# NATIONAL REPORT FOR POLAND ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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# Questionnaire for national reports

# POLAND

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## On electronic evidence and videoconferencing

This questionnaire addresses practical and theoretical aspects regarding the taking of (electronic) evidence and videoconferencing in (cross-border) civil litigation. Each partner should provide substantive answers for their respective Member State (or additional Member State, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation (EU) 2020/1783 ("Recast Taking of Evidence Regulation"). The latter questions address the interplay between national law and the EU regime on cross-border enforcement in civil and commercial matters.

For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, to:

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783),
- Impact assessment of the Taking of Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285),
- Other *travaux preparatoires* of the Recast Taking of Evidence Regulation (see e.g. https://www.europeansources.info/record/proposal-for-a-regulation-amending-regulation-ec-no-1206-2001-on-cooperation-between-the-courts-of-the-member-states-in-the-taking-of-evidence-in-civil-or-commercial-matters/)
- Council Guide on videoconferencing in Cross-border proceedings (https://www.consilium.europa.eu/en/documents-publications/publications/guide-videoconferencing-cross-border-proceedings/)
- The Access to Civil Justice portal hosted by the University of Maribor, Faculty of Law together with the results of our previous projects, especially our previous project

Dimensions of Evidence in European Civil Procedure (https://www.pf.um.si/en/acj/projects/pr01/).

The structure of each individual report should follow the list of questions enumerated below, to the utmost extent possible. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. "answer to this question is already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside. If so, indicate expressly the lack of relevance and consider explaining the reason(s).

Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data. **Where the answer would be "no" or "not applicable", because something is not regulated in your national legal order, please specify how you think it should be regulated**.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 31 March 2023.

In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si ; or to assist. Denis Baghrizabehi: denis.baghrizabehi@um.si.

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## 1. General aspects regarding electronic evidence

*(Note that the following definitions apply:*

- *Authentic evidence: the content of evidence was indeed created or drawn by a person or entity declared to be its creator or author; authenticity refers to the genuine source.*
- *Reliable evidence: the content of evidence is true, accurate and non-compromised; reliability refers to the truth and accuracy of content.)*

### 1.1. Does the law of your Member State provide any definition of electronic evidence?

*(If applicable, cite the definition of electronic evidence.)*

The Polish procedural law does not provide for a legal definition of electronic evidence (*dowód elektroniczny*).

### 1.2. Does the law of your Member State define of what is considered as paper document?

*(If yes, please provide the definition. If not, please indicate the relevant case law.)*

A legal definition of document (*dokument*) was included in the Polish Civil Code,[1] hereinafter: Civil Code, by way of the amendment to the Civil Code, the Code of Civil Procedure and other acts of 10 July 2015.[2] As laid down in Art. $77^3$ Civil Code, a document shall be any information carrier that allows to get acquainted with its content.

This broad definition is of a framework nature, with a systemic scope. With regard to civil proceedings, the notion set out in Art. $77^3$ Civil Code provides a basis on which to identify the object that can be admitted as evidence from documents. Additionally, the abovementioned definition, in conjunction with the relevant provisions of the Polish Code of Civil Procedure,[3] hereinafter Code of Civil Procedure, determines the mode of taking of evidence from a document.[4]

The legislator has not specified what an information carrier is. It has only been stipulated that this carrier shall enable the perusal of the content of the information. The carrier is therefore technologically neutral. It can be any tool that will achieve the goal of preserving information. The nature of the information carrier is irrelevant. It means that the definition covers both traditional media (e.g. computer printout, hard disk or flash memory) and those that are only gaining popularity (such as cloud computing). Hence, it is not of importance whether the content of the information is written on paper, stored in electronic format or as an audio, visual or audiovisual recording. In this way, the above definition has broken with the common

[1] *Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny* (Journal of Laws of 2022, item 1360, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640160093/U/D19640093Lj.pdf>, visited 17 February 2023.

[2] *Ustawa z dnia 10 lipca 2015 r. o zmianie ustawy – Kodeks cywilny, ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw* (Journal of Laws item 1311), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001311/T/D20151311L.pdf>, visited 15 February 2023.

[3] *Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego* (Journal of Laws of 2021, item 1805, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640430296/U/D19640296Lj.pdf>, visited 15 February 2023.

[4] K. Górska, 'Pojęcie dokumentu w prawie cywilnym – głos w dyskusji nad istotą regulacji art. $77^3$ k.c.' [The Concept of Document in Civil Law: Contribution to the Discussion on the Essence of the Regulation of Art. 773 Civil Code], 5 Przegląd Ustawodawstwa Gospodarczego (2021) p. 55 at p. 55 – 57. See further K. Knoppek, Dokument w procesie cywilnym [Document in Civil Proceedings] (Dr Maciej Roman Bombicki – Polski Dom Wydawniczy „Ławica"1993).

understanding of a document recorded on paper. The category of documents includes also images, sounds, emails, SMS messages, scans, faxes or computer files.[5]

The definition of document under the Civil Code is not based on the criterion of the identification of the issuer, and covers both documents whose issuer can be identified (by means of a signature or other identifying mark) and those whose issuers' identification is not possible. As a consequence, a signature is not a necessary element of a document.[6]

**1.3. How is electronic evidence categorised among means of evidence within the law of your Member State?**

*(In answer to this question, please explain whether electronic evidence is categorised among traditional means of evidence or if electronic evidence forms a new means of evidence. Please cite relevant provisions (esp. if electronic evidence forms a new means of evidence). If electronic evidence is categorised among traditional means of evidence, please explain the reason for this categorisation and elaborate to which category of traditional evidence electronic evidence is assigned (for example, elaborate when electronic evidence is considered a document and when it is an object of inspection). Should electronic evidence be categorised among traditional means of evidence, please also comment on possible problems regarding an analogous application of traditional evidence rules.)*

Under the Code of Civil Procedure, an open catalogue of means of evidence has been established, including, e.g., evidence from documents, witness testimony, expert opinion, hearing of parties, or so-called audiovisual evidence, as specified in Art. $243^1$ – 308 Code of Civil Procedure. As follows directly from art. 309 Code of Civil Procedure, methods of taking evidence other than those referred to in the preceding articles shall each time be determined by the court having regard to the nature of evidence; the provisions regarding evidence apply *mutatis mutandis*. Therefore, any evidence available at a given stage of development of technology and science shall be admissible for the purpose of civil proceedings, even if it does not fall within any specific category of evidence.[7]

The impact of the present-day development of digital technologies entails the expansion of the traditionally understood catalogue of evidence. This is manifested by the way the status of so-called audiovisual means of evidence has changed as a result of a recent amendment to Art. 308 Code of Civil Procedure. Until 8 September 2016 this category of evidence included film, television, photocopies, photographs, plans, drawings, audio tapes or CDs and other instruments fixing or transmitting images or sounds. The content of Art. 308 Code of Civil Procedure was

[5] M. Załucki, [Commentary on Art. $77^3$ Civil Code], in M. Załucki (ed.), Kodeks cywilny. Komentarz [Civil Code: Commentary] (Wydawnictwo C.H. Beck 2023), paragraphs 1, 3; A. Czarnecka, A. Kobylańska, M. Lewoszewski and R. Brodzik, 'A General Introduction to E-discovery and Information Governance in Poland' (2021), <www.lexology.com/library/detail.aspx?g=1c5c9c88-7dcetemplin-4ae9-8aa4-c943f2690215>, visited 17 February 2023.

[6] E. Rudkowska-Ząbczyk, [Commentary on Art. $243^1$ Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz [Code of Civil Procedure: Commentary] (Legalis 2023), paragraphs 6 – 8; Czarnecka, Kobylańska, Lewoszewski and Brodzik 2021, supra n. 5.

[7] See: E. Rudkowska-Ząbczyk, [Commentary on Art. 309 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 1; K. Flaga-Gieruszyńska and A. Klich, 'The Status of Electronic Means of Evidence in Polish Civil Procedural Law', in J. Gołaczyński *et al.* (eds.), Legal Innovation in Polish Law (Wydawnictwo C.H. Beck 2019) p. 95 at 96 – 97; A. Klich, 'Admissibility of the Use of Electronic Means of Evidence Obtained Unlawfully in a Civil Proceeding', 113 Vilnius University Law Jurnal TEISĖ (2019) p. 205 at p. 207; B. Głąbiński and M. Zych, 'Electronic Evidence Still Poses Challenges', Wardyński & Partners' Yearbook (2021) p. 31 at p. 31 – 32. See also 'Taking of evidence. Poland', <e-justice.europa.eu/76/EN/taking_of_evidence?POLAND&member=1>, visited 17 February 2023.

redrafted as part of the amendment of 2015 referred to in point 1.2. It is noteworthy that alongside laying down the legal definition of document, the abovementioned amendment resulted in introducing to the Civil Code provisions relating to new forms of juridical acts – the document form and the electronic form[8]. Moreover, when it comes to the Code of Civil Procedure, the new Art. 243[1] was added, providing that the provisions of the subchapter regarding evidence from documents shall apply to documents containing text, which make it possible to identify their issuers.[9] According to the current wording of Art. 308 Code of Civil Procedure, evidence from documents other than those referred to in Art. 243[1], in particular containing an image or sound recording or an image and sound recording, shall be taken by the court in accordance with the provisions regarding evidence from inspection and documents.

Thus, based on the criterion of the manner of expressing the information, a distinction between two categories of documents has been made under the Code of Civil Procedure. The first type is 'text document' (also called *sensu stricto* document), which covers all the documents containing text, whether in a traditional (paper) or an electronic format, provided that it is possible to identify their issuer. The second one encompasses 'other documents' (also called *sensu largo* documents), including 'text documents' as well as documents containing an image or sound recording or an image and sound recording, where there is no possibility to identify their issuer.[10]

On the basis of the foregoing, generally, depending on its nature, electronic evidence may be classified either

1) as a document, incluing:

   – a document containing text, whose issuer is identifiable (referred to in Art. 243[1] Code of Civil Procedure) and

   – a document whose issuer cannot be identified (referred to in Art. 308 Code of Civil Procedure,

or

2) in the miscellaneous category of "other means of evidence" (*inne środki dowodowe*) within the meaning of Art. 309 Code of Civil Procedure.[11]

[8] Pursuant to Art. 77[2] Civil Code, in order to comply with the document form (*forma dokumentowa*) of a juridical act, it shall suffice that the declaration of intent be made in the document form, in a manner enabling identification of the person making such declaration. In accordance with Art. 78[1] Civil Code, making a declaration of intent by electronic means and providing it with a qualified electronic signature shall be sufficient to comply with an electronic form (*forma elektroniczna*) requirement for a juridical act (§ 1); a declaration of intent made by electronic means shall be equal to a declaration of intent made in the written form (§ 2).

