

Aspectos jurídicos seleccionados de la informatización de la administración agrícola en Polonia

Selected Legal aspects of Computerization of Agricultural Administration in Poland

JAROSŁAW DOBKOWSKI

University of Warmia and Mazury in Olsztyn, (Poland)

j.dobkowski@uwm.edu.pl

ORCID <https://orcid.org/0000-0002-2010-4152>

IZABELA LIPIŃSKA

University of Life Sciences, ul. Wojska Polskiego 28 60-637 Poznań, (Poland)

izabela.lipinska@up.poznan.pl

ORCID <https://orcid.org/0000-0003-2884-0733>

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Resumen: Los temas que se abordan en este estudio están relacionados con las tareas que realizan los organismos de la administración pública en el ámbito de la informatización de los registros públicos agrarios. Esto incluye, sin limitarse a ello, todos y cada uno de los registros, anotaciones y otros sistemas de recogida e intercambio de información sobre los agricultores y su actividad de producción agrícola. Además de esto también se analiza aquí algunas cuestiones relacionadas con el valor probatorio de los registros públicos polacos en el ámbito de la administración agrícola en el contexto del sistema polaco de TIC ampliamente utilizado. El documento pretende responder a la pregunta de si la normativa legal para la organización de los registros públicos agrarios, tal y como se ha propuesto en la Unión y nacional, permite su funcionamiento eficaz y, por tanto, el desempeño de sus funciones en un sistema de TIC. Otro objetivo de estas reflexiones es identificar los avances actuales en la informatización de la administración agraria y determinar el valor probatorio de los registros polacos en este ámbito. Los autores concluyen que el estado de informatización de los registros oficiales polacos que contienen datos sobre los agricultores y las actividades agrícolas debe considerarse relativamente positivo. Asimismo, constatan que el legislador debe intervenir en un esfuerzo por definir inequívocamente la naturaleza de los propios registros públicos y regular la publicidad de los datos recogidos en ellos teniendo en cuenta las clases de pruebas y los principios para establecerlas.

Palabras clave: informatización; registro público; administración agrícola; actividad agrícola.

Abstract: The topics addressed in this paper relate to tasks performed by public administration bodies in the area of computerization of public agricultural registers. This includes, without limitation, any and all registers, records and other systems for collecting and sharing information on farmers and their agricultural production activity. In addition to the delivery itself of information referred to above, this paper also discusses some issues related to the evidentiary value of Polish public registers in the area of agricultural administration in the context of the widely used Polish ICT system. The paper intended to answer the question whether the legal regulations for the organization of public agricultural registers, as proposed at Union and national level, enable their efficient functioning and, thus, allow their functions to be performed in an ICT system. Another purpose of these reflections was to identify current progress in the computerization of agricultural administration, and to determine the evidentiary value of Polish registers in this area. In the summary section, the authors concluded that the computerization status of Polish official registers containing data on farmers and farming activities should be viewed as relatively positive. They also found that the legislator needs to intervene in an effort to unequivocally define the nature of public registers themselves and regulate the external disclosure of data stored therein by taking account of evidence classes and principles for establishing evidence.

Keywords: computerization, public register, agricultural administration, agricultural activity.

INTRODUCCIÓN

The topics addressed in this paper relate to tasks performed by public administration bodies in the area of computerization of public agricultural registers. This includes, without limitation, any and all registers, records and other systems for collecting and sharing information on farmers and their agricultural production activity. They are put in place gradually, pursuant to applicable legislative acts, which often are the consequence of the implementation of the Common Agricultural Policy. The registers perform different functions and may be of a declarative or constitutive nature. They often support the goals related to financial assistance or enable the fulfillment of duties related to the collection of statistical data used in addressing various public needs.

The choice of this topic is justified by a number of reasons, including cognitive, socioeconomic and practical issues as well as aspects related to making and applying law.

When it comes to cognitive values, note that the issues involved in keeping public registers with the use of dedicated tools have been part of agricultural activities for a long time. However, they took on a special dimension as Poland was preparing to join the European Union. It needs to be emphasized that the process of collecting data over the functioning period of the Common Agricultural Policy was driven by a number of

factors, including the impact of CAP's interventions on relationships under the agricultural law¹. Indeed, as B. Jeżyńska notes, it was necessary to develop an efficient system for collecting and structuring market data in order to ensure control over the agricultural administration mechanisms in place. As a consequence, a broad scope of registration and record-keeping obligations² were imposed, in particular, on agricultural market players (agricultural producers), adding to the then-applicable production restrictions. The specific system of different registers keeps evolving both to align with the directions of subsequent agricultural reforms adopted by the Commission, and to meet the adaptive and regulatory capacity of each member state. The particularities of public registers determine the types of associated tools, especially including electronic and ICT solutions. However, they are numerous while not being coherent and compatible.

As regards socioeconomic aspects, the public registers in place form an important part of national information resources and of the public information infrastructure. They are essential for the effective delivery of public services in agriculture and for ensuring an efficient operation of public administration in that sector. Hence, they should ensure security, stability and certainty of agricultural transactions while also guaranteeing the freedom of social and economic activity of farmers and the openness of defined statuses and relationships under the agricultural law³. At the same time, the registers play a highly important role in planning farming activities, and may also contribute to a certain degree to making them more sustainable and transparent.

The topics addressed in this paper are also crucial due to practical aspects. Indeed, despite the development of ICT techniques and resources that might be suitable for use in agricultural administration records, it needs to be noted that some data may be collected pursuant to a dedicated act without the need to keep a register, which is obviously not true for

¹ See A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Wspólna polityka rolna. Zagadnienia prawne*, (The Common Agricultural Policy. Legal issues), Warsaw 2004, s. 40-47.

² B. Jeżyńska, *Z problematyki prawnej rejestrów związanych z realizacją Wspólnej Polityki Rolnej*, (From the legal issues of registers relating to the implementation of the Common Agricultural Policy), „Przegląd Prawa Rolnego” (Agricultural Law Review), 2008, No. 1, pp. 117-129.

