions of the draft bill discussed here with EU law in the area of legal monopoly in Poland. Meanwhile, the draft bill comes with an opinion on its compliance with EU law, dated 11 December 2017, according to which “the draft bill is not against EU law.”<sup>21</sup> The opinion was signed by the then-Undersecretary of State at the Ministry of Foreign Affairs, J. Czaputowicz. The MFA’s lack of any doubt in a situation in which

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<sup>19</sup> OJ EU L 94 as amended.

<sup>20</sup> Article 15, section 2 of Directive 2014/24.

<sup>21</sup> Ref. DPUE.920.1941.2016/17.

there is a case before the CJEU that concerns provisions similar to those included in the draft bill and when there is an opinion of the Advocate General shall be considered at least odd and implying a significant problem with professional competence at MFA.

Looking at the draft bill in the light of the abovementioned judgement, it is especially necessary to consider selected arguments made by the Commission and the CJEU that point to Austria's breach of EU regulations in the context of the monopoly on public documents given to ÖS by way of an act, making it impossible to apply exceptions from the directive:

- 1) no indirect or direct share of the state in ÖS' ownership structure,
- 2) no domestic regulations in the area of the mechanism of the state's control over ÖS,
- 3) a possibility (based on domestic regulations) to award contracts for documents to entities other than ÖS, especially in a situation in which ÖS is unable to fulfil particular orders,
- 4) no proof that only administrative inspections that Austrian authorities may perform to check ÖS can ensure the required level of confidentiality of orders and that Austrian authorities may not perform the required administrative inspections to check companies other than ÖS with a seat in Austria (or in another member state).

The first argument does not apply to the draft bill because the draft bill names a company wholly owned by the State Treasury. The argument is related to the second argument, which concerns the fundamental mechanisms of state control over monopolists. The status of a company wholly owned by the State Treasury makes it easier to implement special control mechanisms to be applied to it. The state's ownership control of the company gives it a range of options to control the operations of the company more thoroughly and lets it exercise its rights as the shareholder (sole shareholder in the case in question) as stems from the Commercial Companies Code. In the case of PWPW, the special entitlements of the State Treasury (represented by MIA), referring to the matter at issue, can be found in the company's articles of association. The following appear to be particularly noteworthy:

- 1) right to obtain all information and explanations concerning the company's operations from the Management Board and the Supervisory Board – upon request,
- 2) right to obtain information about any significant changes in the Company's financial and legal situation,
- 3) required approval to dispose of intangible and legal assets, tangible assets, and long-term investment projects of the value exceeding PLN 5 million.

Additional rights in the area of controlling the producer of first category document blank forms result from the provisions of the draft bill in question and include controls performed by the MIA and the Head of the Internal Security Agency in the area of having a system of safety management in place and of blank form production taking place in the Republic of Poland (Article 22, section 1).

The abovementioned range of the state's instruments to control the document blank forms producer in Poland is quite narrow, especially in the context of the CJEU's judgement issued in case C-187/16. It seems that giving the monopoly in question needs to involve a necessity for the state to impose certain restrictions on the blank form producer, which other entities will find impossible to comply with, especially private companies, with these restrictions improving the level of safety related to the production of public document blank forms at the same time. An example of such restrictions could be the extended ownership rights provided for in PWPW's articles of association. And so the draft bill should feature additional rights granted to state administration, including:

- 1) obligatory information about the business agreements concluded with other entities (to eliminate the risk of the producer's business cooperation with countries which are hostile to the Republic of Poland) together with the terms of reference of these agreements,<sup>22</sup>
- 2) obligatory information about the financial situation of the producer, covering the current profit and loss account, balance, and cash flow,
- 3) the MIA's entitlement to approve the producer's conclusion of business agreements with other entities (to eliminate the risk of the producer's business cooperation with countries which are hostile to the Republic of Poland),
- 4) obligatory information about the producer's legal disputes,
- 5) obligatory control of selected business agreement concluded by the producer – to be performed by the Internal Security Agency,
- 6) Internal Security Agency's continuous counterintelligence monitoring of the producer's operations,
- 7) the MIA's and the Internal Security Agency's control of the producer's compliance with the conditions required in the area of security of production of first category document blank forms.

The administrative rights formulated in such a way increase the level of security related to the production of document blank forms on the one hand, and on the other, in practice, make it impossible to award contracts to entities other than with

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<sup>22</sup> Such cooperation increases the risk of information concerning the applied security measures and the document production process being intercepted by the intelligence services of hostile countries.

the State Treasury's majority holding. They also act as an answer to the CJEU's arguments implying that Austrian administrative controls may be carried out in other companies seated in Austria than ÖS.<sup>23</sup> Item 3) may seem controversial, but when it comes to PWPW, the limitations of competence of the board to the benefit of the state (formally: of MIA exercising their shareholding rights) function and refer to obtaining an approval – required based on the articles of association – for transactions exceeding the value of PLN 5 million. Item 7), in turn, seems to be obvious since an analogous control is to be carried out pursuant to Article 22, section 1, item 2) in relation to second and third category document blank form producers. Thus, adopting special requirements for production security with respect to the first category document blank form producer seems all the more reasonable. For security reasons, they could be secret.

A point to be made here is that the extension of the business of blank form producers to include blank form personalisation<sup>24</sup> could be an additional argument for a state-controlled monopoly since disclosing personal data of citizens to entities other than those with the state's majority shareholding in their structure could significantly compromise identification security. In his opinion, the CJEU's Advocate General addressed the issue of a justified necessity to process citizens' personal data in their own countries only. What is more, the technological linkage of the personalisation process with the process of blank form production effectively secures a document against being falsified.<sup>25</sup>

The third group of arguments raised by the CJEU concerns a possibility (based on domestic regulations) to award contracts for documents to entities other than ÖS, especially in a situation in which ÖS is unable to fulfil particular orders. The observation leads to the conclusion that the inclusion of a possibility to entrust the production of strategic blank forms of documents to entities other than the originally designated monopolist in some situations into national regulations lowers the credibility of the argument concerning the necessity to entrust the production to the sole producer on account of order confidentiality and the risk of breach of state security. If a state's domestic regulations provide for a possibility to entrust the production of document blank forms (in special situations) to a different entity (i.e. other than the monopolist), it means that the argument for production confidentiality and ensuring security through monopoly is not dominant. The Commis-

<sup>23</sup> Case C-187/16, paragraph 85.

<sup>24</sup> In Poland, vehicle registration cards and driving licences are personalised at PWPW, and personal ID cards and passports – at the Centre for Document Personalization MIA.

<sup>25</sup> M. Goc, *Skuteczność zabezpieczeń polskich dowodów rejestracyjnych*, "Człowiek i Dokumenty" 2010, 17, pp. 6–7.

sion made it clear that “as regards confidence in the undertaking carrying out the printing service in relation to residence permits, the Commission contends that the argument put forward by the Republic of Austria cannot be accepted since the Austrian authorities can also award printing contracts for secure documents to undertakings other than ÖS (...).”<sup>26</sup> Meanwhile, the draft bill in question features an analogous provision that makes it possible to entrust the production of first category document blank forms to entities other than that specified in the already discussed Article 17, section 1 and 2. According to the drafted Article 17, section 6, if it is impossible for the sole producer to produce first category document blank forms according to the conditions defined by the issuer of the document,<sup>27</sup> the blank forms may be produced by another entity.

There are certain requirements defined for the abovementioned “different entity” authorised statutorily to produce first category document blank forms, but these requirements shall not be considered particularly strict. Such an entity shall:

- 1) pursue an activity whose object involves producing document blank forms and sheeted forms (Article 18 in relation to Article 17, section 6),
- 2) comply with the requirements for the security of production of blank forms of public documents (Article 18 in relation to Article 17, section 6),
- 3) if it performs a contract requiring access to information classified at least as confidential (PL: *poufne*) – it shall hold an appropriate facility security clearance (Article 18 in relation to Article 17, section 6),
- 4) be a holder of a level one facility security clearance (Article 17, section 6),
- 5) have a production facility where blank forms would be produced, located in the Republic of Poland (Article 17, section 6),
- 6) have a valid, certified, and supervised safety management system confirmed by a certificate of conformity with ISO 14298:2013 – if having such a system in place is required under EU regulations for the production of certain documents (Article 17, section 7),
- 7) make sure that the persons engaged in the production of blank forms have not been sentenced for an intentional crime against the credibility of documents, economic turnover, and common security (Article 19, section 1),
- 8) have the technical and technological potential to fulfil the necessary orders and to guarantee the security of the production of blank forms (Article 19, section 3),

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<sup>26</sup> Case C-187/16, paragraph 54.