[9] Documents containing text shall be understood as documents drawn up using alphabetic characters and language rules. See Rudkowska-Ząbczyk 2023, supra n. 6, paragraphs 8 – 12.

[10] M. Malczyk, '„Dokumenty tekstowe" oraz „inne dokumenty" w kodeksie postępowania cywilnego – zagadnienia wybrane' ["Text Documents" and "Other Documents" in the Code of Civil Procedure: Selected Issues], in I. Gil (ed.), Postępowanie cywilne w dobie przemian [Civil Proceedings in the Times of Transformation] (Wolters Kluwer Polska 2017) p. 85 at p. 88 – 97; S. Kotecka, 'Zmiany w postępowaniu cywilnym dotyczące dokumentów elektronicznych' [Changes in Civil Proceedings Regarding Electronic Documents], Prawo Mediów Elektronicznych (special issue, 2011) p. 17 at p. 17.

[11] Głąbiński and Zych 2021, supra n. 7, p. 32; W. Bijas, 'Dowody z Facebooka w procesie cywilnym' Evidence from Facebook in Civil Proceedings], 2 Prawo Mediów Elektronicznych (2017) p. 25 at p. 28 – 29. See also K. Flaga-Gieruszyńska, 'Strona internetowa jako środek dowodowy w procesie cywilnym – wybrane zagadnienia' [Website as a Means of Evidence in Civil Proceedings: Selected Issues], 2 Wrocławskie Studia Sądowe (2016) p. 12 at p. 15 – 19. Further on the classification of electronic evidence, see Flaga-Gieruszyńska and Klich 2019, supra n. 7, p. 96 – 99; M. Nowak, 'Rodzaje dowodów elektronicznych w postępowaniu cywilnym' [Types of Electronic

**1.4. Does the law of your Member State explicitly regulate that evidence or data in electronic form has evidentiary value?**

*(If yes, please cite the provision regulating the evidentiary value of electronic evidence (e.g., "electronic data shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form"). Please also explain if there is any presumption regarding the evidentiary value, admissibility, reliability or authenticity of electronic evidence.)*

According to the principle of free assessment of evidence (*zasada swobodnej oceny dowodów*), expressed in art. 233 § 1 Code of Civil Procedure, the court shall assess the credibility and evidentiary value of evidence at its own discretion, based on comprehensive consideration of the available material. Furthermore, the principle of equality of evidence (*zasada równorzędności dowodów*) applies in civil proceedings, which means that there is no hierarchy of evidence (except for some special preferences granted to evidence from documents which is manifested in a number of legal presumptions – see point 1.6). Therefore, all the evidence, including electronic ones, shall be subject to the court assessment[12].

**1.5. Does the law of your Member State explicitly differentiate between electronic and physical private documents as evidence?**

*(Please elaborate on whether the law of your Member State regulates electronic documents and if an electronic document has the same legal effect as a physical document. Please emphasise whether there are any provisions differentiating between electronic and physical documents. If applicable, please cite the provisions regulating electronic documents.)*

Under the Code of Civil Procedure, documents are divided according to the criteria of the issuer, the subject-matter of cases in which documents have been issued and their evidentiary value, into two categories: authentic documents (official documents – *dokumenty urzędowe*) and private documents (*dokumenty prywatne*).[13]

Pursuant to Art. 244 Code of Civil Procedure, authentic documents drawn up in the form prescribed by relevant public authorities and other state authorities constitute proof of the facts officially stated therein (§ 1). The provisions of § 1 apply *mutatis mutandis* to authentic documents issued by authorities other than those provided for in § 1 within the scope of public administration tasks delegated to them by the law (§ 2).

As follows from art. 245 Code of Civil Procedure, a private document made in the written form or in the electronic form evidences the fact that its signatory made a statement contained therein. On this basis, any written or electronic document which does not comply with the requirements pertaining to authentic documents shall be considered a private document. This is also true for documents issued by the entities indicated in Art. 244 Code of Civil Procedure, whose subject-matter does not fall within the scope of public activity. A signature is an inherent feature of private documents serving as a means of evidence. With regard to the written form, according to Art. 78

Evidence in Civil Proceedings], 3 Polski Proces Cywilny (2022) p. 539 at p. 540 – 554; B. Oręziak and M. Świerczyński, 'Electronic Evidence in the Light of the Council of Europe's New Guidelines', 29 Comparative Law Review (2019) p. 257 at p. 262 – 264.

[12] E. Rudkowska-Ząbczyk, [Commentary on Art. 233 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraphs 1 – 3, 10 – 11; M. Rejdak, [Commentary on Art. 233 Code of Civil Procedure], in A. Marciniak (ed.), Kodeks postępowania cywilnego, vol. 2: Komentarz do art. $205^1$–$424^{12}$ [Code of Civil Procedure, vol. 2: Commentary on Art. $205^1$–$424^{12}$] (Wydawnictwo C.H. Beck 2019), paragraph 1.

[13] E. Rudkowska-Ząbczyk, [Commentary on Art. 244 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 1.

§ 1 Civil Code, to comply with the requirement thereof for a juridical act, it is sufficient to append one's handwritten signature to the document containing the declaration of intent. For the conclusion of a contract it shall be sufficient to exchange the documents containing declarations of intent, each of them being signed by one of the parties, or documents each of which contains a declaration of intent of one party and is signed by such party. As far as the electronic form is concerned, in turn, it shall be sufficient to make a declaration of intent electronically and provide it with a qualified electronic signature. Declarations of intent made in the electronic form shall be equivalent to declarations of intent made in writing (Art. $78^1$ Civil Code).[14]

**1.6. Does the law of your Member State recognise the special evidentiary value of public documents, and does this also apply to electronic public documents?**
*(If yes, please cite the provision regulating public documents in electronic form. Please emphasise whether any provisions differentiate between electronic and physical public documents.)*

Authentic documents benefit from legal presumptions of authenticity and of veracity, which are of *erga omnes* effect. Accordingly, an official document is presumed to originate from a person or a body identified as its issuer, i.e., not to be forged (authenticity), and it is presumed to present the truth (truthfulness of the document's content).[15] Authentic documents may be issued in electronic format, provided that such format is regulated in specific provisions. That would be a case of evidence from electronic document. Thus, traditional and electronic authentic documents shall have equal evidentiary value in civil proceedings.[16]

As with authentic documents, the presumption of authenticity applies to private documents. Moreover, it is presumed that the issuer who signed a private document made a statement contained therein. At the same time, private documents do not benefit from the presumption of truthfulness of the statements contained therein.[17]

Furthermore, special evidentiary value of documents finds its expression in Art. 246 and 247 Code of Civil Procedure. Pursuant to the former provision, if the law or an agreement between the parties requires that a juridical act be made in the written form, witness testimony or

[14] E. Rudkowska-Ząbczyk, [Commentary on Art. 245 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraphs 1 – 20.
[15] See e.g. Rudkowska-Ząbczyk 2023, supra n. 14, paragraphs 14 – 33; K. Knoppek, [Commentary on Art. 244 Code of Civil Procedure], in T. Wiśniewski (ed.), Kodeks postępowawnia cywilnego. Komentarz, vol. 1: Artykuły 1–366 [Code of Civil Procedure: Commentary, vol. 1: Articles 1–366] (Wolters Kluwer 2021), paragraphs 5 – 6, 26; B. Czerwińska, 'Dokumenty urzędowe i dokumenty prywatne jako środki dowodowe w postępowaniu cywilnym' [Authentic and Private Documents as Means of Evidence in Civil Proceedings], 11 Acta Erasmiana (2016) p. 11 at p. 14 – 17.
[16] Rudkowska-Ząbczyk 2023, supra n. 14, paragraph 12.
[17] Rudkowska-Ząbczyk 2023, supra n. 14, paragraphs 21 – 30. For more on evidence from electronic documents, see e.g. M. Rusiński, 'Dowód z dokumentu elektronicznego i wydruku w procesie cywilnym w świetle znowelizowanych przepisów kodeksu postępowania cywilnego' [Evidence from an Electronic Document and a Printout in Civil Proceedings in the Light of the Amended Provisions of the Code of Civil Procedure], 2 Przegląd Sądowy (2017) p. 61 at p. 69 – 75; F. Zedler, 'Dowód z dokumentu elektronicznego w postępowaniu cywilnym' [Evidence from Electronic Document in Civil Proceedings], in T. Ereciński, J. Gudowski and M. Pazdan (eds.), Ius est a Iustitia Appellatum. Księga Jubileuszowa dedykowana Profesorowi Tadeuszowi Wiśniewskiemu [Ius est a Iustitia Appellatum: Jubilee Book Dedicated to Professor Tadeusz Wiśniewski] (Wolters Kluwer Polska 2017), p. 562; Nowak 2022, supra n. 11, p. 543 – 551; B. Kaczmarek-Templin, Dowód z dokumentu elektronicznego w procesie cywilnym [Evidence from Electronic Document in Civil Proceedings] (Wydawnictwo C.H. Beck 2012); D. Szostek, Nowe ujęcie dokumentu w polskim prawie prywatnym ze szczególnym uwzględnieniem dokumentu w postaci elektronicznej [A New Notion of Document in Polish Private Law with Particular Consideration of a Document in Electronic Form] (Wydawnictwo C.H. Beck 2012), p. 157 – 189.

examination of the parties in a case between the parties to such ajuridcal act, with respect to the performance of such juridical act shall be admissible if the document evidencing the juridical act has been lost, destroyed or misappropriated by a third party, and provided that the written form was stipulated for evidence purposes only, also in the instances provided for by the Civil Code. As laid down in the latter provision, evidence from witness testimony or examination of the parties against or beyond the body of a document evidencing a juridical act may only be taken with respect to the parties to such juridical act if this does not seek to circumvent the provisions which require that a juridical act be made in the written form in order to be valid, and where the court considers this necessary, having regard to the specific facts of the case.

