

Questionnaire concerning the Treatment of Foreign Law — [POLAND]

Identification

Name of the Member State: **POLAND**

For follow-up purposes:

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Part I – General Questions

Please answer the following general questions with regard to the European Convention of 7 June 1968 on Information on Foreign Law (the “London Convention”), the Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law (the “Montevideo Convention”), the Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (the “Minsk Convention”) and any bilateral treaty on proof of and / or information on foreign law (“bilateral treaty”).

In this Questionnaire, the term “foreign law” encompasses both foreign internal (substantive) law and foreign private international law.

1) Is your State Party to:

- a) The London Convention YES NO
- b) The Montevideo Convention YES NO
- c) The Minsk Convention YES NO
- d) Any bilateral treaty YES NO

(Please indicate the number of bilateral treaties concluded: 30)

2) If not, does your State intend to become in the near future a Party to:

- a) The London Convention YES NO
- b) The Montevideo Convention YES NO
- c) The Minsk Convention YES NO
- d) or conclude any bilateral treaty YES NO

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

- a) The London Convention No of requests: 5 No of weeks: 4
- b) The Montevideo Convention No of requests: No of weeks:
- c) The Minsk Convention No of requests: No of weeks:
- d) Any bilateral treaty No of requests: 5 No of weeks: 4

4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

- a) The London Convention No of requests: 7 No of weeks: ?
- b) The Montevideo Convention No of requests: No of weeks:
- c) The Minsk Convention No of requests: No of weeks:
- d) Any bilateral treaty No of requests: No of weeks:

5) Do you foresee an increase in the number of requests referred to in:

- a) Question No 3 (incoming requests)
 YES
 NO
- b) Question No 4 (outgoing requests)?
 YES
 NO

6) If so, in which areas of the law? Please specify for each of the sub-questions:

a) **property law, inheritance law, family law, commercial law**

b) **property law, inheritance law, family law, commercial law**

7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:

The execution of the requests (terms and quality) depends on the country requested.

8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:

- lack of obligatory terms for execution of the requests

Part II – Free public access to information on the content of the law

9) Does your State and / or Regional Economic Integration Organisation (“REIO”) provide online access to its legislation¹² through an official (governmental) website?

YES. Please specify whether this information is also provided in a non-official language and, if so, in which language(s):

Polish Parliament’s website – legislation only in Polish:

<http://isip.sejm.gov.pl/prawo/index.html>

NO. Does another, non-governmental body or organisation provide this information online (please specify which organisation or body)?

Wolter Kluwer Polska Publishing

<http://www.abc.com.pl/>

10) Does your State and / or REIO respond to written or oral requests for information on the content and / or application of its law?

YES. Please specify for which areas of the law:

The governmental offices can respond the requests concerning almost all areas of the Polish law.

NO. Does another, non-governmental body or organisation provide this service (please specify which organisation or body)?

university law clinics

11) Are the services in Question No 10 available to people in other States?

YES. Is this service offered in any non-official language and, if so, in which?

University law clinics provide the services also in non-official languages (usually English, French, Germany, Russian) but the governmental offices respond only in Polish.

NO

12) If yes, do people in other States have access to this service at the same costs as residents?

YES

NO

13) Do you foresee the proportion of people in other States using these services

increase in the future?

YES

NO

Please specify:

Part III – Access to information on the content of foreign law at the litigation stage

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year. Percentage: ____% (year: ____). Likely to increase: YES NO
no such statistics

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

Marriage and nullity of marriage

Divorce and legal separations

Parental responsibility

Parent-child relationship

International child protection including child abduction and child adoption

Protection of adults

Maintenance (child support and other forms of family support)

Traffic accidents

Products liability

Other types of tort

Consumer protection

Commercial contracts

Sale of goods

Securities transactions

Property

Inheritance

Bankruptcy

Choice of court agreements

Other, please specify:

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

United States, Canada, Australia,

Great Britain, Germany, Italy, France

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):

a) ex officio without the assistance of an expert¹⁶ (e.g. law firm, specialised institute,¹⁷ university, government (i.e. specialised department or embassy), etc.)

b) ex officio with the assistance of an expert

c) by submitting, ex officio, a request for information under a bilateral or multilateral treaty (where applicable)

- d) as the result of an (express) agreement of all parties, without the assistance of an expert
- e) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- f) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g) by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h) at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k) by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l) by any other method (please specify):

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- Internet (official legislation, case-law and legal publications websites)
- Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))
- Local or personal library (local electronic databases)
- Local or personal library (printed legislation, case-law and legal publications)
- Other:

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein:

When the judicial authority requests the Ministry of Justice or an expert for the information about the foreign law, the Ministry or the expert will take the responsibility for the verification of the source of information.

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty. Description:

The judicial authorities usually order translation of the information provided by the Ministry of Justice or by an expert in non-official language.

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

- YES
- NO

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

YES

NO

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

a) Local private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

b) Foreign private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

c) Local specialised institute

YES

NO

d) Foreign specialised institute

YES

NO

e) Local government (including embassies abroad)

YES

NO

f) Foreign government (including embassy in your State)

YES

NO

g) Member of the local judicial authority

YES

NO

h) Member of a foreign judicial authority

YES

NO

i) Other(s):

j) Which of the above is most often used?

local government including embassies abroad

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

The requesting judicial authority

The party that raised the application of foreign law

The party(ies) against whom costs will be awarded

All parties

Other:

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

YES

NO, please explain:

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (e.g., parties with too little or no resources to afford an expert); the reasons why questions are asked (e.g., no material available in a language understood by the judicial authority seized of the matter); etc.

Description:

The type of question asked: request for the foreign law provisions

- who: the judicial authorities
- the reasons: no material available at all or need of very detailed information

27) Please indicate whether judicial authorities in your State can transmit the request for information directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

YES

NO, please explain:

The judicial authorities can transmit the request only through the transmitting agency (Ministry of Justice).

28) If so, can the request be transmitted by regular non-secured e-mail?

YES

NO, please explain: