

A Few Remarks on the “*Ustawa o zmianie ustawy o ochronie zabytków i opiece nad zabytkami*” project of 30.05.2023

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INTRODUCTION

1) The current “*Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami*” [henceforth *Ustawa*]¹ as it exists today is a tragic patchwork of incoherent and inhomogeneous articles that betray its complex history of ad hoc modifications since it was first published in 2003 and as a whole already barely does the job it is intended for. Under the pressure of a lobby group representing hobbyist artefact hunters changes have been proposed in the existing system that further weaken its effectiveness as an instrument too protect the buried archaeological heritage from looting . The purpose of this text is to discuss these proposed changes as presented in the document presenting these proposals titled “*Ustawa o zmianie ustawy o ochronie zabytków i opiece nad zabytkami*” now in the public domain (the version discussed is that of 5th June 2023).² This document (henceforth ‘Project’) modifies the existing *Ustawa* for the benefit of artefact hunters [metal detectorists].³ Such a text does nothing to address the problems of the current shape of the *Ustawa*, it does nothing to improve that situation, but makes it worse. The current *Ustawa* urgently needs consolidating and refining, but this is not the way to achieve that. The project has a number of flaws and should not be adopted in its current form.

HOW THE SYSTEM WORKS

2) The Project has one main theme, to remove the current requirement to receive a permit for artefact hunting (“*poszukiwania zabytków*”) in the same way as other activities connected with *zabytki*⁴ making the activity a free-for-all, and replacing it with a “mobile application” that comprises what is called a Register of Searches (Regestr Poszukiwań – henceforth RPsZ) that the artefact hunter [metal detectorist] uses to report the finds they have removed from the search site that they have chosen. This removes the whole artefact hunting process from the

¹ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20031621568>

² <https://orka.sejm.gov.pl/Druki9ka.nsf/0/9FB134537D0A14B8C12589D0005451CE/%24File/3383.pdf>

³ In the *Uzasadnienie* of the project this is admitted explicitly, the document aims to rewrite the *Ustawa* (Project *Uzasadnienie* p. 1) protect „*amatorskie poszukiwania zabytków w Polsce*”.

⁴ Although I will write In English, I will use the Polish terms that are not always translatable into an exact equivalent In English.

system of “ochronie zabytków i opiece nad zabytkami” that has operated in Poland for over a century, an anarchy that exposes sites and monuments to damage by removing all controls.

3) At the core of the idea of the current Polish system of is the existence of a dedicated, public funded service, based around the role of the Provincial Conservator of Historical Monuments (Wojewódzki Konserwator Zabytków” – henceforth WKZ). The latter is charged with identifying and caring for zabytki in general (defined in the Ustawa Art 3). The WKZ is tasked with their documentation and issuing administrative orders for their care and preservation. In the case of archaeological sites and monuments,⁵ and “antiquities”⁶ this control, and archivisation of the documentation is conducted at the level of the Voivodship. In Poland, central government seems unable to create a coherent policy for zabytki, there has been over the past few decades a complex (and ever-changing) relationship between the WKZ in local government and the Ministry of Culture and National Heritage (Ministerstwo kultury i Dziedzictwa Narodowego – MKDN) and institutions such as the Narodowy Instytut Dziedzictwa (NID – the successor to the former - Ośrodek Dokumentacji Zabytków, Ośrodek Ochrony Zabytkowego Krajobrazu, Ośrodek Ochrony Dziedzictwa Archeologicznego and Krajowy Ośrodek Badań i Dokumentacji Zabytków and their predecessors). The Project as it stands muddles these needlessly. Attempted introduction of the proposed changes in this Project is a further illustration of the damaging total lack of an overall and coherent policy of Polish lawmakers on the subject of zabytki, the archaeological record and the national heritage.

4) In particular, in the context of the present discussion, it should be noted that the authors of this new Project ignore the fact that in Poland, the role of recording Zabytki falls to the NID (<https://nid.pl/o-nas/>) rather than the MKDN; and administrative decisions on individual sites, monuments and objects to the WKZ. The authors of this document therefore completely muddle the competences of three entirely different organs.

5) In the present system, the fundamental premise is that zabytki are the responsibility of the state, that portable antiquities are (on behalf of all of society/citizens) the property of the state

⁵ 4) zabytek archeologiczny – zabytek nieruchomy, będący powierzchniową, podziemną lub podwodną pozostałością egzystencji i działalności człowieka, złożoną z nawarstwień kulturowych i znajdujących się w nich wytworów bądź ich śladów albo zabytek ruchomy, będący tym wytworem;

⁶ Art. 3. 1) „zabytek – nieruchomość lub rzecz ruchoma, ich części lub zespoły, będące dziełem człowieka lub związane z jego działalnością i stanowiące świadectwo minionej epoki bądź zdarzenia, których zachowanie leży w interesie społecznym ze względu na posiadaną wartość historyczną, artystyczną lub naukową”;

treasury.⁷ This principle is not rescinded by the Project, which postulates that hunting for such artefacts (“wytwory”) should be unregulated and free-for-all. This supposedly will be „good” for the buried heritage.

6) This postulate reveals that the Project’s authors muddle two things, “discovery” (and then removal of part of the contents of a site) and “conservation”. This is the equivalent of elephant poachers gleefully reporting where they had shot and dismembered elephants to remove their tusks and calling it a conservation programme (because their actions had prevented the elephants eventually becoming senile or catching a fatal disease and dying in the wild).

7) The Project postulates that the issue is that after items have been dug up, the state (through the WKZ should define which portable antiquities found by artefact hunting are “zabytki” in the terms of Polish law. This is the purpose of the public platform, the Registr Poszukiwań. Its text does not make clear how that decision is to be issued, and communicated to the finder and landowner (see below). Nor does it define what then happens to these items and on what time scale, and to what overall purpose this serves (apart from allowing hobbyists to hunt for artefacts at will).

8) The Project assumes that some items found by the artefact hunter with a metal detector and reported on the RPsZ will not be declared “zabytki” (and so, it seems their intent is that the Finder should be allowed to keep them). Here there is a gap in its provisions.

The Project ignores the fact that these items however are the property of the landowner (not “the user of the land” as the project suggests) who should not only give permission for the search to take place but also their permission for their inclusion on the RPsZ and for the division and disposal of finds. The landowner should be included in the process, and their property rights respected.