³ For a broader description, see: A. Gryszczyńska, *Pojęcie i jawność rejestrów publicznych – uwagi wprowadzające*, (The concept and openness of public registers - introductory remarks), [in:] *Rejestry publiczne. Jawność i interoperacyjność* (Openness and interoperability of public registers), eds. A. Gryszczyńska, Warsaw 2016, p. 3-20.

public registers. The latter must meet separate conditions, giving them a slightly different dimension. Also, any data stored therein enjoys a presumption of authenticity. They are supposed to support the performance of public services which in this case are strictly related to the functioning of public (agricultural) administration in a broad sense.

From a practical perspective, it is worth emphasizing that in some situations, regulatory instability has a strong impact on how data is delivered and collected (and additionally on the production process itself). Agricultural producers make economic decisions in an evolving legislative environment which requires them to meet new registration obligations, including ones that are not legible, understandable and justified to them. This can have an adverse, if not restrictive, effect on farming activities, depending on their particularities.

In a broader sense, going beyond the legal and administrative considerations and the related functions that may be performed by public registers, it needs to be noted that the ICT systems used in data sourcing and processing are currently viewed as key enablers of the three dimensions of sustainable development: economic growth, environmental balance and social integration⁴.

The purpose of these considerations is to answer the question whether the legal regulations for the organization of public agricultural registers, as proposed at Union and national level, enable their efficient functioning and, thus, allow their functions to be performed in an ICT system. Another purpose of these reflections is to identify current progress in the computerization of agricultural administration, and to determine the evidentiary value of Polish registers in this area.

The establishment and keeping of public registers falls within the goals of the Digitization Strategy for Rural Areas and the Agri-Food Sector, as described in the 2030 Sustainable Development Strategy for Rural Areas, Agriculture and Fisheries⁵. This is one of the national strategies that implement what is referred to as the Medium-Term National Development Strategy (2030 NDS). It specifies a number of measures to be taken, including providing an easier access to IT resources which means, in particular, facilitating the flow of IT resources between public

⁴ See *Digitising European Industry - Reaping the full benefits of a Digital Single Market*. COM(2016)180 – Communication.

⁵Resolution No. 123 of the Council of Ministers of October 15, 2019 on the adoption of the “2030 Sustainable Development Strategy for Rural Areas, Agriculture and Fisheries,” Official Journal of 2019, item 1150.

administration bodies and research institutions (Article 114(b) of the Strategy). The dedicated instruments are provided for in the 2023–2027 National Strategic Plan⁶ for the Common Agricultural Policy.

1. COMPUTERIZATION STATUS OF OFFICIAL REGISTERS CONTAINING DATA ON FARMERS AND FARMING ACTIVITIES IN POLAND

Today, Polish public authorities and other competent bodies in charge of public administration of agriculture keep a number of registers, records, books, directories, catalogs, compilations, repertories, inventories, lists, censuses, files, sheets and indexes or other systems for collecting and storing information on farmers, including both the material scope (the whole agricultural production activity or parts thereof) and the personal scope (personal information on the farmer, his/her family and household members working on the farm). In a way, this is the consequence of the departmental structure of administrative authorities and of many public bodies being interested in agricultural matters. Nevertheless, work is in progress on unifying these datasets by establishing central national registers, some of which are provided for by the legislation of the European Union.

The methods for collecting and storing information on farmers, as mentioned at the beginning, can be either implemented in a traditional way (as hardcopy documents) or be subject to electronic retrieval and sharing processes, e.g. in the form of legally protected databases. Both in the Polish legal order and in the European Union law, a database means indeed a set of data or any other materials and elements collected as per a defined scheme or method, available individually in any way (including online), which requires substantial investment efforts (whether in qualitative or quantitative terms) in order to create, verify or present the content thereof. The protection of databases is regulated under the Polish Database Protection Act of July 27, 2001 (unified text: Journal of Laws [Dz.U.] of 2021, item 386), adopted in implementation of Directive 96/9/EC of the European Parliament and of the Council of March 11, 1996 on the legal protection of databases (OJ CE L No. 77 of March 27, 1996, p. 20–28).

Defined as such, the digitization of the forms for collection information on farmers and their activity, as listed at the beginning,

⁶ 2023–2027 Strategic Plan for the Common Agricultural Policy, Brussels, August 31, 2022, p. 1211.

essentially boils down to database operations and does not yet mean computerization par excellence. Computerization takes on an interesting dimension when the collection, storage and sharing of specific data is based on ICT systems.

Pursuant to the Act of July 18, 2002 on the delivery of online services (unified text: Journal of Laws [Dz.U.] of 2020, item 344), an ICT system shall mean a set of interoperating IT equipment and software which ensure the processing, storage, sending and receiving of data through telecommunication networks, with the use of a terminal device suitable for the type of telecommunication network concerned. A virtually identical definition of an ICT system is provided for in the Act of February 17, 2005 on the computerization of activities of bodies in charge of public services (unified text: Journal of Laws [Dz.U.] of 2021, item 2070, as amended): a set of interoperating IT equipment and software which ensure the processing, storage, sending and receiving of data through telecommunication networks, with the use of a terminal device suitable for the type of telecommunication network concerned. The telecommunications terminal device is defined in the Telecommunications Law Act of July 16, 2004 (unified text: Journal of Laws [Dz.U.] of 2022, item 1648) as a telecommunications device intended to be directly or indirectly connected to network termination points.

The principles for setting the minimum requirements for ICT systems used in keeping public registers are governed by the Act on the computerization of activities of entities in charge of public services. The operation of a public register is essentially supposed to be underpinned by ICT systems; defined as such, the computerization of public registers is viewed dynamically. Only some Acts clearly lay down whether a register is to be operated with the use of ICT systems. This is because priority is given to specific provisions related to the Act on the computerization of activities of entities in charge of public services.

This is pictured in the legal definition of a “public register” set forth in that Act. In the light of Article 3, item 5 thereof, public registers shall mean not only typical registers or records but also various indexes, lists, censuses and other forms of records kept pursuant thereto by public bodies in charge of public services.