**1.7. Describe the legal effects of changing the form of electronic evidence to physical.**
*(In answer to this question, please explain whether it is admissible to change electronic evidence (e.g., websites, social networks, or e-mail) to a physical form and, what legal effect such change has. Please also specify, whether electronic evidence is treated as a copy and whether printouts are necessary when submitting particular types of electronic evidence (e.g., websites, social networks or e-mail). If applicable, please cite the provisions relating to changing the form of electronic evidence.)*

Given the open catalogue of means of evidence and the principle of free assessment of evidence enshrined in the Code of Civil Procedure, electronic evidence converted to physical evidence shall be admissible, likewise any other evidence in civil proceedings. For instance, it has been recognised in the case-law (preceding the abovementioned amendment of 2015) that computer printouts, such as e-mail printouts, shall be considered "other means of evidence" within the meaning of Art. 309 Code of Civil Procedure.[18] In the light of the foregoing in points 1.2 and 1.3, in the present state of the law, a computer printout falls within the scope of the definition of document set out in art. $77^3$ Civil Code, hence computer printouts should be qualified as "other means of evidence" provided that they do not contain text and their issuer cannot be identified. It is also highlighted in the legal scholarship that the use of computer printouts as evidence poses significant risks because they may be neither dated nor signed, in contrast to electronic originals. Such circumstances shall be taken into account in the judicial practice of the courts.[19] In this context, among the main problems inherent to taking of electronic evidence are resistance to unauthorised modification (e.g. alteration of the content of electronic document), and elimination of the distortion resulting from the still existing technical limitations caused by the imperfection of the way of preserving information in an electronic form. While criminal proceedings have developed and applied appropriate techniques of securing and presenting such means of evidence in the courtroom, the civil procedure is only at the beginning of this road.[20]

**1.8. Describe the legal effects of changing the form of physical evidence to electronic.**
*(In answer to this question, please explain whether it is admissible to change evidence in the physical form to electronic and what legal effect such a change has. If applicable, please cite the provisions relating to changing the form of physical evidence.)*

[18] Judgment of the Supreme Court of 5 November 2008 r., I CSK 138/08. See also e.g. judgments of the Courts of Appeal: in Łódź of 13 November 2014, I ACa 984/14; in Katowice of 4 August 2014 r., I ACa 184/14.
[19] See e.g. B. Kaczmarek-Templin, 'Dowód z dokumentu' [Evidence from Document], in Ł. Błaszczak (ed.), Dowody w postępowaniu cywilnym [Evidence in Civil Proceedings] (Wydawnictwo C.H. Beck 2021) p. 1061 at p. 1078 ff.; Kaczmarek-Templin 2012, supra n. 17, p. 280 – 289; Flaga-Gieruszyńska 2016, supra n. 11, p. 20 – 25; Bijas 2017, supra n. 11, p. 27 – 28.
[20] Flaga-Gieruszyńska and Klich 2019, supra n. 7, p. 99 – 100.

As indicated in point 1.2, the legal definition of document encompasses both documents drawn up electronically and those drawn up in paper format and then digitised, including scans and photocopies of traditional documents.[21] Paper documents converted to electronic ones shall therefore be admitted under the same rulses as other evidence.

**1.9. Explain the rules and what is considered to be an original and what a copy (the concept of original).**

*(If applicable, please cite relevant provisions.)*

A copy is defined as a document containing information about the existence of another document with a specific content. As a secondary document, a copy is opposed to the concept of the original, of which it is a faithful representation.[22] Considering the legal status of a copy of a document under the provisions now in force, it is noteworthy that the broad definition provided for in Art. $77^3$ Civil Code does not differentiate among particular types of documents, and as a consequence it encompasses copies. A copy shall be identified as a document under procedural law as well, which has been confirmed by the judicature.[23] However, specific provisions of the Code of Civil Procedure do not necessarily apply to both original documents and their copies. This is because the application of the provisions on documents as means of evidence is restricted to documents containing text, which make possible the identification of their issuers (Art. $243^1$ Code of Civil Procedure). It is important to make a distinction between the issuer of an original document and the issuer of a copy thereof. The latter may be, e.g., a person who certifies the conformity of a copy with the original. In the case of an uncertified copy, Art. 308 Code of Civil Procedure shall apply. As quoted above, according to that provision, evidence from documents other than those referred to in Art. $243^1$, in particular containing an image or sound recording or an image and sound recording, shall be taken by the court in accordance with the provisions regarding evidence from inspection and documents.[24]

**1.10. Describe the legal effects of a copy of electronic evidence within the law of your Member State.**

*(In answer to this question, please explain when electronic evidence is considered a copy. Please also elaborate on the legal effects of a copy of electronic evidence, and, if applicable, cite the relevant provisions. Should the law of your Member State not regulate copies of electronic evidence, please explain how the court perceives a copy of electronic evidence.)*

It is argued in the literature that, as far as the distinction between the original and the copy is concerned, there is a significant difference between electronic documents and traditional ones. Due to its intangible form, an electronic document can be reproduced many times, sent remotely to an unlimited number of addressees, and saved on many carriers without losing its originality. Thereofe, in technical terms, the notion of "a copy of an electronic document" does not exist because the file that is copied contains exactly the same data as the "original" file.[25]

Electronic documents issued as a result of digitisation are digital equivalents of paper documents. In principle, such document is converted to a form different than the one of the source object, i.e.

[21] Rusiński 2017, supra n. 17, p. 65 – 75.

[22] K. Górska, Zachowanie zwykłej formy pisemnej czynności prawnych [Compliance with the Ordinary Written Form of Juridical Acts] (Wydawnictwo C.H. Beck 2007), p. 94 ff.

[23] Decree of the Supreme Court of 12 February 2019, II PK 12/18.

[24] J. Kaspryszyn, 'Znaczenie procesowe kopii dokumentu w postępowaniu cywilnym' [The Significance of a Copy of a Document in Civil Proceedings], 2 Kwartalnik Prawo Zamówień Publicznych (2019), p. 29 at p. 41 – 44; Górska 2021, supra n. 4, p. 59.

[25] Kaczmarek-Templin 2012, supra n. 17, p. 36 – 37; Szostek 2012, supra n. 17, p. 132 ff.

to the form of an electronic file. Once it is scanned, a paper document takes the form of an image-text file, which, however, does not mean that it loses its nature of a document (specifically, a secondary document). Importantly, it is possible to automatically improve the quality of scanned images by correcting not fully recognisable characters. Likewise, subsequent copies of an electronic document may consist in creating more advanced binary copies. Paradoxically, in such case, a secondary document can appear to be more useful for the court to decide the case than the original. At the same time, it should be emphasised that possible discrepancies between primary and secondary documents need to be thoroughly assessed in the context of all the evidence collected in an individual case. It also has been pointed out in the doctrine that the identity of an electronic document is determined by the unity of the information and the carrier, which means that the same (or rather identical) file which has been copied on different carriers (media) is not one, but many documents.[26]

Furthermore, it is observed that taking of evidence from a file recorded on a specific data carrier does not preclude the court from taking evidence from a file with the same name and the same attributes, which is recorded on another data carrier. For example, this would be the case of proving the difference in the content or credibility of those files, both treated as one and the same document. A file is meant here as a data recording unit, which is not an information carrier, but only a method of formatting and cataloging information.[27]

## 2. Authenticity, reliability and unlawfully obtained electronic evidence

### 2.1. Are there any particular procedure, guidelines, mechanism or protocol on how the parties shall obtain electronic evidence in order to preserve their authenticity and reliability before submitting them to the court?

*(If applicable, also comment on possible effects regarding the admissibility of electronic evidence if they are not obtained in accordance with such procedures or technical guidelines.)*

According to article 308 of the Code of Civil Procedure evidence from documents other than those listed in article 243[1], in particular containing a record of image, sound or image and sound (among others electronic evidence), the court shall carry out, applying the provisions of the evidence of visual inspection and evidence of documents, respectively. The indicated provision and the provision of article 309 of the Code of Civil Procedure, according to which the manner of taking evidence by means of evidence other than those mentioned in the preceding articles (documents, expert witness, witness) will be determined by the court in accordance with their nature, applying the provisions on evidence accordingly. In Polish civil procedure, apart from the general regulations described above, there is no procedure, guidelines, mechanism or protocol regarding electronic evidence. All evidence, regardless of its nature, has an equivalent value and is subject to assessment by the court in accordance with the principle of free assessment of evidence (Article 233 of the Code of Civil Procedure).

[26] Kaspryszyn 2019, supra n. 24, p. 40 – 41.

[27] J. Widło, 'Dowód z dokumentu nieobejmującego podpisu wystawcy (w świetle nowelizacji Kodeksu cywilnego i Kodeksu postępowania cywilnego)' [Evidence from a Document without the Issuer's Signature (in the Light of the Amendments to the Civil Code and the Code of Civil Procedure)], 9 Przegląd Sądowy (2017), p. 81 at p. 96, 104.

**2.2. Is there any particular procedure on how the court should identify the source of electronic evidence?**
*(If any official guidelines, mechanisms or protocols are established within the law of your Member State to identify the source of evidence, by either the expert or the court, please mention those as well (e.g. in the case of evidence derived from cloud computing, blockchain or using AI algorithms).)*

There are no rules or procedures in this regard. Usually in practice, if the evidence is of electronic nature, e.g. e-mail, text message, the parties submit its printout or recording on a data carrier (pendrive, CD or DVD). In practice, the court does not review the authenticity of such evidence, unless a party denies the authenticity of the evidence. In such a situation, special messages will be required to verify the authenticity, which will make it necessary to admit expert evidence.

**2.3. Does the law of your Member State stipulate different rules or provisions for different types of electronic evidence?** (*Please explain whether certain types of electronic evidence are presumed authentic and reliable and others inauthentic and unreliable. If applicable, please cite the provisions regarding (in)authenticity and (un)reliability of electronic evidence.)*

There are no specific rules for different types of electronic evidence. Court should apply for them mutatis mutandis general rules which are applicable to traditional evidence.