<sup>27</sup> Or in the case of notarial documents – defined by the National Notary Council.

- 9) have internal rules of security of blank form production in place and keep records to prove that these rules are applied in practice, and make these records available for inspection – at the MIA’s request (Article 19, section 4).

The requirement defined in the abovementioned item 2) regarding the assurance of production security covers, in particular, the security of technical documentation, keeping records of production resources, safe storage of production resources, security of production and storage rooms, keeping records of access to such rooms, issuance of produced blank forms to authorised persons, documented disposal of production waste, security of transportation of production resources and blank forms, keeping records of employees engaged in the production of blank forms, training of employees in the area of the requirements related to the security of blank form production.

While the abovementioned requirements can be regarded as justified, it needs to be stressed that in the light of CJEU’s judgement in question, the very consent to an option to entrust the production of blank forms of strategic documents to another entity (i.e. other than the sole producer controlled – in a special way – administratively by the state and with the state’s major shareholding in its capital structure) weakens the arguments for the necessity to establish a monopoly for reasons concerning confidentiality and security of production. It seems therefore that upholding the provisions regarding monopoly would require – in order to be compliant with EU law – excluding the option to entrust the production of first category document blank forms to other entities from the draft bill.

The fourth group of arguments raised in the CJEU’s judgement pertains to the necessity for a member state to prove that only the administrative controls that the authorities may subject the monopolist to can guarantee the required confidentiality of orders for the production of documents, and that it is necessary to have proof of the inability to carry out such controls in other companies than the sole producer of the documents in question. This analysis suggests an extension of the range of the state’s controlling options to include solutions that improve the security level and at the same time it is impossible to apply them to other entities than those owned by the state. The objectives such controlling solutions serve seem to be difficult to achieve using other tools. And so a set of well-defined administrative controls to subject the sole producer to and the special duties imposed on the sole producer included in the draft bill may act as a reasonable justification to apply exceptions from Directive 2014/24/EU.

Setting the prices of the first category document blank forms is a separate issue. As regards the domestic market of document blank forms, a monopoly may be considered justified by reasons related to both state security and the economy

(economies of scale, subadditivity, etc.).<sup>28</sup> Yet, a monopoly, especially a legal one, is surely a phenomenon carrying a significant risk of generating economic losses and producing goods (rendering services) of reduced quality. It is hard not to reach for arguments from the area of neoclassical economics, which imply that a monopoly leads to the suboptimal allocation of resources and, in effect, to losses in social prosperity,<sup>29</sup> especially compared to conditions existing in a perfectly competitive market. Perfect competition guarantees that the marginal costs and marginal revenue become levelled out in the long run, producing a specific level of production in effect. Monopolists do not level their marginal costs with their marginal revenue – they have no motivation to lower the costs. As a result, by reducing the production volume and setting a higher price, they generate additional profit with a loss in social prosperity.

In such circumstances, in order not to cause the said market dysfunctions to happen, every monopoly shall be subject to controlling in two aspects:

- ❑ in the scope of the set prices,
- ❑ in the scope of the quality of the provided services and produced goods.

Unfortunately, the draft bill does not implement the said controlling mechanisms. Such a controlling mechanism is certainly not the price setting procedure defined in Article 17, section 5, i.e. setting the price in an agreement concluded between the issuer and a company, taking commercial principles and public interest into account. The generally formulated pricing conditions are not clear and, in consequence, may lead to abuse of the monopolist position and to economic inefficiency. There is no doubt that the price setting procedure shall be significantly changed in the draft bill so that the prices are not imposed by the monopolist, but result from objective reasons and stimulate actions aiming to reduce costs at the same time. In the light of the above, it is reasonable to adopt a statutory restriction in the area of prices for public documents. Such a restriction may take the form of:

- ❑ a maximum level of margin I (%), which does not, unfortunately, limit the monopolist's ability to apply excess direct costs,
- ❑ setting the price at a level similar to the market level, which requires, however, setting these market prices beforehand, which is quite difficult in practice because of the often incomparable products and the confidentiality of such type of data.