However, the above includes neither any relevant datasets kept by bodies and organizational units other than public authorities (even if granted the power to deliver public services) nor any data collected for

purposes other than the delivery of public services⁷. These are only internal records which in reality represent sets of personal data and information on certain facts pertaining to people or goods, and may potentially take the form of official registers. This is because pursuant to Article 2, item 12 of the Public Statistics Act of June 29, 1995 (unified text: Journal of Laws [Dz.U.] of 2022, item 459, as amended) official registers shall mean public registers as defined in the Act on the computerization of activities of bodies in charge of public services and other registers and records kept pursuant to relevant Acts or to implementing Acts issued thereunder which contain information on economic operators and their activity, information on natural persons, their life and situation, and information on phenomena, events and objects.

Therefore, official registers are public registers kept in an ICT system and registers, records, books, indexes, catalogs, compilations, repertories, inventories, lists, censuses, compilations, sheets, files and other forms of data collection, whether kept traditionally or with the use of computer (online) databases.

In other words, all public registers are official registers but not all official registers are public registers. Moreover, the operation of official registers other than public registers is not essentially required to be underpinned by ICT systems. However, the form thereof can be provided for by the law.

The legal grounds for keeping public registers are laid down in the Act on the computerization of activities of entities in charge of public services and in trade union regulations. Pursuant to Article 14, a public body which keeps a public register shall: 1) keep the register in a way to meet the minimum requirements for ICT systems, if the operation of the register is underpinned thereby; 2) keep the register in accordance with minimum requirements for public registers for the exchange of online information; 3) enable online submission to and online sharing of information from the register, if the operation thereof is underpinned by ICT systems.

Also, the body which keeps a public register shall provide any public body—and any entity (other than a public body) which delivers public services pursuant to separate provisions or as a consequence of a public

⁷ Cf. T. Stawecki, *Rejestry publiczne. Funkcje instytucji* (The functions of the institution of public registers), Warsaw 2005, p. 29, and J. Oleński, *Infrastruktura informacyjna państwa w globalnej gospodarce* (National information infrastructure in the global economy), Warsaw 2006, *passim*.

body contracting the delivery of public services—with free access to data stored in the register, as necessary for the delivery of the services concerned. Such data shall be shared online and shall only be used for the purposes of delivering public services. In turn, a scenario where the body who keeps a public register shares its data for reuse for purposes other than the delivery of public services is governed by the Act of August 11, 2021 on open data and on the reuse of information of the public sector (Journal of Laws [Dz.U.], item 1641).

The relevant specific provisions are laid down in the Regulation of the Council of Ministers of September 27, 2005 on the method and scope of and procedure for sharing data stored in a public register (unified text: Journal of Laws [Dz.U.] of 2018, item 29).

In consistence with what is laid down in the Act, it rules that a body which keeps a public register shall share the data stored therein in accordance with the principles provided for in specific regulations applicable to the register concerned; the procedure set out in Article 15 et seq. of the Act on the computerization of activities of bodies in charge of public services (and in the register itself) shall only be applicable in the absence of such regulations⁸. The above means that the specialty rule is applicable, which directly refers to official registers covering farmers and farming activities.

The Polish agricultural legislation provides for different kinds of situations that illustrate progress in the computerization of official registers covering farmers.

The first situation is one where legal regulations do not lay down the form of the register. Examples include: the rules which derive from the Farmers' Social Insurance Act of December 20, 1990 (unified text: Journal of Laws [Dz.U.] of 2022, item 933, as amended) and apply to the records of insurance coverage periods and of social security charges paid for each insured farmer and his/her household members working with him/her; and the regulations of the Act of September 15, 2000 on agricultural producer groups and their unions and on amending other Acts (unified text: Journal of Laws [Dz.U.] of 2022, item 395) which, in Article 9, refers to the register of agricultural producer groups kept by the Head of the Regional

⁸ See: J. Dobkowski, *Rejestry publiczne o charakterze personalnym prowadzone w systemie teleinformatycznym i administracyjne prawo dowodowe*, (Public records of a personal nature held in an ICT system and administrative law of evidence), „Casus” 2018 winter, pp. 63-66.

Branch Office of the Agency for Restructuring and Modernization of Agriculture having territorial competence over the group's seat. This kind of situations is further illustrated by the provisions of the Act of November 9, 2018 on Farmer's Wives' Associations (unified text: Journal of Laws [Dz.U.] of 2021, item 2256) which provide grounds for the functioning of the National Register of Farmer's Wives' Associations, or the registers kept pursuant to the Act of December 17, 2004 on the registration and protection of names and designations of agricultural products and foodstuffs and on traditional products (unified text: Journal of Laws [Dz.U.] of 2021, item 224, as amended). Also, there is the list of agricultural products and foodstuffs subject to temporary national protection and the list of traditional products posted on web pages of the office serving the competent minister in charge of agricultural markets. Another example are the rules of December 19, 2003 on the organization of markets for fruit and vegetables and the market for hops (unified text: Journal of Laws [Dz.U.] of 2021, item 618, as amended) which provide for the functioning of different registers, it being stipulated that the register of preliminarily recognized producers and associations thereof shall be made available on the web page of the Agency for Restructuring and Modernization of Agriculture. The availability of registers on web pages does not reflect their electronic nature but rather their being generally open and accessible. Note that the list of agricultural products and foodstuffs subject to temporary national protection and the list of traditional products were actually kept on paper by the competent minister.

The second situation is one where the legal regulations allow a register to be kept in an ICT system. Examples include the Act of August 25, 2006 on biofuel components and liquid biofuels (unified text: Journal of Laws [Dz.U.] of 2022, item 403) which lays down the principles for pursuing an economic activity related to the production of biofuel components, the importation or intra-Community acquisition of biofuel components, the marketing of biofuel components and liquid biofuels as well as the principles for the production of liquid biofuels by farmers for own use. To the extent governed by the Act, the farmers may produce certain liquid biofuels such as bio-ethanol, ester, biodimethylether, pure vegetable oil, liquid biohydrocarbons, propane-butane bio-mixture, liquefied biomethane, compressed biomethane, biohydrogen and biofuels made of biomass which constitute self-contained fuels (other than listed above) for own use, upon being entered to the register of farmers who produce liquid biofuels for own use. The register is kept by the Director-General of the