9) What is a notable flaw in this Project is its inconsistency with the entire content of the existing Ustawa. As a fundamental point, the Ustawa places the issue of administrative

⁷ Ustawa: Art. 35. 1. Przedmioty będące zabytkami archeologicznymi odkrytymi, przypadkowo znalezionymi albo pozyskanymi w wyniku badań archeologicznych, stanowią własność Skarbu Państwa. 2. Własność Skarbu Państwa stanowią również przedmioty będące zabytkami archeologicznymi, pozyskane w wyniku poszukiwań, o których mowa w art. 36 ust. 1 pkt 12.

decisions on intervention of all types in the fabric of a zabytek in the hands, judgement and oversight of the WKZ (most usually in the form of issue of a permit and monitoring the agreement of the work done with its content). The project postulates making an exception only in the case of amateur artefact hunting with metal detectors and removing selected objects from an area that is likely to produce such items (portable antiquities, artefacts, finds, “wytwory” of the past).

It fails to justify why this is the case. What is so special about metal detector users? Why should the entire Polish system of „ochronie zabytków i opiece nad zabytkami” be based on prioritising preservation in situ (and mitigating any unavoidable damage by preservation by documentation) – in accordance with EU norms – with the exception of one minority activity, metal detecting, which this project sees as deserving its own anarchistic public-funded mini-system based on a vaguely-conceptualised “application” (the RPsz)?

10) Possibly the politicians supporting this project that overturns a large part of the protection that the current Ustawa affords the buried heritage see only a lot of potential voters whose support can be gained by introducing these changes. Its authors see comparatively large numbers of citizens interested in this *„Projekt dotyczy szerokiej grupy obywateli szacowanej przez Ministerstwo Kultury i Dziedzictwa Narodowego na liczbę ok. 100 tys. osób i zapewnia włączenie ich do systemu poszukiwań z poszanowaniem dziedzictwa kulturowego”* (Project Uzasadnienie p. 1). No precise source is quoted for this number.

In fact, various figure are cited for the number of metal detectorists in Poland. Sam Hardy has calculated that there are some 54000, my own research suggests the number might be as low as 21000.

METAL DETECTING PERMITS

11) Nowhere in this Project and its Uzasadnienie is it explained why the issue of a permit for searching a site or area for *“ukrytych lub porzuconych zabytków ruchomych, w tym zabytków archeologicznych, przy użyciu wszelkiego rodzaju urządzeń elektronicznych i technicznych”* under specified conditions does not already maintain the *“bezpieczeństwa dziedzictwa kulturowego”*. The only factor is that most metal detectorists go artefact hunting without getting one. This argument is like saying that speed limits do not increase safety on the roads because many drivers routinely ignore them, so they “should be replaced” by a system where

drivers themselves decide how fast they will drive through city centres and residential areas (with a mobile app so they can report to the Ministry of Transport that since there are no restrictions, their intention to drive at 90 up Marszakowska).

12) In the same way, the whole system of heritage protection in Poland currently operates on the basis of administrative decisions by the WKZ, yet this Project postulates this be abandoned in the case of sites artefact hunters want to remove loose artefacts from in favour of a do-it-yourself system created (with public money) for detectorists to sidestep the administrative procedure.

13) The Uzasadnienie of this document claims that the permit system is inefficient as detectorists cannot get them quickly enough (Uzasadnienie p. 2): *“Wzrost zainteresowania amatorskimi poszukiwaniami zabytków sprawił, że obecna procedura administracyjna przestała być efektywna, a nawet wydolna przy założeniu dbałości o zachowanie dziedzictwa kulturowego”*. The sense of that last part of the sentence is unclear in the context of the content of the current form of the Ustawa and the principles and international norms it embodies. Artefact hunting damages archaeological sites by removing „wytwory” (sic) from their context in the structure of a site.

The text then goes on to say (Uzasadnienie p. 2): *„Obecnie szacuje się, że zaledwie 1% obywateli poszukujących zabytków korzysta z procedury administracyjnej. Reszta pozostaje poza systemem”*. In fact, the percentage is much lower than that (Author’s own research) and many permits issued for metal detecting in Poland recently have been for professional archaeological projects using this tool (Ibid).

REPLACEMENT WITH A PUBLIC “REGISTER OF SEARCHES”

14) The Project proposes removing the obligation on the metal detectorist to integrate their activities with the current system of heritage protection though interacting with the WKZ and obtaining a search permit before hunting for artefacts. The authors propose replacing this with an online public register (RPsZ) accessible from outside, where the WKZ can be informed where a given artefact hunter is on a given day, and what they have found. This is described as an application for *“Zgłoszenia poszukiwań dokonuje się przed rozpoczęciem poszukiwań za pomocą aplikacji mobilnej udostępnionej przez ministra właściwego do spraw kultury i ochrony dziedzictwa narodowego”*.

15) According to the project, use of this Register by all metal detectorists is to be mandatory. Failure to use it will be an offence.

16) The structure of the RPsZ is sketched out in the Project. If, however, this is to be a legal requirement, the conditions it imposes should all be in the legislative act and not a separate document, such as a decree or guidelines. The current Project has a number of missing elements in this regard.

17) The first question arises why it is the MKDN that produces this RPsZ when the organ it affects is the WKZ and the record that is produced is currently in fact the domain of NID. This is not explained in the project. It also encumbers the Ministry with unnecessary new tasks related to its development maintenance and the costs, both apparent and hidden related to that.

18) The nature of the records created of these searches is unclear. The whole Uzasadnienie of the project is predicated on the introduction of this RPsZ being a means of protection of information about zabytki for wider use and benefit of the public. Yet (Project's Art 36d, ust.5) „*minister właściwy do spraw kultury i ochrony dziedzictwa narodowego [...] zapewnia ochronę przed nieuprawnionym dostępem do rejestru poszukiwań*” – meaning who, if it is to be a public record? The Portable Antiquities Scheme in England established in 1996 has from the beginning had two levels of data to make the objects and information in the record accessible, while protecting personal data. The same concerns the Danish DIME record. It is not explained why this is not applied here.

Also it seems the Project's authors do not envisage this database being a permanent record (Project's Art 36d, ust.6: “*Dane przetwarzane są przez okres 3 lat od dnia ostatniej aktywności użytkownika w rejestrze poszukiwań*”). What happens to the records of the searches and the zabytki found then? in what way does a temporary record replace the data about zabytki permanently archived in the WKZ offices and other institutions such as NID?

19) The fact that the RPsZ is “mobilny” means the metal detectorists can make the announcement actually standing on the site, with metal detector and spade poised (Project art.36b, ust.6: “*6. Z chwilą dokonania zgłoszenia poszukiwań jest ono skuteczne i można*

rozpocząć poszukiwania”). While this may be attractive for the impatient treasure hunter, it in no way makes the buried heritage safer. The law should establish a period of grace between the announcement and the beginning of artefact hunting, in case there is a matter the WKZ needs to make the searcher aware of. Seven working days seems a suitable minimum.