**2.4. Does an unfamiliarity with the technical part and a (high) possibility of manipulation of electronic evidence impact its evidentiary value?**
*(Please elaborate on whether the technical nature and a [high] possibility of manipulation of electronic evidence have any impact on the court's assessing of the evidentiary value.)*

Electronic evidences are trated and assessed in the same manner as traditional evidence. According to article 233 § Code of Polish Civil Procedure the court assesses the credibility and strength of the evidence according to its own conviction, based on a comprehensive consideration of the collected material. evidence. All evidence, regardless of its nature, has an equivalent value and is subject to assessment by the court in accordance with the principle of free assessment of evidence.

**2.5. When should the court appoint experts to process electronic evidence?**
*(Please enumerate cases in which the court may or must appoint an expert when processing electronic evidence.)*

The need to appoint an expert arises if the conduct or assessment of electronic evidence requires special knowledge. Special knowldge are those that go beyond normal, common knowledge in given conditions, taking into account the development and universality of messages of a certain type in the process of changes in the sphere of general knowledge. Therefore, special knowledge does not include those that are available to an adult with appropriate life experience, education and knowledge. The regulations do not introduce an obligation to appoint an expert witness, it always depends on the court decision and the specific circumstances of the case.

**2.6. Who bears the costs if an expert needs to be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence?**
*(Please explain the distribution of costs related to potential expert assessments and opinions on the reliability, authenticity and lawful manner of obtaining electronic evidence.)*

In principle, the cost of the expert opinion will ultimately be borne by the losing party in dispute (proceedings). However, during the trial, the party who submits the evidence application, if it involves the need to admit evidence from an expert opinion and generates expenses, the court may oblige such party to cover the advance payment towards the expert opinion. Finally court decides who will ultimately bear the costs of the expert opinion in the judgment .

**2.7. What options are available to a party claiming that electronic evidence has been compromised, tampered with, manipulated or obtained illegally (e.g. by hacking into an IT system)?**
*(Please explain whether any special procedures are established within the law of your Member State to challenge the reliability, authenticity or manner of obtaining electronic evidence. If no special procedure exists, explain regular remedies that would apply in such a case. If applicable, cite relevant provisions, case law, guidelines or other sources regulating the procedure to challenge the admissibility of compromised electronic evidence.)*

Thera are no special procedures established to challenge the reliability, authenticity or manner of obtaining electronic evidence. If party claiming that electronic evidence has been compromised, tampered with, manipulated or obtained illegally may use all means of evidence, in particular, he may submit evidence from an expert opinion in this circumstance. In particular, such a party which is goinbg to challenge unlawfull evidence may present documents and materials related to reporting such an activity as a possible crime to law enforcement authorities. The court will take this into account and may formally omit such evidence or subject such evidence to assessment at the sentencing stage and consider it unreliable.

**2.8. How is the admissibility of compromised or illegally obtained electronic evidence regulated within the law of your Member State?**
*(Is the court bound by any rules regulating the admissibility of compromised or illegally obtained (electronic) evidence (e.g. explicit rules provided under your national legislation, rules developed through case law, etc.)? If the rules regulating the admissibility of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

According to article 309 k.p.c., it is possible to take evidence by other means than those listed in the code, as long as they are carriers of information about facts relevant to the resolution of cases, and their use is not contrary to the provisions of law. At the same time, it should be noted that in the Code of Civil Procedure, it is difficult to find regulations that would expressly refer to the discussed problem. This, in turn, is the cause of discrepancies in the doctrine of the civil process, as well as in the jurisprudence of the court. According to view presented in doctrine the possibility of using a document presented by a party or other items infringing the personal rights of the opposing party or third parties in a civil trial without their consent cannot be treated as a lawful action, which means that such evidence cannot be admitted in the proceedings[28]. This line of argumentation is also in line with the arguments, according to whom it should be considered unacceptable to use evidence obtained in a manner contrary to the right to physical and mental integrity of a person in civil. Moreover in civil procedure there is a basic, though not expressed expressis verbis, prohibition of using evidence gathered by the parties in an unlawful manner. Basis for such a court decision may be general provision of article $235^2$ point 4) Code of Civil Procedure accoridng to which in particular, the court may omit evidence impossible to carry out. It is also poddible find a separate view in the doctrine and jurisprudence, according to which the prohibition of taking unlawful evidence is only of a relative nature. There are also in jurisprudance views that a

[28] *E. Wengerek, Korzystanie w postępowaniu cywilnym ześrodków dowodowych uzyskanych sprzecznie z prawem, „Państwo i Prawo" 1977, z. 2, s. 40.*

person who himself - being a participant in the conversation - records statements of people participating in this event, cannot be charged that his actions are against the law, or at most against good manners. Moreover, the court noted that it was admissible to take evidence from recordings made personally by persons acting as parties who, being participants in the conversation, did not violate the provisions protecting the secrecy of communication. In the case of infringement of other absolute rights, the lack of unlawfulness results from the exercise of the right to a fair trial[29].

In conclusion there is no direct regulation concerning illegally obtaioned electronic evidence in Polish Code of Civil Procedure, nevetheless most of doctrine and juriospridence denied possibility to use such a evidence. Howewer it depends on certain court and factualcircumstances of a case.

**2.9. Which party carries the burden of proving the (in)authenticity or (un)reliability of electronic evidence?**
*(Please explain whether the party producing electronic evidence carries the burden of proving such evidence authentic and reliable or whether the party who challenges electronic evidence is charged with proving its inauthenticity and unreliability.)*

Article 253 Polish Code of Civil Procedure shall apply in this regard mutatis mutandis on basis of article 308 and article 309 Code of Civil Procedure. According to this provision if a party denies the veracity of a private document or claims that the statement of the person who signed it does not come from it, it is obliged to prove these circumstances. However, if the dispute concerns a private document from a person other than the denying party, the authenticity of the document should be proved by the party that wants to use it. Applying above mutatis mutandis the party producing electronic evidence carries the burden of proving such evidence authentic and reliable.

**2.10. Does the court have the discretion to challenge the authenticity and reliability of electronic evidence even if neither party objects the authenticity and reliability of electronic evidence?**
*(Please explain if the court can challenge the authenticity and reliability of electronic evidence ex officio, e.g. when there is a high possibility that electronic evidence has been manipulated and neither party objected the authenticity and reliability of electronic evidence.)*

Yes, court have the discretion to challenge the authenticity and reliability of electronic evidence. According to article 233 § Code of Polish Civil Procedure the court assesses the credibility and strength of the evidence according to its own conviction, based on a comprehensive consideration of the collected material evidence. In the case of electronic evidence, a lot depends on the judge's experience and knowledge of technical issues related to electronic evidence. In practice, the indicated factors have the greatest impact on the possible questioning of electronic evidence ex officio, if it is manipulated and the opposing party has not raised objections in this respect.

**2.11. How is the manipulation or (un)lawful manner of obtaining electronic evidence assessed by the court in the case of a challenge?**
*(In answer to this question, please explain whether judges are expected to assess if evidence was compromised or illegally obtained by themselves, whether an expert may or must be appointed, and whether any other rules and requirements have to be complied with.)*

[29] see judegment on 31st of December 2012 Court of Appeal in Bialystok, *files No I ACa 504/11, OSAB 2013, nr 1, s. 17–30.*

It depends on certain situation there is no strict rules in this regard. Judge is obliged to assess the credibility and strength of the evidence according to its own conviction, based on a comprehensive consideration of the collected material evidence as well as his/her klnowladge, expirience and principles of logical reasoning. Nevertheless if in order to asses electronic evidence there is a need to posses special konwladge judge is entitled to appoint even ex offcio expert witness in order to present this special information and enable the court to properly evaluate the evidence.

**2.12. What are the consequences if the court finds that evidence was indeed compromised or obtained illegally?**
*(The question refers to procedural implications, e.g. the exclusion of evidence or considerations when assessing the weight of such evidence.)*

According to article 233 § Code of Polish all evidence, regardless of its nature, has an equivalent value and is subject to assessment by the court in accordance with the principle of free assessment of evidence. If court find that that evidence was indeed compromised or obtained illegally, as it was mentioned in answer to question 2.8., it is up to certain situation, however court has two options. First on the basis of article $235^2$ point 4) Code of Civil Procedure court may may omit such a evidence as evidence impossible to carry out. Second court may not formally omit such a evidence, however in reasinong of a judgement court may express that the evidence was obtained unlawfully, therefore, in the opinion of the court, it cannot constitute the basis for making findings regarding circumstances that are significant from the point of view of settling the case.

**2.13. Does the law of your Member State enable for the parties to submit written statements of witnesses?**
(*If yes, are pre-recorded oral statements of witnesses admissible as evidence?)*

Yes, it is possible to submit written statement of witness. Accrding to article $271^1$ Polish Code of Civil procedure if the court so decides the witness shall testify in writing. In this case, the witness make an oath by signing the text of the oath. The witness is obliged to submit the text of the testimony to the court within the time limit set by the court.

## 3. Duty to disclose electronic evidence

**3.1. How is the duty to disclose electronic evidence regulated within the law of your Member State?**

*(Please explain whether there are any special rules explicitly regulating the disclosure of electronic evidence or if general rules of disclosure apply instead. Should the rules regulating disclosure of particular means of evidence (e.g. documents, physical objects, affidavits) be applied to disclosure of electronic evidence by analogy, please explain which rules are to be used under which circumstances. Include the name of the act and the article(s) containing relevant provisions.)*

On the basis of Article $77^3$ of the Civil Code[30], a document is a data carrier that allows a person to read its content. However, the legislator does not specify what should be understood as an information carrier, which means that it is both a paper document and an electronic one. Such a data carrier can be, for example, a computer printout, computer hard disk, server, e-mail, CD, DVD, flash memory, cloud

[30] Kodeks Cywilny [Civil Code] (henceforth: the Civil Code).

computing, portable disk, pen drive, etc.[31] The data carrier must contain information, otherwise it is not a document.

In civil proceedings, the regulation in Article 243[1] of the Code of Civil Procedure[32] stipulating that the provisions of section 2 regulating documents apply to documents containing text, enabling the identification of their issuers. The provision of Article 243[1] of the Code defines the scope of application of the provisions on documentary evidence. However, the court takes evidence from documents other than those listed in Article 243[1] of the Code, in particular those containing an image, sound, or image and sound, by applying the provisions on evidence from inspection and evidence from documents, respectively, which are regulated in Article 308 of the Code. Thus, the provision of Article 308 of the Code applies to documents indicated in Article 77[3] of the Civil Code, which do not have content in the form of text.