National Center for Agricultural Support, provided that it may be kept in an IT system (which should be considered as an ICT system). Today, rather than being based on an ICT system, the register of farmers who produce liquid biofuels for own use is a computer (online) database. This is consistent with the regulations of the Renewable Energies Act of February 20, 2015 (unified text: Journal of Laws [Dz.U.] of 2022, item 1378, as amended) which, in Article 27.2, states that the register of agricultural biogas producers may be kept in an ICT system, just like the list of energy cooperatives provided for in Article 38.h.2 which may include cooperatives as defined in the Cooperative Law Act of September 16, 1982 (unified text: Journal of Laws [Dz.U.] of 2021, item 648) or in the Agricultural Cooperatives Act of October 4, 2018 (Journal of Laws [Dz.U.] item 2073). In turn, pursuant to Article 86 of the Seed Production Act of November 9, 2012 (unified text: Journal of Laws [Dz.U.] of 2021, item 129, as amended), farmers may market agricultural and vegetable seed produced in their own farms, provided that they report their intent to do so to the Voivodeship Plant Protection and Seed Production Inspector having territorial competence over their place of residence. Upon receipt of the report, the inspector enters the farmer to the farmers' records which, pursuant to Article 88.5 thereof, may be kept in an ICT system. Today, rather than being based on ICT systems, the records of farmers marketing seeds are computer (online) databases, too.

The third situation is a case where legal regulations require that the register be kept online but it does not mean that its operation is based on an ICT system. A representative example of this kind of situation are the provisions of the Act of March 11, 2004 on the organization of certain agricultural markets (unified text: Journal of Laws [Dz.U.] of 2022, item 185, as amended). In accordance with Article 38k, the register of producer organizations, the register of associations of producer organizations and the register of cross-sectoral organizations shall be kept online by the Head of the Regional Branch Office of the Agency for Restructuring and Modernization of Agriculture. However, these provisions were introduced pursuant to the Act of July 10, 2015 on amending the Act on the Agricultural Market Agency and the organization of certain agricultural markets and certain other Acts (Journal of Laws [Dz.U.] item 1419). Therefore, they are not subject to the rule of conflict set forth in Article 61.1 of the of Act on the computerization of activities of entities in charge of public services. The same is true for registers kept online pursuant to the Act of April 20, 2004 on the organization of the

market for milk and milk products (unified text: Journal of Laws [Dz.U.] of 2022, item 381) which were also established pursuant to the Act of July 10, 2015 on amending the Act on the Agricultural Market Agency and the organization of certain agricultural markets and certain other Acts.

In the fourth situation, legal regulations rule that the register must be kept online which means that its operation shall be based on an ICT system. Examples include the provisions of the leading Act of December 18, 2003 on the national system of records of producers, farm records and records of payment applications (unified text: Journal of Laws [Dz.U.] of 2022, item 203, as amended) which, in Article 6, states that the records of producers, farm records, records of payment applications and the identification system for agricultural parcels shall be kept online by the Agency so as to ensure data security and protection against loss and unauthorized access. In this context, it is worth noting that the records of producers are the largest dataset kept by the Agency for Restructuring and Modernization of Agriculture. It contains data of all operators who are required to identify and register animals and who participate to mechanisms co-financed or financed by the European Union and administered by the Agency for Restructuring and Modernization of Agriculture or the Agricultural Consultancy Center. The rule laid down in Article 6, unchanged, was already included in the initial text of the Act; in view of the rule of conflict set forth in Article 61.1 of the Act on the computerization of activities of entities in charge of public services, the above means that the records of producers, farm records and records of payment applications shall be considered as registers whose operation is underpinned by ICT systems. Likewise, the register of marked farm animals kept pursuant to the Act of April 2, 2004 on the system for the identification and marking of animals (unified text: Journal of Laws [Dz.U.] of 2021, item 1542, as amended) shall also be qualified in the same way because the rule laid down in Article 4 which states that the Agency for Restructuring and Modernization of Agriculture shall keep a register of marked farm animals (but not a register of equidae provided for in the same Act) was stipulated in the previous Act from the very beginning.

The fifth situation is one where legal regulations rule that the register's operation must be based on an ICT system. A representative case is the list of organic producers contemplated in Article 5.2 of the Organic Farming and Organic Production Act of June 23, 2022 (Journal of Laws [Dz.U.], item 1370). An interesting example (though seemingly misleading) of

such a solution are the provisions of the Act of February 13, 2020 on the protection of plants against pests (unified text: Journal of Laws [Dz.U.] of 2021, item 256, as amended). They do not indicate the form of the official register of professionals; nevertheless, the Act enables the application of the Regulation (EU) No. 2016/2031 of the European Parliament and of the Council of October 26, 2016 on protective measures against pests of plants, amending Regulations (EU) No. 228/2013, (EU) No. 652/2014 and (EU) No. 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ UE L 317 of November 23, 2016, p. 4, as amended) and the application of the Regulation (EU) No. 2017/625 of the European Parliament and of the Council of March 15, 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) No. 2016/429 and (EU) No. 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives No. 98/58/EC, No. 1999/74/EC, No. 2007/43/EC, No. 2008/119/EC and No. 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives No. 89/608/EEC, No. 89/662/EEC, No. 90/425/EEC, No. 91/496/EEC, No. 96/23/EC, No. 96/93/EC and No. 97/78/EC and Council Decision No. 92/438/EEC (Official Controls Regulation) (OJ UE L 95 of April 7, 2017, p. 1, as amended). In the above law instruments of the European Union, it is implied that the operation of the register referred to in Article 65.1 of Regulation No. 2016/2031 shall be underpinned by and ICT system. It is similar for the Act of December 17, 2004 on the registration and protection of names and designations of agricultural products and foodstuffs and on traditional products (Journal of Laws [Dz.U.] of 2021, item 224, as amended) issued in the implementation of the Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of November 21, 2012 on quality schemes for agricultural products and foodstuffs (OJ EU L 343 of December 14, 2012, p. 1).