<sup>28</sup> R. Lewandowski, *Contemporary Monopolies in the Polish Economy – A Case Study of PWPW*, "Oeconomia Copernicana" 2014, 5(3), pp. 127–152.

<sup>29</sup> M. Dietl, *Proces monopolizacji i niepewność*, Warszawa 2010, p. 54.



Therefore, a solution that seems to be implementable in practice is to limit the monopolist's chance for abuse by means of a statutory determination of the maximum level of margin I (in percentage terms). In addition to that, in extra-statutory terms, it seems reasonable to enhance the position of the State Treasury with respect to monopoly by adopting a strong, fact-oriented mechanism of ongoing control of the company's financial situation, especially in the area of setting its costs. Such kind of control should be aimed at eliminating any potential attempts of the company to inflate costs and at promoting an appropriately high effectiveness of the pursued activity. Such control should take place at the level of the Supervisory Board and be effected by a specialised Committee for Finance.

### **Second and third category documents**

According to the draft bill, the production of second and third category document blank forms is not monopolised and may be provided by both the producer of first category documents and other entities defined in Article 18. The conditions which such "other entities" have to fulfil are analogous to those discussed in part 4.1. – in relation to an alternative (i.e. other than the sole) producer of first category document blank forms. One of the requirements is that the persons engaged "in the production of public document blank forms" have a clean criminal record (Article 19, section 1). However, a requirement formulated in such a manner is unclear. It is hard to say if it applies to persons engaged directly in the production process or to a broader category of employees. Given the nature of the analysed business activity pursued and its impact on state security, it seems justified to apply this requirement to all employees employed at entities engaged in the production of second and third category document blank forms, and in particular of first category document blank forms.

Moreover, the detailed requirements for the security of the production of the blank forms included in the categories at issue are to be defined in the MIA's regulation. The control of blank form producers is limited to the MIA's and the Head of the Internal Security Agency's verification performed in the area of the criminal record of persons engaged in the production of blank forms and in the area of compliance with the requirements discussed above (Article 22, section 1, item 2).

### **Issuer's obligations and the Public Document Register**

The draft bill imposes a range of obligations on the issuer of public documents. The following shall be considered in particular:

- 1) publishing graphic files and certain data concerning a new specimen of a public document on the issuer's website (Article 34, section 1),
- 2) providing the MIA with detailed data and information concerning a given public document (Article 34, section 2 and 3), necessary to keep the Public Document Register,
- 3) providing chiefs and heads of the police, Border Guard (PL: SG), Internal Security Agency (PL: ABW), Central Anti-Corruption Bureau (PL: CBA), and MIA with specimens of first and second category documents (Article 35, section 1),
- 4) providing the MIA with specimens of third category documents – at the minister's request (Article 36, section 1),
- 5) providing the MIA with documents returned by their holders, showing to be damaged as a result of technical defects (Article 37),
- 6) granting access to a document's technical documentation – at the MIA's request (Article 39, section 1).

The abovementioned obligations will guarantee a smooth flow of information regarding public documents among entities responsible for state security. Nevertheless, in the light of the draft bill it seems that these obligations concern rather public documents with new specimens, and so they ignore the necessity to form a consistent body of knowledge regarding the documents already being in circulation. The provisions of Article 36, section 2 deserve credit, in turn, because they allow to provide entities offering expert and education services in the area of documents with document specimens. Such an entitlement may significantly improve the level of social awareness in the field of document security, and facilitate the practice of experts dealing with document protection and authentication.

Moreover, the obligation to notify the MIA of any identified acts of documents being falsified and of opinions of experts in this domain by enumerating particular public institutions appears to be a good solution (Article 40). This will make it possible to centralise the knowledge of document falsification since such information is to be an element of the Public Document Register (Article 45, section 1, item 6). The Public Document Register is kept by the MIA and includes (Article 45, section 2):

- 1) graphic files of a document specimen,
- 2) document description (especially including the date of the specimen being introduced into the system, the starting date of issuance of the document based on the specimen in question, the ending date of issuance of the document based on the specimen in question, and the document's validity period),

- 3) graphic files illustrating the elements of the protection measures to be applied for the purpose of first and second level authentication – including a description of the process of authentication,
- 4) names of the security measures applied for the purpose of third level authentication of documents (excluding classified information),
- 5) information concerning the producer, the circulation volume, the list of individual labels,
- 6) information about instances of a public document being falsified.