Provisions on evidence from inspection[33] and evidence from documents[34] apply accordingly to evidence containing, in particular, an image, sound, or image and sound. The assessment of the external condition of the document is conducted in accordance with the provisions on inspection, and the assessment of its content in accordance with the provisions on documents. The list of evidence referred to in Article 308 of the Code is a non-exhaustive list.

The solution adopted in Article 308 of the code also includes the so-called electronic minutes, that is sound or image and sound recordings of the court hearing. Electronic minutes include not only sound or image and sound recording, but also text synchronized with this recording (annotations). Together, both elements constitute the so-called electronic minutes. More and more documents have a multimedia form that combines image, text, and sound.[35]

Due to the fact that the provision of Article 308 of the Code permits inspection as evidence from a document other than those mentioned in Article 243[1] of the Code, the content of this document can be determined. In the case of an electronic document, it is possible to submit a copy instead of the original document, if the opposing party does not object. In the jurisprudence of the Supreme Court, it is assumed that the failure to provide the original document is not subject to an absolute sanction of omission of evidence. As a rule, copies may also be evidence in the case.[36] The court may also assess the refusal to present and the reason for presenting the original document. When assessing the failure to submit the original document, a distinction should be made between the formal and material aspects. The content included in the document, and therefore not only its form, may be important. The original document may be important when evaluating the party's declaration of intent as evidence. A copy does not disqualify the document as evidence when, together with other evidence, it confirms the facts.[37]

Moreover, the provision of Article 309 of the code provides for the possibility of admitting and conducting other means of evidence, not specified in the Act, with the appropriate application of the provisions on evidence. Such other means of evidence may be a video or an audio recording that does not contain a declaration of will and knowledge.

[31] See: M. Załucki (ed.), Kodeks cywilny. Komentarz. Wyd. 3 [*Civil Code. Commentary. 3rd edition*] (Legalis 2023).
[32] Kodeks Postępowania Cywilnego [Code of Civil Procedure] (henceforth: the Code).
[33] Art. 292-298 of the Code.
[34] Art. 244-257 of the Code.
[35] See: justification to the government draft act amending the Act – Civil Code, Act – Code of Civil Procedure and some other acts, Sejm paper of the 7th term of office No. 2678.
[36] Art. 308 of the Code.
[37] See: decision of the Supreme Court of 14 April 2021, IV CSK 72/20, Legalis.

**3.2. What is the scope of the party's duty to disclose electronic evidence within the law of your Member State?**

*(Please address the circumstances under which the party is required to provide electronic evidence (e.g. the evidence was obtained in a particular manner, the evidence refers to both parties, the parties brought up the evidence when testifying, etc.), the type of evidence they are required to provide (if applicable) and procedural requirements (e.g. does the party in need of evidence have to request particular evidence with an explicit motion, does the court have any discretion when ordering disclosure, are there any time limits, etc). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

The provision of Article 248 § 1 of the Code imposes on everyone the obligation to present, at the court's order, at a specified time and place, a document in their possession, which is evidence of a fact relevant to the resolution of the case, unless the document contains classified information. However, it is the provision of Article 227 of the Code that is the basis for the court's decision as to the admissibility of taking specific piece of evidence,[38] since the subject of the evidence is facts that are significant for the resolution of the case.[39]

Moreover, the provision of Article 254 § $2^1$ of the Code allows for the possibility of a court order to provide an electronic document. In this case, the court, if necessary, may request the issuer of the document prepared in electronic form to provide the IT data carrier on which the document was recorded. The regulation resulting from the provision of Article 254 § $2^1$ of the Code applies equally to parties and third parties. However, a person who could refuse to testify as a witness when asked whether the document was created on this IT data carrier or whether the document comes from it, is exempt from the obligation to provide the IT data carrier.[40]

It is worth noting that the court may apply to a third party who has not complied with the court's orders in the above scope the same coercive measures as against witnesses.[41] A third party may demand reimbursement of expenses necessary for appearing in court or providing an IT data carrier, as well as compensation for loss of earnings.[42]

The provisions on evidence from inspection[43] and on evidence from documents[44] apply to non-electronic evidence. However, the provisions on evidence from inspection[45] and on evidence from documents[46] apply accordingly to evidence containing, in particular, an image, sound, or image and sound.

The provisions on evidence from documents[47] apply accordingly to evidence containing image, sound, or image and sound, which means that the provision of Article 252 of the Code regulating the distribution of the burden of proof when rebutting presumptions used in official documents, as well as the provision of Article 253 of the Code regulating the distribution of the burden of proof when rebutting presumptions in private documents will also apply.

[38] See: A. Marciniak (ed.), Kodeks postępowania cywilnego. Tom II. Komentarz do art. $205^1$–$424^{12}$ [*Code of Civil Procedure. Volume II. Commentary on Art. $205^1$–$424^{12}$*] (Legalis 2019).
[39] Art. 227 of the Code.
[40] Art. 254 § $2^2$ of the Code.
[41] Art. 254 § 3 of the Code.
[42] Art. 254 § 4 of the Code.
[43] Art. 292-298 of the Code.
[44] Art. 244-257 of the Code.
[45] Art. 292-298 of the Code.
[46] Art. 244-257 of the Code.
[47] Art. 244-257 of the Code.

In such a case, the party who denies the authenticity of the official document or claims that the statements of the authority from which the document originates contained therein are untrue, should prove these circumstances.[48] However, if a party denies the veracity of a private document or claims that the statement of the person who signed it does not come from this person, the party is obliged to prove these circumstances. If the dispute concerns a private document originating from a person other than the denying party, the authenticity of the document should be proved by the party wishing to use it.[49] Moreover, a party who, in bad faith or recklessly, made the allegations provided for in Articles 252 and 253 of the Code, is liable to a fine.

Documents in the form of a message sent via e-mail, mobile phone, instant messenger, communication channels on social networking sites, do not benefit from the presumption under Article 245 of the Code, which means that the person who refers to such a document must prove its origin from the issuer and its authenticity.

In the request for the taking of evidence, the party is obliged to mark the evidence in a way that allows it to be taken and specify the facts to be proved with this evidence.[50] The provision of Article $235^1$ of the Code applies to all evidence requests submitted by the parties and contains the elements that must be included in the evidence request, such as marking the evidence in a way that allows it to be taken, as well as the facts that are to be demonstrated by the evidence submitted by the party. The provision of Article $235^1$ of the Code sets out the obligations of the party invoking the evidence, not the obligations of the court.

The court may order an inspection without or with the participation of experts, and, if appropriate, also in conjunction with the examination of witnesses. It is assumed in the jurisprudence that making and documenting the necessary observations may be conducted in the course of an inspection with the participation of an expert[51] in a situation where viewing the subject of the dispute may also allow the court to determine the facts relevant to the case. The development of technology means that in more and more civil cases, the mere factual determination in the field of technology may require knowledge and experience in a given field, and even research equipment (specialised knowledge). Making and documenting the necessary observations during the inspection with the participation of an expert may be justified when viewing the subject of the dispute may also allow the court to determine the facts relevant to the case. Otherwise, the court should entrust the expert with the task of making factual observations as a premise for the expert's opinion.[52]

If a preparatory hearing has been scheduled, a party may adduce claims and evidence to substantiate the party's conclusions or to rebut the conclusions and claims of the opposing party until the agenda of the trial is approved. Statements and evidence submitted after the approval of the agenda of the trial are omitted, unless the party substantiates that it was not possible to invoke them or the need to invoke them arose later.[53]

If a preparatory hearing has not been ordered, the party may present claims and evidence to justify the party's conclusions or to rebut the requests and claims of the opposing party until the trial is closed, subject to the unfavourable effects which, according to the provisions of the Code, may result for the

[48] Art. 252 of the Code.
[49] Art. 253 of the Code.
[50] Art. $235^1$ of the Code.
[51] Art. 292 of the Code.
[52] See: judgment of the Supreme Court of 20 June 1984, II CR 197/84, Legalis.
[53] Art. $205^{12}$ § 1 of the Code.

party from acting for a delay or failure to comply with the orders of the presiding judge and orders of the court.[54]

However, the time limits for the submission of statements and evidence in the course of the proceedings under Article $205^{12}$ § 1 and 2 of the Code are subject to modification, as the presiding judge may oblige the party to provide all statements and evidence relevant to the resolution of the case in the preparatory pleading, under pain of losing the right to invoke them in the course of further proceedings. In such a case, statements and evidence submitted in violation of this obligation are omitted, unless the party substantiates that it was not possible to provide them in the preparatory pleading or that the need to invoke them arose later.[55]

### 3.3 Does the duty to disclose electronic evidence apply to third persons?

*(Please elaborate on whether persons not directly involved in proceedings must present or disclose electronic evidence under the same conditions as the parties or whether different rules apply. If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

The regulation resulting from the provision of Article 254 § $2^1$ of the Code applies equally to parties and third parties. It allows for the possibility of a court order to provide an electronic document. In this case, the court, if necessary, may request the issuer of the document prepared in electronic form to provide the IT data carrier on which the document was recorded. However, a person who could refuse to testify as a witness when asked whether the document was created on this IT data carrier or whether the document comes from it, is exempt from the obligation to provide the IT data carrier.[56] However, for an unjustified refusal to present a document by a third party, the court, after hearing the third party and the parties as to the legitimacy of the refusal, will sentence the third party to a fine. A third party has the right to demand reimbursement of expenses related to the presentation of the document.[57]

The provisions on evidence from inspection[58] and on evidence from documents[59] apply to non-electronic evidence. However, the provisions on evidence from inspection[60] and on evidence from documents[61] apply accordingly to evidence containing, in particular, an image, sound, or image and sound.

### 3.4. Are there any limits to the duty to disclose electronic evidence specified within the law of your Member State?

*(Does your national legislation stipulate reservations and exceptions to the duty of disclosure that would apply to (or also to) electronic evidence? On the one hand, the question refers to the right to refuse disclosure, privileges, the protection of secrecy and similar restrictions. On the other hand, it refers to measures imposed to prevent abuse in the form of fishing expeditions (requesting non-specific or broad information and evidence in the hope of gaining compromising materials) or excessive disclosure (providing an unmanageable volume of information in the hopes of confusing the parties or the court and delaying proceedings). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

[54] Art. $205^{12}$ § 2 of the Code.
[55] Art. $205^3$ § 2 of the Code.
[56] Art. 254 § $2^2$ of the Code.
[57] Art. 251 of the Code.
[58] Art. 292-298 of the Code.
[59] Art. 244-257 of the Code.
[60] Art. 292-298 of the Code.
[61] Art. 244-257 of the Code.