Irrespective of the legal solutions in place, the current computerization status of official registers containing data on farmers and farming activities also needs to be assessed in a practical context. The revising, transitional

and adapting provisions laid down in respective Acts provide a reliable basis for that purpose. Usually, the implementing rules for specific legal regulations refer to the existing facts. The amendment to the Act on the system for the identification and marking of animals made under the Act of September 23, 2016 on amending certain Acts with a view to facilitate the eradication of infectious diseases in animals (Journal of Laws [Dz.U.], item 1605) assumed the existence of the ICT system of the Agency for Restructuring and Modernization of Agriculture. Article 49.11 of the Act of February 10, 2017—the implementing rules for the Act on the National Agricultural Support Center (Journal of Laws [Dz.U.], item 624)—stipulates that the President of the Agency for Restructuring and Modernization of Agriculture, the President of the Agricultural Market Agency and the President of the Agricultural Property Agency shall take measures to adjust the ICT systems for which the rights are held by the Agency for Restructuring and Modernization of Agriculture, the Agricultural Market Agency and the Agricultural Property Agency in order to enable the takeover of services which as at the day this Act enters into force shall be delivered by the Agency for Restructuring and Modernization of Agriculture and the National Agricultural Support Center. Hence, the above implies the existence of specific IT systems used in the delivery of public services. Article 10c of the Act of May 9, 2008 on the Agency for Restructuring and Modernization of Agriculture (unified text: Journal of Laws [Dz.U.] of 2019, item 505, as amended) refers to the Agency's ICT system, although the relevant provisions entered into force pursuant to the Act of December 17, 2021 amending certain Acts in connection with the prolonging of the implementation of the 2014–2020 Rural Development Program (Journal of Laws [Dz.U.] of 2022, item 88). That very system is mentioned in the Regulation of the Minister of Agriculture and Rural Development of March 11, 2010 on the form for entering data to the ICT system of the Agency for Restructuring and Modernization of Agriculture which keeps the register of marked farm animals (Journal of Laws [Dz.U.] No. 56, item 345), replaced by the eponymous Regulation of the Minister of Agriculture and Rural Development of August 29, 2018 (unified text: Journal of Laws [Dz.U.] of 2021, item 374). The title of the Act alone suggests that the register of marked farm animals is kept within an ICT system. This is also true for a number of other registers kept by the Agency for Restructuring and Modernization of Agriculture. Their ICT system is being enhanced with more and more functionalities related to registers kept in it. Thus, while

there is progress in the computerization of official registers, there is also noticeable development of ICT systems. Indeed, the recently added Section 13 of the Regulation of the Council of Ministers of January 27, 2015 on the detailed scope and methods of performing certain tasks of the Agency for Restructuring and Modernization of Agriculture (Journal of Laws [Dz.U.], item 187, as amended), includes references to “ICT systems” rather than to an “ICT system.” This is because these systems are also used to keep registers of a near-private nature, as reflected for instance in the content of Section 2.2 of the Regulation of the Minister of Agriculture and Rural Development of December 12, 2018 on the record book for cattle, pigs, sheep and goats (Journal of Laws [Dz.U.], item 2505).

The same is true for other agricultural administrative bodies, starting from the competent minister in charge of agriculture, agricultural markets and rural development (its back-end office operates a great number of ICT systems). The same thing can be observed in the National Agricultural Support Center; even though the Act on the National Agricultural Support Center of February 10, 2017 (unified text: Journal of Laws [Dz.U.] of 2020, item 481, as amended) does not explicitly state so, it can be deduced both from the implementing rules referred to above and from Acts under the substantive law, such as the Act of April 16, 2004 on the administration of foreign trade in goods (unified text: Journal of Laws [Dz.U.] of 2019, item 1606) which mentions automatic registration in the context of provisions governing the grant of importation and exportation permissions for agri-food commodities by the Director-General of the National Agricultural Support Center. Furthermore, an Integrated IT System is operated by the Farmers’ Social Insurance Institution, and includes the records of insured parties. Also, the Director of the Agricultural Consultancy Center based in Brwinów keeps the list of agricultural consultants, the list of forestry consultants, the list of agri-environmental consultants and the list of environmental experts as referred to in the Act of February 20, 2015 on supporting rural development with resources of the European Agricultural Fund for Rural Development under the 2014–2020 Rural Development Program (Journal of Laws [Dz.U.] of 2022, item 1234, as amended) within the ICT system of the Agricultural Consultancy Center in Brwinów. There are no clear legal grounds for these records to be kept this way; however—as can be inferred from online notifications—all of them meet the requirements provided for in the Regulation of the Council of Ministers of April 12, 2012 on the National

Interoperability Frameworks, minimum requirements for public registers and exchange of electronic information, and minimum requirements for ICT systems (Journal of Laws [Dz.U.], item 526). Hence, official registers are put in the framework of ICT systems not only through the implementation of legal acts but also as a *fait accompli*.

2. EVIDENTIARY VALUE OF POLISH PUBLIC REGISTERS IN THE AREA OF AGRICULTURAL ADMINISTRATION

Generally, the operation of official registers relies on ICT systems. While some public registers are still kept on paper or as part of computer (online) databases, they are expected to be upgraded over time so as to become fully underpinned by ICT systems. This is because the computerization process has not been yet finally completed in Poland. The above remarks refer directly to the agricultural sector where a number of public registers are not operated with the use of ICT systems. Therefore, priority is given to specific regulations on particular registers, which means that data stored in a register shall be shared in accordance with the conditions, methods, scopes and deadlines set out in the regulations that govern the operation thereof rather than as provided for in the Act of February 17, 2005 on the computerization of activities of bodies in charge of public services (unified text: Journal of Laws [Dz.U.] of 2021, item 2070, as amended) or in the Regulation of the Council of Ministers of September 27, 2005 on the method and scope of and procedure for sharing data stored in a public register (unified text: Journal of Laws [Dz.U.] of 2018, item 29).

Note however that specific data may be collected and stored in an ICT system without the need for keeping a register. ICT systems may be used in handling different individual cases which involve automatically generated documents sealed with a qualified electronic seal of a public administration body, as provided for in the Administrative Procedure Code Act of June 14, 1960 (unified text: Journal of Laws [Dz.U.] of 2021, item 735, as amended, hereinafter referred to as “APC”). However, these uses of “artificial intelligence” are not allowed with respect to public registers. This is because a public register acts as sets of properly arranged and updated data together with computerized structures that enable sharing it. Also, data stored in a register is presumed authentic.