Additionally, the register may contain scanned copies of distinguishing features of falsified documents and descriptions of the committed acts of falsification (Article 46, section 3) as well as data of documents that have expired. The register is therefore a database for a broad range of cases related to public documents – regarding both the security measures and data concerning the production process and the identified instances of falsification. Such a base will serve as a great tool, useful to both specialists dealing with document authentication and to persons designing documents and the related security measures. An extensive knowledge of falsification practices makes it possible to prepare oneself to counteract these practices and secure the documents in circulation better. Importantly enough, as for the data referred to in 1–3, the register will be available to the public (Article 47, section 1), which may considerably improve the level of citizens' knowledge about documents and basic security measures, and thus protect them better against document falsification practices.

## Conclusion

A legislative initiative to regulate the sphere of public documents is certainly necessary. The current atomisation of responsibility and competence in the area of designing public document specimens and selecting the security measures to be applied makes it impossible to speak of an efficient system of public document management being in place in Poland. And this is an issue of great importance, directly affecting the state's public and economic security. The government's draft bill on Public Documents of 20 December is an attempt at addressing this issue. However, the draft bill contains a range of flaws which not only weaken the designed system of document security but also seem to be at variance with EU law, especially in the context of the CJEU's judgement issued in case C-187/16.

This article reviews and assesses the draft bill, with the performed analysis offering a set of conclusions concerning particular matters regulated by the draft

bill in question. It seems that in order to make the devised system of public document security function in an optimal manner and to make the drawn up regulations compliant with EU law, it is necessary to correct a number of provisions of the draft bill at issue. It appears especially important to take the following remarks into consideration:

- 1) limiting the range of first category public documents by narrowing it down to documents of a strictly strategic importance to the state's security,
- 2) granting the Committee for public documents the right to take initiative in the area of making modifications to the specimens of the existing public documents,
- 3) supplementing the rules of designing public document specimens with the procedures to follow when:
  - a) the recommendations have not been arranged between the Team and the issuer or the authorised entity,
  - b) the public document design and the detailed description of the security measures as suggested by the issuer or the authorised entity has not been approved by the Team,
  - c) the sample blank form of the document has been assessed negatively by the Team,
- 4) giving PWPW a legal monopoly in the area of producing first category document blank forms or introducing a regulation making it possible to select the sole producer of first category blank forms based on criteria defined in the act,
- 5) introducing a requirement of a clean criminal record, to be applied to all employees of the sole producer of first category document blank forms,
- 6) extending the clean criminal record requirement applied to second and third category blank form producers to include all of their employees, not just those "engaged in the production" of blank forms,
- 7) extending the range of instruments available to the state to control the first category document blank form producer by introducing:
  - a) obligatory information about the business agreements concluded with other entities (to eliminate the risk of the producer's business cooperation with countries which are hostile to the Republic of Poland) together with the material terms of these agreements,
  - b) obligatory information about the financial situation of the producer, covering the current profit and loss account, balance, and cash flow,
  - c) the MIA's entitlement to approve the producer's conclusion of business agreements with other entities,
  - d) obligatory information about the producer's legal disputes,

- e) obligatory control of selected business agreement concluded by the producer – to be performed by the Internal Security Agency,
  - f) the Internal Security Agency's continuous counterintelligence monitoring of the producer's operations,
  - g) the MIA's and the Internal Security Agency's control of the producer's compliance with the conditions required in the area of security of production of first category document blank forms,
- 8) resignation from the option to entrust the production of first category document blank forms to an entity other than the sole producer of these blank forms,
  - 9) controlling the process of price setting by the sole producer of first category document blank forms in a more strict way by determining the maximum level of margin.

If the demands listed above are met, it will not only greatly improve the quality of the system of document security but will also make it possible for the drafted regulations to become compliant with EU law. The compliance with EU law concerns, in particular, the issue of monopoly given to the producer of first category document blank forms. The abovementioned suggestions of the measures that could be taken should guarantee this compliance. But there is an alternative to the statutory provision on monopoly. This could involve employing a modified *in house* model, which would grant an option to sell the produced goods also to other clients than just the entity controlling the producer. But this matter is so extensive that it would require a separate analysis as part of further research.