Provisions on evidence from documents apply accordingly to electronic evidence.[62] The provision of Article 247 of the Code defines limitations on the admissibility of evidence from witnesses and parties in the event when the party is able to submit a document covering a given legal act, but at the same time claims that the document is incomplete or does not faithfully reflect the content of the legal act.[63] Evidence from witnesses or from the hearing of the parties against or beyond the content of a document covering a legal act may be admitted between the participants of this act only in cases where this will not lead to circumvention of the provisions of the required form under pain of nullity and when, due to the specific circumstances of the case, the court considers it necessary.

The provision of Article 248 § 1 of the Code imposes on everyone the obligation to present, at the court's order, at a specified time and place, a document in their possession, which is evidence of a fact relevant to the resolution of the case, unless the document contains classified information. However, this obligation may be waived if a person, as a witness, could refuse to testify as to the circumstances covered by the content of the document or holds the document on behalf of a third party who could object to the presentation of the document for the same reasons. However, even then, the presentation of the document cannot be refused if its holder or a third party is obliged to present it with respect to at least one of the parties, or if the document is issued in the interest of the party that requests the taking of evidence. Moreover, a party may not refuse to present a document if the damage the party would be exposed to by doing so consists in losing the case.[64]

For an unjustified refusal to present a document by a third party, the court, after hearing the third party and the parties as to the legitimacy of the refusal, will sentence the third party to a fine. A third party has the right to demand reimbursement of expenses related to the presentation of the document.[65]

The court, if necessary, may request the issuer of the document prepared in electronic form to provide the IT data carrier on which the document was recorded. However, a person who could refuse to testify as a witness when asked whether the document was created on this IT data carrier or whether the document comes from it, is exempt from the obligation to provide the IT data carrier. [66]

The provision of Article 295 of the Code provides for the right of a third party to demand the omission of inspection, making its legitimacy dependent on the occurrence of important reasons. This provision also regulates the procedure triggered by the submission of such a request.[67] A third party may, for important reasons, request the summoning court to omit the inspection within three days from the service of the summons. Before examining the request of the third party, the court will not proceed with the inspection. The court will impose a fine on a third party who, without justified reasons, has not complied with the orders regarding the inspection.

The parties and participants to the proceedings are obliged to conduct procedural activities in accordance with good practice, give truthful explanations as to the circumstances of the case and without concealing anything, and present evidence.[68] The provision of Article 3 of the Code, stipulating that the parties should provide explanations as to the circumstances of the case in accordance with the truth and without concealing anything, gave the principle of truth a normative status. The addressees of the norm contained in this provision are the parties.[69] This principle applies to proceedings aimed at resolving the merits of

[62] Art. 244-257 of the Code.
[63] Cf. E. Marszałkowska-Krześ and I. Gil, Kodeks postępowania cywilnego. Komentarz [*Code of Civil Procedure. Commentary*] (Legalis 2023).
[64] Art. 248 § 2 of the Code.
[65] Art. 251 of the Code.
[66] Art. 254 § $2^2$ of the Code.
[67] Marszałkowska-Krześ and Gil, supra n. 34.
[68] Art. 3 of the Code.
[69] See: judgment of the Supreme Court of 11 December 1998, II CKN 104/98, Legalis.

the case and extends to any incidental proceedings that must be undertaken in the course of the proceedings.[70] From this principle, the prohibition of falsehood in court addressed to the parties, other participants to the proceedings and their representatives is derived.[71]

### 3.5. What are the consequences of a violation or non-compliance with the duty to disclose electronic evidence?

*(Please explain whether any coercive measures or sanctions may be imposed against a party or a third person who unjustifiably refuses to comply with their duty to disclose (electronic) evidence. Does your national legislation provide for any presumptions or fictions regarding the truth of facts to be proved with undisclosed evidence? If the rules for disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

The obligation resulting from Article 248 § 1 of the Code applies to the parties to the proceedings, intervening parties, other participants to the proceedings and third parties who are not directly involved in the proceedings. This provision imposes on everyone the obligation to present, at the court's order, at a specified time and place, a document in their possession, which is evidence of a fact relevant to the resolution of the case, unless the document contains classified information. However, this obligation may be waived if a person, as a witness, could refuse to testify as to the circumstances covered by the content of the document or holds the document on behalf of a third party who could object to the presentation of the document for the same reasons. However, even then, the presentation of the document cannot be refused if its holder or a third party is obliged to present it with respect to at least one of the parties, or if the document is issued in the interest of the party that requests the taking of evidence. Moreover, a party may not refuse to present a document if the damage the party would be exposed to by doing so consists in losing the case.[72] It is noted in the literature that a person summoned by the court to present a document may evade this obligation if this person could exercise the right to refuse to answer the question asked. The prerequisites for the existence of this right are: the threat of exposing such a person or a person close to that person to the degree and extent specified in 261 § 1 of the Code to criminal liability, disgrace, severe and direct financial damage, as well as the violation of professional secrecy or the secrecy of confession.[73]

For an unjustified refusal to present a document by a third party, the court, after hearing the third party and the parties as to the legitimacy of the refusal, will sentence the third party to a fine. A third party has the right to demand reimbursement of expenses related to the presentation of the document.[74] The provision of Article 251 of the Code states that in order for a third party to be fined, the third party must firstly receive a court request to submit a document, and secondly, the third party must unreasonably refuse to present the document.[75]

### 3.6. Have there been any problems before the national courts in your Member State arising from differences in national regulations of the duty to disclose electronic evidence, or are such problems to be expected in the future?

*(The answer to this question should contain an overview of any case law addressing the duty to disclose electronic evidence (or other evidence, if the same issue could arise concerning electronic evidence) in*

[70] Cf. decision of the Supreme Court of 13 July 1966, II CZ 74/66, Legalis.
[71] See: T. Szanciło (ed.), Kodeks postępowania cywilnego. Komentarz do Art. 1–505[39]. Tom I [*Code of Civil Procedure. Commentary on Art. 1-505[39]. Volume I*] (Legalis 2019).
[72] Art. 248 § 2 of the Code.
[73] K. Flaga-Gieruszyńska and A. Zieliński, Kodeks postępowania cywilnego. Komentarz. Wyd. 11 [*Code of Civil Procedure. Comment. 11th edition*] (Legalis 2022).
[74] Art. 251 of the Code.
[75] See: judgment of the Court of Appeal in Łódź of 11 January 2018, III AUa 1551 /16, Legalis.

*the context of cross-border proceedings, most notably any cases in which the problems resulted from national differences in the scope of the duty to disclose such evidence (e.g. a broader scope of the duty to disclose evidence in one participating Member State than in the other, privileges or exceptions existing in one Member State but not in the other, etc.). If no such case law exists, please explain any potential problems discussed in legal literature or any problems you expect to arise in practice.)*

The provision of Article 308 of the Code applies to documents indicated in Article $77^3$ of the Civil Code, which do not have content in the form of text. Provisions on evidence from inspection[76] and evidence from documents[77] apply accordingly to evidence containing, in particular, an image, sound, or image and sound. Moreover, the provision of Article 309 of the code provides for the possibility of admitting and conducting other means of evidence, not specified in the Act, with the appropriate application of the provisions on evidence. The provision of Article 248 § 1 of the Code imposes on everyone the obligation to present, at the court's order, at a specified time and place, a document in their possession, which is evidence of a fact relevant to the resolution of the case, unless the document contains classified information.

It should be explained that the provision of Article 254 § $2^1$ of the Code allows for the possibility of a court order to provide an electronic document. In this case, the court, if necessary, may request the issuer of the document prepared in electronic form to provide the IT data carrier on which the document was recorded. The regulation resulting from the provision of Article 254 § $2^1$ of the Code applies equally to parties and third parties. However, a person who could refuse to testify as a witness when asked whether the document was created on this IT data carrier or whether the document comes from it, is exempt from the obligation to provide the IT data carrier.[78]

Moreover, pursuant to Article 8 of Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) the principle was adopted that documents transmitted electronically should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents.

**Judgment of the Court of Appeal in Warsaw of 22 March 2022, V ACa 756/21, Legalis**

A computer printout of an unsigned letter or a printout of a statement of transferred funds prepared in Excel by the claimant constitute, as a rule, evidence in civil proceedings as the so-called 'other means of evidence' referred to in Article 308 of the Code and Article 309 of the Code, as the list of evidence referred to in those articles is a non-exhaustive list. Although it cannot be assumed that the statement contained in the computer printout is consistent with the actual state of affairs, it should be considered that the evidence in question proves the existence of a computer record of a specific content at the time of printing. Of course, each 'other means of evidence' listed in Article 308 of the Code may be modified, which does not deprive it of its probative value.

**Decision of the Supreme Court of 13 January 2022, II PSK 203/21, Legalis**

The provision of Article 308 of the Code does not distinguish between legal and illegal recordings. The wording of this provision is clear. It does not exclude evidence from call recordings, without the consent and knowledge of the persons participating in the call. The importance of such evidence is assessed on

[76] Art. 292-298 of the Code.
[77] Art. 244-257 of the Code.
[78] Art. 254 § $2^2$ of the Code.

a case-by-case basis. The assessment of evidence is ultimately important in terms of the content of substantive law norms that the court applies sovereignly. The basis for the application of substantive law should be the actual facts and those can be evidenced by recording, taking into account the situation in which the recording takes place, including a certain advantage of the recording person, if not even manipulation. Evidence is assessed against the background of the entire case, the material, statements, and positions of the parties, in other words, the recording may be evidence. Jurisprudence cannot create a prohibition on the use of such evidence because it would be contrary to the law and the right to a fair examination of the case.

**Judgment of the Court of Appeal in Krakow of 21 December 2021, I ACa 354/20, Legalis**

The provisions of the Code of Civil Procedure contain a non-exhaustive list of evidence, and from the content of Article 309 of the Code it follows that it is possible to take evidence also by means other than those specified in the Code, as long as their use is not in conflict with the provisions of law. A copy is a form of technical (including photoelectric) reproduction and recording of documents, drawings and other two-dimensional graphic elements. It does not differ substantially in terms of the result in the form of a copy from a photocopy, which is mentioned in Article 308 of the Code and basically allows to determine whether a given document existed, what content it contained and from whom it came.