20) In the current wording concerning the RPs, a glaring omission is that it should be noted that nowhere does the Project (Art 36b) stipulate that the full personal details of the landowner of all properties within the metal detectorist’s chosen search area should be ascertained and appended to the RP record. Mention is only made of a declaration (Project Art 36b, ust 1 pkt 3) of the metal detectorists that they “have” the permission of the landowners and users of those properties. There should instead be from the outset an actual document supplied to the RPs for use in further administrative tasks by the WKZ and MKDN using the record.

Obviously, firmer details of the owners of the objects being considered are needed. This is especially the case as it is envisaged (Project Art. 33a, ust. 3) that on artefacts being reported to the RPs, the site of the finds may (the text says “will”) be visited by the WKZ or their representative within a fixed number of days – so the full ownership and contact details are an essential part of the record. The proposal needs to make this a legal obligation as part of the correct announcement of the intention to search.

21) There is no discussion in this Project of the financial aspects of this system. At the moment, the issue of metal detecting permits is part of the routine activities of the WKZ concerning public users of zabytki and is already in the budget (even though it may be under-resourced). The introduction of a totally new and parallel system, devised ONLY for metal detectorists adds new obligations on the WKZ and makes new demands on the time of the staff alongside those already resulting from the current Ustawa.

There is no mention in the Project or its Uzasadnienie of any cost analysis having been carried out prior to this proposal. This is a gross mistake, and introducing these measures are certainly going to add a considerable financial burden on some part of the heritage protection budget.

To what extent does this compare with the savings that would accrue from the WKZ not having to process, under the Project's proposed law, applications for metal detecting permits? How much does this currently cost annually?

22) The Project's Art 33a places a huge extra burden on the staff of the WKZ office. The document itself suggests there are 100000 artefact hunters with metal detectors. Although this is probably not the case (see above), if the situation was as the document postulates, in the case of 16 voivodships, that is an average of 6250 detectorists in each. Even if they all find and report just four objects a month (potentially it will be many more), it means that in an average week, on top of their other work resulting from the current legislation, each WKZ would have to process and document and communicate their conclusions on c. 6250 records from the application run by the MKDN (1250 objects daily in a five day week). In addition to this, the document in its current form says, the WKZ is obliged to actually visit the findspot of all 6000+ finds (though the Project postulates they can somehow do it magically "przy użyciu urządzeń technicznych"). They then consider which artefacts reported are zabytki in terms of the law, then inform the 6000+ finders individually (how?) and put a permanent record onto the MKDN's RPsz (how?).

Quite clearly, to cope with this sort of workload on top of the other tasks, the introduction of the proposed changes concerning the activities of metal detectorists will mean that each WKZ office will have to employ at least one, possibly more, additional members of staff to process all this information and carry out the tasks the Project envisages.

How is this extra work to be financed? Will the MKDN finance it, since the results end up on their database? What budget needs to be set aside for this if the system is to be up-and-running from 1st May 2024?

23) In England and Wales, where there are an estimated 27000 metal detectorists, the Portable Antiquities Scheme (PAS a public recording scheme set up in 1996 to record archaeological finds made by members of the public including metal detectorists <https://finds.org.uk/>), the annual budget for the central office alone is 1.5 million pounds (equivalent to c. 7,700,000 zł), which does not take into account the costs of the 46 regional offices vital to the efficient operation of the whole system that are funded from other sources (pers comm. Prof. M. Lewis, British Museum, London - Head of the PAS). This budget is not

enough to carry out the tasks of the Scheme in full. According to Prof. Lewis, the Scheme currently records and maintains a permanent record of between 50 and 80 thousand artefacts reported by metal detectorists per year, at a unit cost of about 30 GBP (c. 155 zł) each. I am informed that the authors of this project have not consulted this proposal with the PAS, the oldest and most experienced recording scheme like this in Europe. This needs to be done so Poland can draw on the experience embodied in such organizations (see The European Public Finds Recording Network <https://www.helsinki.fi/en/networks/european-public-finds-recording-network> for contacts).

24) The issue of the development and running costs of an equivalent Polish Scheme need to be addressed. The Project supposes that it would have to cope with the recording and analysis of the finds of a community of 100k Polish metal detectorists, over three times the number of metal detectorists in England and Wales. How much will this proposal cost the Polish budget annually? Are sufficient funds earmarked for the proposed launch of this scheme in just eleven months time as the Project supposes?

THE PROPOSED MODIFICATIONS

25) Art 1 of the Project sets out in the first 7.5 pages of the document the proposed changes to the wording of, additions to, alternative forms of, and deletions of, certain articles of the existing Ustawa in eleven points (numbered 1 to 11). These all cover only aspects referring to metal detecting.

Note that no mention is made of the need to change some fundamental elements of the existing Ustawa, in particular the “definitions” (Ustawa Art. 3 - see below).

26) Project Art 1, point 1 (ad Art. 33)

In the project’s proposal, this article is placed awkwardly in relation to art. 36, this is because it is intended to follow on from the similarly-worded art.33 (“Kto przypadkowo znalazł przedmiot, co do którego istnieje przypuszczenie, iż jest on zabytkiem archeologicznym....”).

„Art. 33a. 1. Kto w wyniku poszukiwań, o których mowa w art. 36b ust. 1, znalazł lub pozyskał przedmiot, co do którego istnieje przypuszczenie, że jest on zabytkiem

archeologicznym albo innym zabytkiem ruchomym, jest obowiązany niezwłocznie zawiadomić o tym wojewódzkiego konserwatora zabytków.

Ad. Ust.1, „znalazł lub pozyskał”, what does this mean in the context of artefact hunting? The term “niezwłocznie” needs defining, does it mean that at the moment of discovery, the finder uses the mobile application to enter a record of the find (with a photo and description) onto the Register, so that if stopped by the police in the field on the way back to the car, they can show the record?⁸ Does it mean “as soon as they can get home and clean it a bit”? Does it mean “within seven days”?

Ad. Ust.2,

„Art. 33a.2. W przypadku znalezienia lub pozyskania na obszarze nie większym niż 100 m² co najmniej trzech przedmiotów, co do których istnieje przypuszczenie, że są one zabytkami archeologicznymi, prowadzący poszukiwania obowiązany jest niezwłocznie zawiadomić o tym wojewódzkiego konserwatora zabytków i wstrzymać poszukiwania do czasu przeprowadzenia czynności, o których mowa w ust. 3 jednak na okres nie dłuższy niż 30 dni od dnia przyjęcia zawiadomienia. W zawiadomieniu należy wskazać lokalizację znalezionych przedmiotów.

„, na obszarze nie większym niż 100 m² co najmniej trzech przedmiotów, co do których istnieje przypuszczenie, że są one zabytkami archeologicznymi”, what is the significance of this? Why „three” artefacts, and why “100m²”? Is this supposed to be a “site” or “punkt osadniczy” in terms of an AZP KESA? How does this relate to other parts of the Ustawa?