In a public register, data is openly available. However, most importantly, disclosing the data stored in it (as per the applicable

procedure) gives rise to certain factual and legal effects and usually plays an important role in explaining the essence of an individual case or the solution to a social problem.

According to the legal definition of a public register, the constitutive feature of every public register is that it should serve the delivery of public services. Hence, it is related to the functioning of public administration in a broad sense (in this case, agricultural administration). While public administration can deliver public services directly through its bodies and organizational units, the process of public services may involve entities other than public bodies which deliver public services pursuant to separate provisions or as a consequence of a public body contracting the delivery thereof. In that case, the role of agricultural administration bodies boils down to supervising, controlling and collaborating with these entities, including exchanging electronic information⁹.

The fact of being public (i.e. being kept by the relevant public body or another equivalent entity) means that the register is accessible to public administration bodies and other equivalent entities. In addition to providing access to registered data as part of an online service delivered to an interested party who supports the delivery of aforesaid services with a view to implement the strategies, programs and program documents (including under a development policy), the body which keeps the public register shall share the data stored therein for purposes other than the delivery of public services under the principles provided for in the Act of August 11, 2021 on open data and on the reuse of information of the public sector (Journal of Laws [Dz.U.], item 1641).

Direct access to a register means that a party may display its content and download specific data in the form of a recording (a procedure referred to as “working with the register”) or just preview the data stored therein.

Hence, the question arises on how to disclose information stored in public registers related to the Polish agricultural sector for evidentiary purposes, in particular for the purposes of procedures under public and civil law (including pending administrative procedures). Nevertheless, it needs to be noted that in Poland, formalized preparatory inquiries are carried out only as part of jurisdiction proceedings and, to a partial extent, when issuing certificates. Conversely, preparatory inquiries (in the

⁹ For a broader description, see: T. Burczyński, *Elektroniczna wymiana informacji w administracji publicznej* (Electronic exchange of information in public administration), Wrocław 2011, passim.

classical sense) are not part of other measures, e.g. lawmaking, issuing general implementing acts or performing material and technical activities. The above does not mean these measures do not involve collecting any documents or materials; it just takes place outside the procedure.

In general jurisdiction proceedings—i.e. in proceedings held to settle individual cases based on rulings provided for in administrative decisions or in tacit procedures—evidentiary matters can be considered in a number of different ways, depending on the party who exercises his/her right to adduce evidence: a public administration body or a party to the administrative procedure (including without limitation a farmer).

As regards the former, the APC relies on facts or on the legal situation which can be investigated by the administrative procedure authority based on records or registers held by it or based on public registers held by other public bodies which the administrative procedure authority may access online.

Although the above is a regulation set forth in Section VII which relates to the issuance of certificates (more specifically, it is part of rules designed to reduce the number of cases where certificates are required to be submitted to public administration bodies), it is widely used in practice in proceedings for the establishment of rights and obligations.

Sometimes, administrative procedure bodies investigate the facts or the legal situation not only as part of preparatory inquiries but already during what is referred to as the pre-trial stage; they do so based on their own public registers or those they can access online. Findings from these investigations often lay grounds for initiating an administrative procedure *ex officio*.

Retrieved in the way described above, data from public registers kept in an ICT system usually takes the form of computer printouts (from the ICT system of the register concerned) or of an electronic image extracted from the register.

Irrespective of whether data from public registers is present in the proceedings from the very beginning or is retrieved in the course thereof, the question arises on the evidentiary effect of such computer printouts or electronic images.

In order for a computer printout or an electronic image from a public register to have the power of an official document, it must be produced in the form provided for in Article 76.1 of the APC, i.e. in one of the qualified forms referred to as an extract, excerpt, copy or certificate.

If produced in another form, a computer printout or an electronic image from a public register may have the power of an official document provided that a specific rule exists which states that printouts or images have an effect equal to that of official documents¹⁰.

By nature, such printouts or images cannot be considered a private document either, because they were produced for other purposes.

Furthermore, the APC lacks a regulation similar to Article 308 of the Civil Procedure Code Act of November 17, 1964 (unified text: Journal of Laws [Dz.U.] of 2021, item 1805, as amended)¹¹, which states: *When considering evidence from documents other than listed in Article 243¹ [documents which include text and enable their issuers to be identified], including without limitation documents which include recorded images, sounds or images and sounds, the court shall respectively apply the rules for visual examination evidence and documentary evidence.*

Hence, what actually are computer printouts or electronic images if they cannot be considered a document and, as a consequence, cannot be taken into account as qualified evidence?

Undoubtedly, a computer printout or an electronic image from a public register can be deemed a source of knowledge about a fact or the legal situation of a person or object. However, it is somehow a secondary source.

Indeed, it seems that the procedure for retrieving register data consists in that data is previewed and only afterwards is recorded as a computer printout or an electronic image. Therefore, it should bear the relevant endorsement contemplated in Article 72.1 of the APC, provided that—in accordance with Section 2—the endorsement itself can take the form of an electronic document. As a minimum, the act of previewing the register must be mentioned in the case sheet referred to in Article 66a.1 of the APC. Also, as per Section 2, the content of the case sheet should include a reference to the computer printout included in case files or to the electronic image extracted from the register, if the file is stored on media which form part of the materials relating to the procedure. Hence, the preview of the

¹⁰ Cf. L. I. Ratajczyk, *Moc dowodowa wydruku komputerowego w systemie rejestracji stanu cywilnego* (Evidentiary value of a computer printout in the system of civil status registration), “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1980, j. 1, p. 216 et seq.

¹¹ Also cf. K. Knoppek, *Wydruk komputerowy jako dowód w procesie cywilnym* (Computer printout as evidence in civil proceedings), “Państwo i Prawo” 1993, No. 2, p. 54 et seq.

register by an employee of the relevant body is in itself of primary and key importance.

However, the following question arises: what if the public administration body can only preview the data of a public register but cannot “work on the register,” including without limitation make computer printouts or extract electronic images? The ability to make computer printouts or extract electronic images from a public register is essentially a way to authenticate data retrieved from the register.