**Judgment of the Court of Appeal in Katowice of 16 November 2021, V AGa 411/20, Legalis**

The screenshot and the saved website are evidence in a civil lawsuit within the meaning of Article 308 of the Code as evidence from image.

**Decision of the Supreme Court of 14 April 2021, IV CSK 72/20, Legalis**

Failure to provide the original document is not subject to an absolute sanction of omission of evidence. As a rule, copies may also be evidence in the case.[79] The court may also assess the refusal to present and the reason for presenting the original document. When assessing the failure to submit the original document, a distinction should be made between the formal and material aspects. The content included in the document, and therefore not only its form, may be important. The original document may be important when evaluating the party's declaration of intent as evidence. A copy does not disqualify the document as evidence when, together with other evidence, it confirms the facts.

**Judgment of the Court of Appeal in Szczecin of 30 December 2019, I ACa 672/19, Legalis**

*Verba legis*, a sufficient premise for a document within the meaning of Article $77^1$ of the Civil Code to be regulated by Article $243^1$ of the Code is that it is possible to identify its issuer (the person from whom the information recorded in the document originates). The Procedural Act differentiates between documents prepared in writing and in electronic form, as well as other documents which, although falling within the definition of Article $243^1$ of the Code, cannot be classified as private documents under Article 245 of the Code. This norm applies only to the documents referred to in Article 78 of the Civil Code (documents containing the issuer's handwritten signature) and in Article $78^1$ of the Civil Code (documents in electronic form with a qualified electronic signature). It does not apply to documents that are not signed or are signed in a different way (for example with an electronic signature, which does not meet the characteristics of a qualified signature required by law). In other words, it does not cover documents containing statements in documentary form.[80] This distinction has significant procedural and legal implications as Article 253 of the Code does not apply to documents prepared in a form other than written or electronic. When assessing evidence from secondary documents and documents in electronic form, the circumstances in which the evidence was created, the purpose of the person creating this type of evidence, and the condition of the evidence should be taken into account. In any case, the

[79] Art. 308 of the Code.
[80] Art. $77^2$ of the Civil Code.

circumstances in which the recording was made, and the purpose of the recording should be clarified, in particular by means of evidence from the testimonies of witnesses or the hearing of the parties.

**Judgment of the Court of Appeal in Szczecin of 26 May 2020, I ACa 13/20, Legalis**

A document falling within the category referred to in Article 243[1] of the Code or Article 308 of the Code, but not meeting the characteristics of a private document referred to in Article 245 of the Code, does not benefit from the presumption of truth and origin, but it does have evidentiary value, as it reflects statements made in electronic form or content displayed on the Internet user's device – websites created by digital recording and documented in this way. The Internet is currently the basic tool of social communication; however, the popularity of this medium is also associated with its widespread availability (especially when using popular websites such as Facebook or YouTube). Thus, if a person who disseminates information containing the image of another person via such a medium (statements, images, videos) does not make any efforts to limit access to the disseminated data (for example by delimiting the circle of persons who are authorized to view the posted content), the person cannot then conclude that only some recipients (for example local residents) could be interested in the presented content.

**Judgment of the Court of Appeal in Katowice of 4 August 2014, I ACa 184/14, Legalis**

Provisions on the taking of evidence, created taking into account the realities existing on the date of their adoption or amendment, do not keep up with the progress of technology, especially electronic technology, and do not regulate in detail possible modern means of evidence. However, the legislator provided for the emergence of such measures in Article 308 § 1 of the Code and introduced the regulation of evidence from video, television, photocopies, photographs, plans, drawings and sound disks or tapes and other devices recording or transmitting images or sounds, ordering the relevant application of the provisions on evidence from inspection and evidence from documents to these means. A printout from a computer screen is the closest to a photocopy, although it does not reflect the content of a paper document, but the ephemeral (because it is possible to delete or change it at any time) content of a website. This difference results in the impossibility to certify that such a printout is a true copy of the original content of the page, because the person preparing the printout would have to be assisted by a notary public or a legal representative who is a lawyer or attorney-at-law, and this is practically impossible. For this reason, a printout, despite not being a certified true copy, may be considered as evidence in the case, which should be assessed in terms of its credibility or probative value on the general principles set out in Article 233 § 1 of the Code.

**Judgment of the Court of Appeal in Warsaw of 23 July 2013, I ACa 72/13, Legalis**

Although printouts from e-mails cannot be considered documents within the meaning of Article 245 of the Code, they constitute another means of evidence to which the provisions on documents should be applied accordingly.[81] The mere fact that a given piece of evidence comes from the party to the dispute does not deprive it of credibility and the court, taking into account the entirety of the evidence material, as well as the form and content of the evidence, should evaluate it, guided by the provisions of applicable law, principles of logic and life experience. The court's assessments cannot be arbitrary and should indicate the reasons for the refusal of credibility and probative value of certain evidence.

**Judgment of the Court of Appeal in Poznań of 23 January 2013, I ACa 1142/12, Legalis**

There are no fundamental reasons to disqualify evidence from recordings of telephone conversations, even if these recordings were made without the knowledge of one of the interlocutors. The Code of Civil Procedure does not prohibit the introduction of evidence from conversations recorded between the

[81] Art. 308 and 309 of the Code.

parties to the trial. The possibility of taking evidence from tape recordings and disks is stipulated in Article 308 and 309 of the Code. Taking evidence in violation of Article 236 of the Code does not constitute a significant procedural defect that may affect the outcome of the case.

**Judgment of the District Court in Bydgoszcz of 25 October 2013, VIII Ga 61/13, Legalis**

It is permissible to determine, based not only on the original of the contract, but also on the entirety of the evidence, by other means of evidence, that the scan, as an electronic copy (photocopy) of the document, reflects its content in accordance with the lost original. The applicable civil procedure does not contain any restrictions in this respect.

**4. Storage and preservation of electronic evidence**

*(Storage and preservation of electronic evidence refer to the preservation of electronic evidence in active cases which have not yet been concluded with a final act. For archiving electronic evidence in closed cases, see the next part of the questionnaire.)*

Files are created for each case handled by common courts. Files may also be created and processed using information technology. The ICT system that supports court proceedings, in which case files are created and processed, is maintained by the Minister of Justice. However, the Minister of Justice, as the administrator of the ICT system that supports court proceedings, does not have access to the files of the proceedings. The Minister of Justice is the administrator of the ICT system that supports court proceedings. Case files are kept in the court or ICT system that supports court proceedings for the period necessary due to the type and nature of the case, limitation periods, interests of persons involved in the proceedings and the importance of the materials contained in the files as a source of information. After the period of storage in the court, the case files are transferred to the appropriate state archives.[82]

If the properties of an item allow it, material evidence and traces are stored in the case files. They are subject to destruction along with the files on the basis of separate regulations.[83] Unless a specific provision provides otherwise, items deposited or retained in connection with the proceedings are attached to the case files, and, if necessary, placed in an envelope sewn into the files, on which its contents and the date of receipt of the item as well as the name of the authority or the name and surname of the person who submitted it are described. If the items deposited or retained in connection with the proceedings cannot be attached to the case files due to their nature or importance, they are stored in the filing office, court payment office or other properly secured place. Information about the place of storage of items is placed in the case files.[84]

In addition, it should be noted that a minute-clerk prepares minutes of a public hearing. The minutes benefits from the presumption of truth and correctness of the statements contained therein.[85] The minutes are prepared by recording the course of the hearing using a device recording sound or image and sound, and in writing, under the direction of the presiding judge, in accordance with Article 158 § 1 of the Code. If, for technical reasons, it is not possible to record the course of the hearing using a device recording sound or image and sound, the minutes are prepared only in writing, under the direction of the presiding judge, in accordance with Article 158 § 2 of the Code. When issuing judgments by default, it is enough to indicate in the files that the defendant did not appear at the hearing, did not request a hearing

[82] Art. 53 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of 27 July 2001 - Law on the system of common courts].
[83] § 103(3) Rozporządzenie Ministra Sprawiedliwości z dnia 18 czerwca 2019 r. – Regulamin urzędowania sądów powszechnych [Regulation of the Minister of Justice of 18 June 2019 – Rules concerning the operation of common courts] (henceforth: the Common Courts Regulation).
[84] § 104(1) and (2) of the Common Courts Regulation.
[85] Art. 244 of the Code.

in the defendant's absence and did not submit any explanations, and a reference to the announcement of the judgment. An official note is prepared from a closed hearing if no decision has been issued.[86]

The minutes prepared with the use of a device recording sound or image and sound are signed by the minutes-clerk with an electronic signature guaranteeing the identification of the minute-clerk and the recognition of any subsequent changes to the minutes. The minutes prepared in writing are signed by the presiding judge and the minute-clerk. The presiding judge may order the preparation of a transcript of the relevant part of the minutes prepared using a device recording sound or image and sound if it is necessary to ensure the correct adjudication in the case.