The project does not precisely explain what happens next, what the consequences of this are. On what basis is this definition established? The three objects, are they metal, or can they be small pottery fragments (down to what size?) or a flint spall? What if it is a loose animal bone fragment, is that a “przedmiot” in terms of this law? The term needs definition here.

How is the area measured? Is further artefact hunting stopped within that 10x10m square (or is it an oval area? This needs to be defined), or does that restraint refer to the whole artefact-producing area around that concentration. This needs to be stated.

⁸ This seems to be the sense of the detectorists. announcement of the project You Tube: <https://youtu.be/ufFVDrYSqwg> (especially: <https://youtu.be/ufFVDrYSqwg?t=118>)

“W zawiadomieniu należy wskazać lokalizację znalezionych przedmiotów.” To what degree of accuracy, and with relation to what?

Ad. Ust.3, „W terminie 5 dni od dnia otrzymania zawiadomienia [...] WKZ jest **obowiązany** dokonać oględzin znalezionej lub pozyskanego przedmiotu **ī** miejsca jego znalezienia”. For this, they need the contact details of the landowner to get permission (see above); this is not stated in the Project to be in the information required by the RPsz.

Given the current staffing of the WKZ Office and the many additional tasks each person has already to undertake, it will not be possible for the archaeological staff to look through hundreds of records on the RPsz as well as visit more than a handful of the findspots in the time scale of five days – especially if we take into account the length of some days and weather conditions in the winter detecting season and transport issues.

“W terminie 5 dni od dnia otrzymania zawiadomienia [...] w razie potrzeby, zorganizować badania archeologiczne”. Without further resources made available to create some form of fully-staffed and equipped „pogotowie archeologiczny’ in a number of regional centres, as things stand currently, this will often technically not be possible (especially as the five days are not explicitly noted as five working days). It is not stated here who pays for this excavation, the landowner/user or the finder whose activities exposed this material requiring attention. In the case of development (Ustawa art. 32 ust.5 pkt 3) the agent responsible for the disturbance to the site [e.g., developer] pays. This question should be regulated by the Project, and if the WKZ is expected to finance this in the timespan envisaged by the Project (which is however not yet defined as closely as it is in Art. 32), the manner in which it will be budgeted for needs to be defined by the Project.

“ Oględziny mogą się odbyć przy użyciu urządzeń technicznych umożliwiających dokonanie tej czynności na odległość”. It is not clear if this means examination of the reported artefacts as photographs/video or perhaps other forms of record, or whether this means some kind of remote sensing of the site of the find (which would be inadequate as the sole source of information). This needs clarifying as it defines the legal basis and standards for the work of the WKZ.

In the recording of sites in AZP (to which in the uzasadnienie this process is compared) a major component of the work is not only fieldwork, but also documentary research and a literature search (Kwerenda) when and how should this be done?

Ad. Ust.4, „*informuje zgłaszającego o ustaleniach i dalszych działaniach co do znalezionej przedmiotu.*” How? By editing the entry on the RPsz? By email/SMS? In the form of an administrative decision sent by registered letter? This should be established by the wording of art.33a.

Ad. Ust.5: „*WKZ niezwłocznie zamieszcza informacje o znalezionym zabytku w rejestrze poszukiwań*”. Again, „*niezwłocznie*” needs to be defined in conformance with the other parts of art.33a. This is not clear. The information is already there, it was placed there on the MKDN site by the finder (art 33a ust.1) its status needs indicating by the WKZ or MKDN staff acting on information supplied by the WKZ. No mention is made here of the fate of the records of the other items reported from the search area that are not qualified as zabytki. Are they deleted from the RPsz record, or kept there as a record of the results of the poszukiwanie?

This raises the whole question of the long-term function of the MKDN's RPsz.

27) Project Art 1, point 2 (ad Art. 34)

The Project changes the existing art. 34.. the matter of financial rewards for finders. This is obviously very important to the project's authors, as this is considerably expanded from the original and makes sure to mention metal detectorists.⁹

What is notable is that ust.2 of the original art. 34 is deleted: “*2. Przepisu ust. 1 nie stosuje się do osób zajmujących się zawodowo badaniami archeologicznymi lub zatrudnionych w grupach zorganizowanych w celu prowadzenia takich badań*”. It is not clear why this was removed. Was this intended by its authors to encourage archaeologists to support this proposed new system from self-interest? Certainly, even very mundane archaeological

⁹ Art. 34. 1. Osobom, które odkryły bądź przypadkowo znalazły zabytek archeologiczny, przysługuje nagroda, jeżeli dopełniły one obowiązków określonych odpowiednio w art. 32 ust. 1 lub w art. 33 ust. 1. 3. Warunki i tryb przyznawania nagród określi, w drodze rozporządzenia, minister właściwy do spraw kultury i ochrony dziedzictwa narodowego, ustalając rodzaje nagród, źródła ich finansowania i wysokość nagród pieniężnych.

artefacts have a market value, and this seems a very dangerous tendency. There have already been financial (and other) scandals involving archaeologists in development archaeology and it seems to me that lawmakers should not allow this change to be admitted.

In fact, this enlarged text of Art. 34 has nothing to offer society in general, all of these matters should be dealt with by the Decree of the MKDN that is referred to at the end of both versions of Art 34.

28) Project Art 1, point 3 (ad Art. 35)

This modifies art. 35 concerning state ownership of archaeological zabytki:

In ust. 1 and 3 they have added “*znalezionymi lub pozyskanymi wyniku poszukiwań, o których mowa w art. 36b ust. 1*”, to the list of artefacts that belong to the state. This leaves a loophole into which fall archaeological artefacts that have not been removed from the ground in accordance with the measures in art. 36b. In effect this leaves the state no legal grounds for prosecuting individuals engaging in metal detecting that is illegal in terms of this proposal. Is that the intent? This certainly needs rephrasing and this loophole closing.

29) Project Art 1, point 4 (ad Art. 36)

This concerns art. 36 (“*Art. 36. 1. Pozwolenia wojewódzkiego konserwatora zabytków wymaga.....*: “ For some reason the authors think it is in the public’s interest and that of the cultural heritage to remove one of the 14 cases where a permit is needed to carry out that activity on a zabytek: “*pkt 12 poszukiwanie ukrytych lub porzuconych zabytków ruchomych, w tym zabytków archeologicznych, przy użyciu wszelkiego rodzaju urządzeń elektronicznych i technicznych oraz sprzętu do nurkowania*”.