Thus, in accordance with Article 73.1–2 of the APC, it seems that if a party to an administrative procedure, as part of him/her previewing the case files, is entitled to produce copies or extracts and to subsequently request the authentication thereof, then nothing prevents the employees of the body concerned from: issuing complete or abridged extracts of data stored in a public register as part of an authorized preview thereof; producing the relevant endorsement by adding the corresponding entry to the case sheet; and (if authorized) authenticating the content thereof. This would constitute a statement of a visual examination of the content of the public register as part of a preview process.

Perhaps the above should apply as well to signed and described screenshots or screen pictures¹² (which are used in practice). This remark is true for public registers which are universally available in the sense that data stored in it can be previewed.

In the case of doubts, per analogy to memos, an employee of the body concerned who produced an excerpt of register data or described and signed a screenshot or a screen picture could be heard as a witness to make a statement on the content of data stored in the register.

From the perspective of a party to the procedure, computer printouts as well as electronic images or excerpts, screenshots and pictures of register data displayed on the screen should be qualified as well-known official facts. However, pursuant to the second sentence of Article 77.4, facts known to the body *ex officio* shall be communicated to the other party.

¹² Cf. A. Murzynowski, *Wydruk z komputera jako dokument w postępowaniu przed organami państwowymi i społecznymi* (Computer printout as a document in proceedings before national and social authorities), [in:] *Studia z informatyki prawniczej* (Studies on legal informatics), eds. S. Zawadzki, Warsaw 1978, p. 89, and J. Janowski, *Podpis elektroniczny w obrocie prawnym* (Electronic signature in the administration of justice), Warsaw 2007, p. 246 et seq. and p. 255 et seq.

Unlike land and mortgage registers, public registers held in an ICT system are not covered by the principle of public credibility referred to in Article 5 of the Land and Mortgage Registers Act of July 6, 1982 (unified text: Journal of Laws [Dz.U.] of 2019, item 2204, as amended). No separate procedure is needed to challenge the power of data retrieved from such registers. Therefore, all the party needs to do is to deny the fact communicated to him/her by the body in charge of the procedure. This opens the door to evidentiary proceedings governed by general provisions of the law. Nonetheless, should this be the case, the party should substantiate his/her denial of the fact concerned with an appropriate request for evidence. Otherwise, computer printouts, electronic images, data excerpts from a public register made by a party on his/her own or signed and described screenshots or pictures shall become “unnamed” evidence (as defined in Article 75.1 of the APC) upon being recognized as evidentiary materials by way of a decision.¹³

However, in view of what has been noted above, in order to further challenge the content thereof, one may not apply the general rule which states that the content of official documents shall not be called into question based on personal sources, e.g. testimonies of witnesses. Indeed, all of them are only a form of recording the activities performed when previewing a public register or displaying data stored therein.

The act itself of previewing a public register or displaying data stored therein is essentially similar to visual examination evidence. However, a public register itself cannot be the subject of a visual examination. Computer printouts, electronic images, data excerpts from a public register made by a party on his/her own or signed and described screenshots or pictures cannot either be subject to a visual examination in the strict sense because it would constitute an unlawful transformation of these forms of official acts into “named” evidence. Only official documents enjoy a presumption of authenticity, credibility and truthfulness. All other sources of facts, including the results of visual examinations and “unnamed” evidence, are subject to a discretionary assessment by the body in charge of the proceedings, by an administrative review body or even by an administrative court.

¹³ Cf. R. Suwaj, *Postępowanie dowodowe w świetle przepisów Kodeksu postępowania administracyjnego* (Evidentiary proceedings in the light of the provisions of the Administrative Procedure Code), Ostrołęka 2005, *passim*.

Under the assumption that data excerpts from a register are only of an internal nature, it would be possible to hear the person “working on the register” as a witness and thus produce evidence in an effort to corroborate the circumstances described in the excerpt concerned.

The body in charge of main proceedings (one which issues the decision in the case concerned) as well as the collaborating body (one which delivers a review or reconciliation of the content of the decision) and the higher-instance body which supplements evidence and materials in appeal proceedings are bound by the general rule laid down in Article 7b of the APC, worded as follows: *in the course of proceedings, public administration bodies shall collaborate with one another as necessary to thoroughly explain the factual and legal situation of the case, having regard to social reasons, legitimate interests of citizens and efficiency of the procedure, and shall use measures adequate to the nature, circumstances and complexity of the case.* The above rule requires the bodies of an administrative procedure to collaborate not only with one another but also with public administration bodies, even if deprived of any judicial competence.

This means the bodies of an administrative procedure not only may but should request the bodies which keep or have access to public registers to deliver data stored therein, provided that it would contribute to explaining the factual and legal aspects of the case.

If data can be extracted from a public register only in a qualified form, the body shall deliver the appropriate extract, excerpt or copy. However, if a qualified form is not required, the bodies are unable to deliver certificates (which is sometimes the case in practice) because public administration bodies which request that kind of collaborative inquiry are not persons requesting a certificate as defined in Article 217.1 of the APC since they do not have any legal interest in having the facts or the legal situation officially confirmed. The body in charge of the administrative procedure shall consider the computer printouts, electronic images, “non-qualified” data extracts from a public register, screenshots and pictures as their own materials and shall notify the parties of their ability to adopt a view on the evidence and materials collected under Article 10.1 of the APC.

Computer printouts delivered under the collaborative inquiry procedure may include annotations or revisions. If they come from a body which keeps a public register and are accompanied by additional relevant explanations, they should be taken into account in a defined way.

However, they need to be verified on a case-by-case basis if they come from another body which only can access the register or preview data stored in it.

As regards the latter scenario, if the interested parties retrieve data from a public register not in the form of printouts, pictures or officially authenticated own excerpts or copies (in the case where the register is generally open) but in qualified forms such as an extract, excerpt, copy or certificate, it needs to be assumed that the parties submit official documents (whether delivered together with the request for initiating the procedure or during the course thereof). In that context, a distinction needs to be made between the certification of a fact or a legal situation provided for in a register kept by the body which issues the certificate and other forms which do not include any activity equivalent in nature to an official certification of a fact or a legal situation on the issuance date thereof. The latter rather seem to be a technical mapping of data stored in the register. In this case, unlike when issuing certificates, the data stored in the register is not aligned with the request of the applicant; instead, only an as-is report is delivered.