Incongruously, for some reason they add a fifteenth point (!) numbered „13” (if Art. 36 is to be rewritten, it needs to be rationalised!): „*13) wydobywanie wielkogabarytowego zabytku ruchomego, wymagającego użycia maszyn budowlanych*”, presumably this means military vehicles such as tanks and aeroplanes or exploring bunkers from WW2. If so, this immediately resolves the controversial question of whether WW2 remains are archaeological zabytki coming under the purview of WKZ. Definition is needed of “*maszyn budowlanych*” here. Does that for example include pumps for removal of water from deep excavations? A generator to power other appliances on a remote site? A hoist for removing artefacts from the well of a Silesian palace? What is the heritage protection meaning of the presence of this or

that equipment in a project that requires a (conservator's) permit rather than an engineering one?

Removing point 12 means the authors have to rewrite the existing ust 2 but duplicating (why?) part of it with a new text (Project ust. 1b) that establishes a totally bizarre situation. In the territory of the Polish Republic, they postulate that the use of metal detectors for artefact hunting on zabytki that are below water needs a permit, but if the same zabytek was above water, no permit is needed.

It is also not clear how this applies to tidal sites, or sites that have components that are both above and below water. What is the situation with river estuaries according to the project? How can this be justified? The "Uzasadnienie" is silent on this issue. This is just a mess.

Removing point 12 means the authors have to rewrite the existing art 36, ust 7 to avoid mentioning detecting permits.

30) Project Art 1, point 5 (ad Art. 36)

This is the most extensive area of changes in the existing text of the Ustawa. It is also the one that introduces the greatest disruption. This is not least because it postulates the insertion of three new articles about metal detecting (art. 36b-36d) between a block of articles concerning permits, their issue and the qualifications of those allowed to work on their basis on various categories of zabytki (arts 36, 36a, 37, 37a-h). This section is already a mess, and now the authors want to add a group of three articles totally unrelated to permits and qualifications right into the middle.

31) Project Art 1, point 5a (ad Art. 36b)

Ad. Ust.1: *„Art. 36b. 1. Poszukiwania ukrytych lub porzuconych zabytków ruchomych przy użyciu urządzeń elektronicznych i technicznych, zwane dalej „poszukiwaniami” ...*

This should be in Art. 3 „definitions”, but needs further precision.

Searching the „towel line” on the beach at Ustka for lost and abandoned coins, jewellery and other metal artefacts left there by holidaymakers is also “poszukiwania” and also very popular among metal detectorists in Poland, and falls into the current wording of this proposed definition. Quite obviously, it would be wasteful for the MKDN to set up an

application to record such searches and get the WKZ to state whether a modern ring found in the sands by the volleyball nets is a zabytek. Yet that is what the proposed new law in its currently proposed wording would stipulate. The term needs better definition before lawmakers pass this into law (as it stands, given this wording, a beachcomber using a metal detectors could be prosecuted for NOT entering their finds onto this database).

- „*pod warunkiem posiadania zgody właściciela nieruchomości lub posiadacza nieruchomości*”. No, not „lub”. The landowner is the landowner. This should be „and”.

Property rights should be respected by laws like this.

- „*i po dokonaniu zgłoszenia poszukiwań do rejestru, o którym mowa w art. 36d ust. 1*”. And here is the problem, this replaces the detecting permit of the existing law. The issue of a permit allows conditions to be set on the methods used to search, methods not to be used to avoid damage to the site (and the environment), the nature of the documentation of the effects on the state of the zabytek or site, allows monitoring of the work, but also allows the imposition of sanctions for not following its directions. The WKZ’s decision and all associated documentation are archived together, allowing transparency to be maintained.

The proposed system involving a mobile “application” (RPsZ) seems to fulfil very few of these functions. Above all, it allows the searcher to announce (for example at ten in the evening on a Friday) that they are going to a certain location, and set off immediately to dig up whatever they want, however they want, even if there are good reasons why that particular site is sensitive and should not be treated in such a way. By the time the WKZ is aware that this is happening, even if they rush out there to intervene (and note, the proposed new law does not give them grounds to halt the work, unless it is a site falling into the categories listed in the Project’s Art 36c.), the damage will have been done. This proposed change in its current form is a looter’s permit, rather than a means to ensure the protection of the buried heritage from disruption and destruction. Allowing the metal detectorist the ability to self-determine where they will dig for artefacts and how introduces precisely the sort of anarchy the current conservation-based system was set up to avoid. This is a step backwards.

We now come to the part of the project’s art 36b that describes the RPsZ:

Ad. Ust.3:

„Zgłoszenie poszukiwań powinno zawierać:

- 1) oznaczenie zgłaszającego: imię i nazwisko, numer PESEL, albo numer paszportu lub innego dokumentu potwierdzającego tożsamość w przypadku osoby nieposiadającej numeru PESEL, adres do korespondencji oraz adres poczty elektronicznej;*
- 2) termin oraz zakres terenowy prowadzenia poszukiwań;*
- 3) oświadczenie zgłaszającego poszukiwania o posiadaniu zgody właściciela lub posiadacza nieruchomości na prowadzenie poszukiwań;*
- 4) oświadczenie zgłaszającego o byciu osobą pełnoletnią;*
- 5) oświadczenie o zobowiązaniu się do zgłaszania znalezionych przedmiotów, które mogą być zabytkami;*
- 6) oświadczenie zgłaszającego o prawdziwości informacji zawartych w zgłoszeniu poszukiwań”.*

There is no mention of a physical map indicating the precise boundaries of the search area that will form the basis of any further work of the WKZ on the records in the register.

It is not enough to have an *„oświadczenie zgłaszającego poszukiwania o posiadaniu zgody właściciela lub posiadacza nieruchomości na prowadzenie poszukiwań”*. This should be a signed copy of the document from the landowner themselves (if sent digitally, some form of electronic signature is required). This is needed in order that the WKZ or anyone else handling data concerning the activity is freed from any eventual consequences of inadvertently being involved with the products of illegal activity (unauthorised entry, trespass and theft of property from the land). This document should also express what the agreement is over the disposition of material (zabytki and not-zabytki) and any prize money resulting from the finds. This law should uphold property rights.

For the reasons mentioned above, there must be the full contact details of both the landowner and user(s) of the land comprising the search area.

33) Project Art 1, point 5a (ad Art. 36c)

It is not clear why Art 36c is inserted here: *“Zabrania się poszukiwania ukrytych lub porzuconych zabytków ruchomych przy użyciu urządzenia elektronicznego i technicznego na obszarach...”* and then a list of types of sites that are protected under specific legislation (wpisane do rejestru/w ewidencji zabytków, pomniki historii, parki kulturowe, World Heritage Sites and their buffer zones, sites marked by a European Heritage designation, cemeteries, both modern and former, war graves and places of execution, but only if *„ujętych*

we właściwych rejestrach lub posiadających widoczną formę, umieszczone symbole lub oznaczenia wskazujące na ich charakter”, Holocaust memorials and their buffer zones).