Nevertheless, sometimes these as-is data reports must be put in a formal template; if they include questions with no simple answers which require register data to be processed, they essentially are certificates, even if formally referred to as extracts, excerpts or copies. The above does not change the power of these documents: in accordance with Article 76.1 of the APC, all of them are official documents produced in the required form by competent state authorities in their field of operation. Hence, they constitute a proof of what is officially ascertained therein. The only difference lies in the procedure for obtaining them which may be either formalized or not.

However, there may be situations where a party to the administrative procedure holds a computer printout or an electronic image but there are no specific provisions that would equate the power of printouts or images with that of official documents. Pursuant to Article 220.1 of the APC, when in doubt, the body in charge of the administrative procedure cannot request a separate certificate or statement because the fact or the legal situation concerned can be determined by it based on information exchanged with another public authority in accordance with the rules laid down in the provisions on the computerization of activities of bodies in charge of public services.

Hence, there is one more form of data “externalization” from the register, namely official information. Unless in the form of a computer printout or electronic image, such information constitutes processed data from a public register which answers the question asked by a public administration body, and therefore is essentially similar to a certificate. However, it is not an official document but a manifestation of internal communications¹⁴. From the perspective of the law of evidence, it is a well-known official fact to the body in charge of the administrative procedure; and as mentioned earlier, any fact known to it *ex officio* shall be notified to the party to the procedure.

There may also be situations where the party presents data retrieved from the register under the procedure for accessing public information, as governed by the Act of September 6, 2001 on accessing public information (unified text: Journal of Laws [Dz.U.] of 2022, item 902)¹⁵. Information delivered under that procedure does not constitute an official document since no qualified form is required for it: instead, it is delivered in a standard written or electronic form.

Note also that the authentication of a copy of a computer printout from a public register does not make it more powerful as evidence, since it only is a copy of a printout officially certified true to the original.

Therefore, having in mind the division into official documents and official materials as provided for in Article 4.2 of the Act of February 4, 1994 on copyrights and related rights (unified text: Journal of Laws [Dz.U.] of 2021, item 1062, as amended), it can be concluded that some media carrying data covered by public registers kept in an ICT system need to be classified as official documents (extracts, excerpts, copies, certificates, certain computer printouts or electronic images, if a specific provision equates the power thereof with that of official documents). Conversely, the rest (other computer printouts and authenticated copies thereof, electronic images, screenshots, reports from visual examination of

¹⁴ Cf. A. Monarcha-Matlak, *Obowiązki administracji w komunikacji elektronicznej* (Duties of administrative bodies in electronic communication), Warsaw 2008, s. 276 et seq.

¹⁵ Cf. A. Gryszczyńska, *Wpływ na dostęp do danych rejestrowych ustawy o dostępie do informacji publicznej i ustawy o ponownym wykorzystywaniu informacji sektora publicznego* (Impact of the Act on access to public information and of the Act on the reuse of information of the public sector on the access to register data), [in:] *Rejestry publiczne. Jawność i interoperacyjność* (Openness and interoperability of public registers), eds. A. Gryszczyńska, Warsaw 2016, p. 29 et seq.

register data, own excerpts of data from the register certified as true copies, official information, public information) shall be viewed as official materials which the relevant body needs to take into account *ex officio*.

Note also that some Acts could introduce significant restrictions with respect to evidence by prohibiting the assessment of the facts based on evidence and materials other than set out therein. This is especially true for the preponderance of civil status records¹⁶. Pursuant to Article 3 (*ab initio*) of the Law of Civil Status Records: *civil status records are exclusive evidence of events referred to therein*. In the administration of justice, civil status records take the form of complete or abridged extracts. From that perspective, the circumstances laid down in civil status records cannot be confirmed in an administrative procedure (or in any other procedure under public and civil law) otherwise than in the form of extracts. The use of other official materials (e.g. printouts from the “*Źródło*” database) proves to be unacceptable. This deprives them of any evidentiary value and makes them unlawful in the sense of Article 75.1 of the APC. Hence, civil status records come with a warranty of public trust, and are exported as extracts rather than other traditional tools such as physical or electronic documents. This is the consequence of civil status records being the sole evidence of civil status.

From the perspective of the provisions of Article 220.1 of the APC, the above is also true for identity cards. Indeed, in light of Article 4.1 of the Identity Card Act of August 6, 2010 (unified text: Journal of Laws [Dz.U.] of 2022, item 671), an identity card is a document that establishes the identity and Polish citizenship of his/her holder; to a much smaller extent, this is also true for passports, i.e. documents which pursuant to Article 4 of the Passport Documents Act of July 13, 2006 (unified text: Journal of Laws [Dz.U.] of 2022, item 350, as amended) certify—but do not establish—the identity and Polish citizenship of their holders.

CONCLUSIONS

In summary, it needs to be stated that official registers certainly form part of ICT systems both *de facto* and under specific legal acts.

¹⁶ For a broader description, see: J. Dobkowski, *Preponderancja polskich aktów stanu cywilnego* (Preponderance of Polish civil status records), “*Metryka. Studia z zakresu prawa osobowego i rejestracji stanu cywilnego*” (Metrics. Studies on personal law and on the registration of civil status) 2011, No. 2 (2), p. 15–32.

Nevertheless, the conclusion is that not all registers are underpinned by such systems. But despite this, the computerization status of Polish official registers containing data on farmers and farming activities should be viewed as relatively positive. Although their further rapid development requires large financial resources and organizational efforts, the desired transformation is also a matter of time. The introduction of the legal requirement to keep a register in an ICT system is a value in itself. By making it optional to operate the registers with the use of an ICT system, the relevant legal regulations leave room for uncontrolled discretionary powers, but only to the extent justified by the purposefulness and economic reasonability of actions taken. Ultimately, all official registers containing data on farmers and farming activities should become public registers and, as such, be subject to the applicable provisions of the Act on the computerization of activities of bodies in charge of public services and of its implementing Acts.

It follows from this review that in Poland, ICT-powered public registers relating to agriculture have an evidentiary function. It therefore seems that the legislator needs to intervene in an effort to unequivocally define the nature of public registers themselves and regulate the external disclosure of data stored therein by taking account of evidence classes and principles for establishing evidence.

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