This leaves a whole range of sites open to uncontrolled artefact hunting totally legally in terms of this new phrasing, instead of the much more comprehensive coverage of the current existing legislation. Both still leave sensitive areas of unclear legal situation, for example searching unmarked Holocaust period cremation ash scatters with metal detectors for gold teeth. This restrictive list of the Project however fails to protect the majority of the archaeological sites of Poland from any kind of looting. Just one example of this is evidenced by the constant flow of Roman silver denarii through online sales portals – the sites these are coming from would not be illegal to search under the proposed legislation.

Ad. Ust.3: *“Osoba poszukująca zabytków jest obowiązana przerwać poszukiwania w miejscu znalezienia zwłok lub szczątków ludzkich [...] i zawiadomić niezwłocznie najbliższą jednostkę Policji”*. It is odd that the rewriting of this act does not extend this requirement to all individuals working on zabytki, just metal detectorists.

Ad. Ust.3: *“Osoba poszukująca zabytków jest obowiązana przerwać poszukiwania w miejscu znalezienia [...] przedmiotów lub substancji groźnych dla zdrowia i życia ludzi, w szczególności materiałów wybuchowych [...] i zawiadomić niezwłocznie najbliższą jednostkę Policji”*. Here, again, there is a gap in the legislation. When Polish metal detectorists' house and collections are raided by the Police (for example as a result of actions like „Pandora”), the media report that the police take away all (?) the dugup and corroded WW1 and WW2 militaria, and it seems often destroy these items. This is done on the grounds that they fall under Polish legislation on firearms and weapons and is a very controversial area. Metal detectorists have been fighting this issue for a long while in Poland, so far with little effect. Given that this is the situation, this revision seems an ideal place to (a) define what – in the case of dugup 20th century militaria constitutes “items and substances dangerous to people’s health” and (b) what should happen to the remains of dugup armaments in the possession of the police when they have seized it. Some of the items seized from collections are rare examples and if they are confiscated (and on what grounds should be defined here) some should end up in public collections, especially if they can be shown through the finder’s documentation that they were associated with particular military actions or places of execution.

34) Project Art 1, point 5c (ad Art. 36d)

Art. 36d then returns to the issue of the (same??) MKDN-run “Register of Poszukiwań” (RPsz). Since this does seem to be the same application discussed in Art 36b ust 1-6, it is unclear why there are two separate articles, separated by one that deals with an entirely different topic. This Project needs rewriting.

This part of the application is termed “*system teleinformatycznym rejestr poszukiwań ukrytych lub porzuconych zabytków ruchomych oraz zgłoszonych zabytków*”. The ‘tele’ indicates that the artefacts are to be examined from afar, not by personal inspection by the archaeologist analysing them. The problems this causes should be obvious.

In art.36d ust.2, we read:

“W rejestrze poszukiwań gromadzi się następujące dane:

- 1) imię i nazwisko, numer PESEL, albo numer paszportu lub innego dokumentu potwierdzającego tożsamość w przypadku osoby nieposiadającej numeru PESEL, adres do korespondencji oraz adres poczty elektronicznej osoby zgłaszającej poszukiwania;*
- 2) termin oraz zakres terenowy zgłoszonych poszukiwań;*
- 3) oświadczenie zgłaszającego poszukiwania o posiadaniu zgody właściciela lub posiadacza nieruchomości na prowadzenie poszukiwań;*
- 4) oświadczenie zgłaszającego o byciu osobą pełnoletnią;*
- 5) oświadczenie o zobowiązaniu się do zgłaszania znalezionych przedmiotów, które mogą być zabytkami;*
- 6) oświadczenie zgłaszającego o prawdziwości informacji zawartych w zgłoszeniu;*
- 7) informacje o zgłoszonych zabytkach ruchomych”.*

This is crazy, the pieces of information mentioned in the first six points are already in the (same??) register, having been entered before the search of the area that produced the reported objects.

As noted above, as a minimum, there should also, as stated above, be the full details of the landowner and user(s) of the land.

What is also missing here (Cf Art 36b, ust 3, pkt 6) is “*oświadczenie zgłaszającego o prawdziwości informacji zawartych w ******”. Not only that the information given is true, but

also that all relevant information is included, for example that every item that is possibly a „zabytek” is included. For example by simply inventing a justification to themselves not to report one of the three items found in a 100m², the detectorists would avoid the necessity to stop searching the site until the WKZ has done what the project requires them to do after the report of all three (“I did not think it would be a zabytek, really, how should I know it was a worked flint and not a stone?”).

The Project however does not go into any details about what information about the reported objects should be there. This is poor writing. It is important to define this in detail in either this legislation (or, less satisfactorily, a Decree related to it) in order to provide a benchmark against which the report actually supplied may be measured. What constitutes a “report” that satisfies the new conditions? This needs addressing. What elements need to be described, what measurements supplied, how many photos, from which angles? What state of preservation? (This is important if a museum has to agree to accept it, they need to know what conservation it may need to budget for). It is understood that in some (many?) cases this description, rather than the object in hand, will be used in any WKZ diagnosis of whether the item is a zabytek, so it needs to be adequately detailed and understandable.

Presumably here should also be a place for recording where the objects were physically in the search area, and in relation to each other and other archaeologically significant features of the area (for example pottery or rubble scatter). To what degree of accuracy should the GPS measurements be? What about the “three items in a 100m²” category, how is this reported, recorded and documented in this application? Should this also not be defined by law?

Ad. Art 36d, ust.3: There is a whole long discussion of RODO issues (Art. 36d, ust. 3-6) associated with the MKDN creation of this application for metal detectorists. This is ridiculous in the light of the fact that nowhere else in the existing Ustawa are these issues raised in relationship to any other documentary task conducted by any other cultural institution mentioned (WKZ, the MKDN also has personal data associated with various heritage projects and tasks, lists of specialists and experts - their contact details and qualifications in their applications for permits). The presence of Art 36d ust 3-6 means that to be consistent, the whole Ustawa therefore would seem to need revision to cover these RODO issues in their case too, not just the metal detectorists.

It is not explained how the MKDN „zapewnia poprawność danych przetwarzanych w rejestrze poszukiwań”, if the data are incomplete or contain mistakes, only the person entering (or not entering) the data know of this.

This seems rather odd:

„7. Wojewódzki konserwator zabytków za pośrednictwem właściwego wojewody przedstawia ministrowi właściwemu do spraw kultury i ochrony dziedzictwa narodowego w terminie do dnia 31 marca każdego roku, zbiorczą informację o: 1) zgłoszonych na terenie województwa poszukiwaniach ukrytych lub porzuconych zabytków ruchomych; 2) zabytkach archeologicznych lub innych zabytkach ruchomych znalezionych lub pozyskanych w wyniku poszukiwań, o których mowa w pkt 1”.

What for? This information would be taken from a database administered by the MKDN, and would (as an additional task) have to be supplied by WKZ to MKDN.... who already have these data on their database!! More useful would be the MKDN supplying breakdown of their data to the WKZ for the voivodship archives as a summary of the data held by MKDN. This needs rethinking.

This is equally problematic:

“8. Minister właściwy do spraw kultury i ochrony dziedzictwa narodowego jest obowiązany do udostępniania i upowszechniania informacji przestrzennej o terenach objętych zakazem poszukiwań”, perhaps as some form of GIS system. One presumes this means the categories of sites mentioned in Project’s Art. 36c, ust 1-pkt 1-7 and ust., 2, but also any sites that are revealed by the RPsz and noted there as postulated in the Uzasadnienie (in which case the absence of maps of the boundaries of search areas mentioned above in the discussion of art 36b is significant). It seems (Art 36c, ust 1, pkt 1) that the metal detectorists expect the location of site boundaries to be made available to an accuracy of less than 5m.

Why would this be the task of MKDN and not NID?

Such maps are doubly dangerous because they will give the impression that the blank areas are all places where artefact hunting can be carried out without damaging “anything important”. That of course is not true – and is the reason for the existence of the permit system issued on a case-by-case basis. In addition, there may be other regions of the country

where metal detecting is forbidden (for example some nature conservation areas), and it should not be the obligation of the MKDN or NID to have to place all these on a map. \

Secondly, experience from other countries has conclusively shown, publishing maps showing explicitly the most important archaeological sites across the country is the surest way to getting them all damaged by criminal looters with metal detectors. It is why other databases such as the British PAS and Danish DIME hide exact details of findspots in the public-facing part of the record. Poland, in the creation of a new system would do well to learn from these experiences going back years, rather than ignore them.

35) Project Art 1, points 9 and 10 (ad Art. 109c)

„9) uchyla się art. 109c”;

~~Art. 109c. Kto bez pozwolenia albo wbrew warunkom pozwolenia poszukuje ukrytych lub porzuconych zabytków, w tym przy użyciu wszelkiego rodzaju urządzeń elektronicznych i technicznych oraz sprzętu do nurkowania, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2”.~~

This is an important element of the protection of the heritage, an activity is allowed and conditions are set out so it is carried out in a way that produces certain desired effects having the protection and care of the zabytek in mind. This article produces conditions whereby if the activity is carried out and those conditions are ignored (thus potentially causing irreversible damage to the zabytek in question), there is some legal consequences. That is not provided by the alternative offered by this Project (see above where the actual wording of the proposed Art.35 and 36b removes any such sanctions for illegal activity).

36) Project Art 1, point 10 (ad Art. 109)

The new text of Art. 109d completely negates the provision of art. 109c. In addition, it is formulated in a totally illogical manner, it merely repeats the types of sites where metal detecting is forbidden (i.e., under protection under other legal acts and conventions) – this is just a needless repetition of art. 36c ust. 1. We note also that it is object-centric, it only concerns people who “*poszukuje ukrytych lub porzuconych zabytków ruchomych przy użyciu urządzenia elektronicznego lub technicznego*” rather than disturb them in any other way. This needs to be rectified, the law on protection of monuments must consistently refer to all damage done, irrespective of whether the culprit has a metal detector.

We note again (Art. 109d ust 2) that the lack of a permit for disturbing a zabytek is a punishable offence under the sea but not on land. This is illogical, the law should be internally consistent.

What also is notable is that in the currently existing legislation, metal detecting without a permit has the punishment of „grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2”. The new law written at the behest of metal detectorists replaces the permit by the obligation for metal detectorists to enter the details of a search and its products on a Register, and failure to do so has a much lighter penalty “*podlega karze grzywny*”, and if they do it again, “*sąd może orzec środek karny zakazu poszukiwania ukrytych lub porzuconych zabytków ruchomych przy użyciu urządzenia elektronicznego lub technicznego na okres do 3 lat*”. There is no mention of what is envisaged for the detectorists who have such a ban and nevertheless continue to penetrate deep into the forest but are caught. Such a ban is unenforceable. In Britain, the penalties for illegal metal detecting now typically involve not only fines, or jail and a proceedings of crime hearing, but also confiscation of all metal detecting equipment and sometimes the vehicle used to commit the offence. Jail time can be up to six or eight years (the Leominster case).

That is the end of the modifications suggested by the Project’s authors to the wording of the existing Ustawa. **They are clearly lacking in consistency and weaken the existing legislation, but also involve civil institutions in considerable extra work and expense for the sake of pandering to a minority hobby and its unwillingness to respect the current law and simply apply for a permit as currently mandated.**

37) Art 2 of the project

Project Art. 2. 1 suggests that in the case that the RPsz, online register (application) of ‘poszukiwań’ is not produced [surely, it should say, “and fully tested”] in time (that is before 1st May 2024) „*zgłoszenia poszukiwań dokonywane są za pomocą elektronicznej platformy usług administracji publicznej ePUAP*” (Elektroniczna platforma usług administracji publicznej. Electronic Platform of Public Administration Services). It is not clear in what format this should have (that, surely also has to be established the same way as the design of the application).

No measures are foreseen for what happens if the Ministry does not succeed in setting up and testing a working ePUAP version of this application, thus preventing any legal metal detecting to take place until they do.

38) Art 3 of the project

Project Art. 3. 1 states that any unfinished administrative processes connected with the issue of detecting permits (Ustawa art. 36 ust. 1 pkt 12) and not concluded in a „decyzja ostateczna” should be discontinued. This exposes the historical record to the danger that if a case (or an appeal) was ongoing because of a complicated situation or threat to the heritage posed by the application, that control of protection of that site is lost.

Of course in the second point of this article, the authors took care that the opposite applies to proceedings in the case of a monetary reward to Finders!

39) Art 4 of the project

Project Art. 4. „*Ustawa wchodzi w życie z dniem 1 maja 2024 r*”. There is no justification for this choice of date. Since these changes have not been introduced to the existing legislation at the time of writing (this act has not been voted on in the Sejm, passed by the Senate and signed off by the President) and no budget has been prepared for executing its provisions (creating and testing the application at its core, supplying extra staff to service it), this is unlikely to be a realistic term and should be rejected by lawmakers.

40) This is followed by a 1500-word „Uzasadnienie”.

I do not propose wasting time on this, much of what it says is one-sided and misleading. I am not clear why in the video of the Polski Związek Eksploratorów, they assert that the Generalny Konserwator Zabytków and Departament Ochrony Zabytków are behind this proposal.¹⁰ That gives some food for thought.

One or two points need making:

41) Poland has long had the institution of społeczny opiekun zabytków. The “Uzasadnienie” of this project wants to set metal detectorists (solely??) in this role, but neglects to allow legal provisions for other activities to this end (gravestone recording, industrial archaeology

¹⁰ <https://youtu.be/ufFVDrYSqwg?t=262>; <https://youtu.be/ufFVDrYSqwg?t=268>

recording, making photographic records of old buildings and traditional activities, reenactments etc.).

42) It is claimed (Project Uzasadnienie p. 1) that „*Celem ustawy jest między innymi zwiększenie bezpieczeństwa dziedzictwa kulturowego*” in two ways. One is described as „*wyłączenie z amatorskich poszukiwań miejsc pozostających pod ochroną konserwatorską, a także miejsc pochówków, miejsc kaźni i pomników zagłady*”. – but the Project ignores the fact that these are already not available for legal artefact hunting without a permit under the present laws. This is a smoke and mirrors argument.

The second way is allegedly (Project Uzasadnienie p. 1) „*zwiększenie bezpieczeństwa dziedzictwa kulturowego poprzez [...] włączenie dużych grup społecznych w polski system ochrony dziedzictwa kulturowego i archeologicznego*”. Sadly, this document does not explain how this is envisaged in any details how this will take place, merely digging up at will a few “old things” at various places is not a way that will achieve this.¹¹ The notion of using legislation to ensure preserving archaeological context is missing from this document.

HOW EFFECTIVE WOULD REPLACING THE EXISTING PERMIT SYSTEM WITH A PUBLIC REGISTER BE?

43) As noted above, the fact is that 99+% of metal detectorists in Poland currently detect without following the law (on the grounds that it is a “bad law” and “too much bother”). This raises the question whether they are going to be suddenly converted to using the new system that the Project proposes creating, just because it is available on a smartphone.

¹¹ Ustawa: Art. 4. Ochrona zabytków polega, w szczególności, na podejmowaniu przez organy administracji publicznej działań mających na celu: 1) zapewnienie warunków prawnych, organizacyjnych i finansowych umożliwiających **trwale zachowanie zabytków** oraz ich zagospodarowanie i utrzymanie; 2) **zapobieganie zagrożeniom mogącym spowodować uszczerbek dla wartości zabytków**; 3) **udaremnianie niszczenia i niewłaściwego korzystania z zabytków**; 4) **przeciwdziałanie kradzieży, zaginięciu lub nielegalnemu wywozowi zabytków** za granicę; 5) kontrolę stanu zachowania i przeznaczenia zabytków; 6) uwzględnianie zadań ochronnych w planowaniu i zagospodarowaniu przestrzennym oraz przy kształtowaniu środowiska.

Art. 5. Opieka nad zabytkiem sprawowana przez jego właściciela lub posiadacza polega, w szczególności, na zapewnieniu warunków: 1) **naukowego badania i dokumentowania zabytku**; 2) prowadzenia prac konserwatorskich, restauratorskich i robót budowlanych przy zabytku; 3) **zabezpieczenia i utrzymania zabytku oraz jego otoczenia w jak najlepszym stanie**; 4) korzystania z zabytku **w sposób zapewniający trwale zachowanie jego wartości**; 5) popularyzowania i upowszechniania wiedzy o zabytku oraz jego znaczeniu dla historii i kultury.

Artefact hunting [metal detecting] does none of these things.

44) What is the incentive? Certainly not that if they do not use this application, they might be caught and punished. It is very clear that (however many thousand active detectorists there are), the vast majority of times artefact hunters currently go out illegal metal detecting in Poland (i.e., without a permit), they are not caught, let alone charged or punished. In the past decade or so, the media have reported on only several dozen cases in a total population of many thousands of detectorists.¹² Many metal detectorists gravitate towards areas where their activities cannot easily be observed; forest areas are popular. In other words, for forty years or more Polish metal detectorists have become accustomed to the idea that they can flagrantly totally disregard the law concerning their hobby, and nobody can, or will, do anything about it. It is difficult to see attitudes changing.

45) In particular, given attitudes in the community as a whole (well visible on social media), it may be that this system will be viewed with suspicion by the Polish metal detecting community. If it works as intended, it will gather the names and home addresses, and personal data of a large segment of the detecting community in one database under the control of the very Ministry that is concerned with combating offences against the heritage. In a time when government surveillance is very much in the news in Poland (Pegasus), it may be felt by hobbyists that the gathering of this information could be used in future for sinister purposes.

46) Certainly, in any future raid on a metal detectorist's home, the records of the RPsz may be used by police to check if all the artefacts stored there have been properly recorded on the RPsz. Absence of records may in certain cases (for example, anyone who took up metal detecting only after the introduction of the new legislation) be used as a basis for charges.

47) It seems obvious to me that one approach to determining whether and how such a scheme would work in Poland would be to set up and finance a scheme to create and test this proposed application within one or two voivodships and when its effectiveness and results (and costs) are assessed, only then think of a national application. This is the approach adopted in 1996 in Great Britain, when the success of a scheme set up in just six regions led a

¹² Most of those were detected not by being found illegally operating in the field, but as a result of attempted Internet sales of portable antiquities.

year later to the creation of the national Portable Antiquities Scheme. It seems by such an approach – and again, building on the experience of others, Poland could save a lot of money.

48) Another area that needs exploring is whether (if the root of the problem is the current mode of issuing of metal detecting permits is the cause of concern because it is in some way regarded as inefficient), this is not the issue that needs changing before the whole system is scrapped. It needs to be determined whether it is not cheaper and more conducive to preserving the fabric of the historical landscape to retain the permit system but find a way by which the procedure itself was overhauled and resourced differently in accordance with needs (including the ability for applicants to submit documentation digitally). For example, would not the employment of additional staff to process and monitor a manageable number of detecting permit applications be much more cost effective than employing additional staff to process individually in a timely manner the thousands of extra pieces of information and tasks arriving in the office of the WKZ as a result of this new proposal? Again, the lack of reference to any kind of cost-benefit study in this proposal is striking and troubling.

49) A final question that I think needs to be addressed to the authors of this project is this: What is the actual function of this do-it-yourself Register of Searches (RPsZ) in the current system of the ochronie zabytków i opiece nad zabytkami in Poland? How does detectorist Jan Kopacz or Iwo Łopata announcing online out of the blue, "I'm going to dig for collectable items on this site XYZ, using whatever tools I like, however I want, and taking whatever I fancy" going to actually protect the potential site precisely from random and uncontrolled digging of this type? That is not explained in the document under consideration, and it is difficult to see what the authors had in mind. Is the concept of "preservation" and "caring for" historical sites and monuments embodied in this proposed new text the same as, or different from, that embodied by the other parts of the same legislative act? It seems to me that it is totally at odds with them.