The Regulation of the Minister of Justice of 2 March 2015 on the recording of sound or image and sound from the course of a public hearing in civil proceedings specifies:

1) types of devices and technical means used to record sound or image and sound from the course of a public hearing;
2) the method of making sound or image and sound recordings from the course of a public hearing;
3) the method of identification of persons making sound or image and sound recordings of the course of a public hearing;
4) the method of sharing and storing sound or image and sound recordings from the course of a public hearing.[87]

The recording is made with the use of digital devices and technical means, allowing for the preservation of this recording on an IT data carrier. Devices, technical means, and IT data carriers ensure:

1) integrity of the recording;
2) copying the recording between devices, technical means, and IT data carriers;
3) protection of the recording, in particular against loss or unjustified alteration;
4) playback of the recording also with the use of devices and technical means correcting or amplifying the recorded sound or image;
5) making the recording available on an IT data carrier;
6) the possibility of ongoing control of the recording made.[88]

Moreover, the Regulation of the Minister of Justice of 5 March 2004 on the storage of court case files and their transfer to state archives or for destruction defines the conditions and scope of storing files in court for the period necessary due to the type and nature of the case, limitation periods, interests of persons involved in the proceedings and the importance of the materials contained in the files as a source of information, as well as the conditions and procedure for storing and transferring files to state archives, and the conditions and procedure for destroying files after the expiry of their storage period.[89]

It should be clarified that due to the fact that electronic evidence is easily modified, manipulated, or destroyed, it is reasonable to secure it in accordance with the provisions of Articles 310-315 of the Code. Before initiating the proceedings, upon request, and in the course of the proceedings, also *ex officio*, it is possible to secure evidence when there is a fear that its taking will become unfeasible or too difficult,

[86] Art. 157 § 1 of the Code.
[87] § 1 Rozporządzenie Ministra Sprawiedliwości z 2 Marca 2015 r. w sprawie zapisu dźwięku albo obrazu i dźwięku z przebiegu posiedzenia jawnego w postępowaniu cywilnym [Regulation of the Minister of Justice of 2 March 2015 on the recording of sound or image and sound from the course of a public hearing in civil proceedings] (henceforth: the Recording Regulation).
[88] § 3(1) and (2) of the Recording Regulation.
[89] § 1 Rozporządzenie Ministra Sprawiedliwości z 5 Marca 2004 r. w sprawie przechowywania akt spraw sądowych oraz ich przekazywania do archiwów państwowych lub do zniszczenia [Regulation of the Minister of Justice of 5 March 2004 on the storage of court case files and their transfer to state archives or for destruction] (henceforth: the Storage Regulation).

or when for other reasons there is a need to establish the existing state of affairs. Securing evidence before initiating the proceedings boils down to taking it outside the trial (often by a court other than the one that later decides the case). As such, this constitutes a significant departure from the principle of direct examination of evidence and may also lead to limiting the parties' rights to participate in evidentiary proceedings. For this reason, the regulation of Article 310 of the Code should be interpreted in a strict way before filing a statement of claim, and in the course of the proceedings, the court should allow the parties to refer to the content of the evidence obtained on this basis.[90]

**4.1. How is the storage and preservation of electronic evidence regulated within the law of your Member State?**

*(Please list legal acts or other documents establishing rules for the proper storage and preservation of electronic evidence (e.g. including guidelines, protocols and instructions) and shortly indicate their content or purpose. If the relevant solutions have developed in practice, explain these as well.)*

**Note:** please see remarks to point 4 above.

**4.2. Provide a short overview of requirements, standards, and protocols for properly storing and preserving electronic evidence.**

*(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of evidence. If there are any special rules regulating the storage of metadata, please describe them.)*

The Regulation of the Minister of Justice of 7 September 2016 on the method and features enabling verification of the existence and content of a document in the ICT system supporting court proceedings defines the method and features enabling verification of the existence and content of a document in the ICT system supporting court proceedings, taking into account the minimum requirements for the ITC systems and the need to protect the rights of persons participating in court proceedings.

A document from the court obtained from the ICT system that supports court proceedings has the power of a document issued by the court, as long as it has features that enable its verification in this system. Verification of the existence and content of the document in the ICT system that supports court proceedings takes place via the service available on the website.[91] The document from the court is provided with information that allows for an unambiguous verification of the existence and content of the document in the ICT system. The information includes:

1) a unique identifier that allows verification of the document with the data contained in the ICT system;
2) the address of the website where the document existence and content verification service is made available;
3) designation of the address of the court from which the document originates;
4) information on the date, hour, minute and second in which the document was downloaded;
5) an indication of the number of pages of the document and the number of each page;
6) title of the document;
7) a clause that the document has the force of a document issued by the court, without affixing it with an official seal and signature of an authorized employee;

[90] See: judgment of the Court of Appeal in Szczecin of 9 November 2018, I ACa 52/18, Legalis.

[91] § 1 Rozporządzenie Ministra Sprawiedliwości z 7 września 2016 r. w sprawie sposobu i cech umożliwiających weryfikację istnienia i treści pisma w systemie teleinformatycznym obsługującym postępowanie sądowe [Regulation of the Minister of Justice of 7 September 2016 on the method and features enabling verification of the existence and content of a document in the ICT system supporting court proceedings] (henceforth: the Verification Regulation).

8) an instruction that the document may be verified via the service with the use of the unique identifier referred to in point 1.

The data referred to in points 1, 2, 5 and 6 are present on each page of the document.[92]

**Note:** please see also remarks to point 4 above.

**4.3. Is electronic evidence stored in one central location, or is the storage decentralised?**

*(Please explain the "physical" location of servers or media where electronic evidence is stored, e.g. each court might be responsible for storing electronic evidence to be used before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to store electronic evidence for all (or several) courts, etc.)*

The Minister of Justice entrusted the courts of appeal with activities related to the design, implementation and maintenance of ICT systems. Those courts are courts of appeal in: Białystok, Gdańsk, Kraków, Lublin, Poznań, Rzeszów, Szczecin and Wrocław. The legal basis for entrusting the courts of appeal with the performance of these activities is the Ordinance of the Minister of Justice of 29 July 2022 on entrusting the courts of appeal with the performance of activities related to the design, implementation and maintenance of ICT systems.

Activities related to ICT systems in the field of: maintenance of IT services, commissioning, license management, architecture management, automation of efficiency measurement, and monitoring of IT services are performed using central IT service management processes and tools supporting them, provided by the Ministry of Justice. Activities related to the provision of the 1st and 2nd lines of support are performed using the Information Technology Infrastructure Library (henceforth: ITIL) tool and central IT service management processes. Testing of ICT systems is performed through the use of testing software and central IT service management processes.[93]

It should be clarified that the 1st line of support means the first level in the hierarchy of support groups involved in the incident management process within the meaning of ITIL, whose tasks include, in particular, receiving and registering requests, their categorization and queuing and immediate service to restore the IT service as soon as possible.[94] The 2nd line of support, on the other hand, means the second level in the hierarchy of support groups involved in the incident management process within the meaning of ITIL, whose tasks include taking actions necessary to handle incidents that could not be resolved by the 1st line of support, in order to restore the IT service as soon as possible.[95]

The performance of activities related to the design, implementation and maintenance of ICT systems centralized in the area of a given court of appeal, which support common courts or court proceedings, other than the systems listed in § 2-9 of the Ordinance, has been entrusted to courts of appeal, each within their own area.[96]

On behalf of the Minister of Justice, supervision over the performance of the activities entrusted to the courts of appeal is exercised by the director of the Department of Computerization and Court Registers of the Ministry of Justice, and in the case of activities referred to in § 5 point 1(c), point 2(d), point 3(c),

[92] § 2 of the Verification Regulation.
[93] § 10 Zarządzenie Ministra Sprawiedliwości z 29 lipca 2022 r. w sprawie powierzenia sądom apelacyjnym wykonywania czynności związanych z projektowaniem, wdrażaniem i utrzymywaniem systemów teleinformatycznych [Ordinance of the Minister of Justice of 29 July 2022 on entrusting the courts of appeal with the performance of activities related to the design, implementation and maintenance of ICT systems] (henceforth: the Ordinance).
[94] § 1 point 4 of the Ordinance.
[95] § 1 point 5 of the Ordinance.
[96] § 15(1) of the Ordinance.

point 4(d), point 5(b) and point 6 of the Ordinance, the director of the Cybersecurity Office of the Ministry of Justice.[97]

The Court of Appeal in Wrocław was entrusted with the administration of ICT systems, for example Information Portal, Judgment Portal, Central Transcription Portal, Certification Centre, Identity Management System, RFID System in the National Court Register and Pledge Register, Register of Persons Participating in Court Proceedings, Court Electronic Mail, Fixed Telephony (VOIP), e-Minutes (central services), Central Videoconferencing Portal.[98]

As an example, it should be pointed out that the Court of Appeal in Gdańsk was entrusted with the performance of activities in the scope of the 1st line of support for users of ICT systems, *inter alia* National Court Register, National Register of Debtors, Pledge Register, Land and Mortgage Register, Information Portal, Judgment Portal, Court Register Portal.[99]

The leading role in the location of servers for 'central' needs is played by the Court of Appeal in Wrocław and the Ministry of Justice in Warsaw. In addition, in common courts there are servers for the so-called 'local' needs. Electronic data carriers on which electronic evidence is stored are in the case files.

### 4.4. Who is entitled to carry out the activities related to storing and preserving electronic evidence?

*(Please explain any potential requirements or limitations on who may carry out activities related to storing and preserving electronic evidence, e.g. private vs. public entities, certification or qualification requirements, etc.)*

The Storage Regulation defines the conditions and scope of storing files in court for the period necessary due to the type and nature of the case, limitation periods, interests of persons involved in the proceedings and the importance of the materials contained in the files as a source of information, as well as the conditions and procedure for storing and transferring files to state archives, and the conditions and procedure for destroying files after the expiry of their storage period.[100]

Files of closed court cases are stored in court archives for the periods specified in the Storage Regulation, using appropriate security measures against access by third parties, and meeting security requirements against loss and destruction.[101]

An electronic repertory or other recording device, including metadata, is stored in a way that ensures the security and integrity of their content and the possibility of extracting metadata. Metadata is understood as a set of logically related to an electronic repertory or other recording device and systematized information describing this repertory or device, facilitating its search, control, understanding and long-term storage and management.[102]

The ICT system that supports court proceedings serves as a court archive with regard to case files kept in this system and enforceable orders including judgments issued in proceedings conducted in this system.[103]

[97] § 11 of the Ordinance.
[98] § 9 point 2 of the Ordinance.
[99] § 3 point 1 of the Ordinance.
[100] § 1 of the Storage Regulation.
[101] § 24 of the Storage Regulation.
[102] § 24a(1) and (2) of the Storage Regulation.
[103] § 24b of the Storage Regulation.

Files of cases examined in electronic proceedings by writ of payment which, as a result of an objection, refusal to issue an order for payment or annulment of the order, have been transferred to a competent court other than the court conducting electronic proceedings by writ of payment, are stored in this court.[104]

Upon completion of the court proceedings, the presiding judge of the trial or hearing classifies the files into the appropriate category and indicates the period of their storage.[105] Files of cases for the recognition and enforcement of judgments of foreign courts and settlements concluded before such courts are qualified, taking into account the subject of the foreign court judgment or settlement concluded before such a court.[106]

The order to transfer the files to the appropriate archive or to destroy the files is issued by the president of the court.[107] Files are handed over for destruction after obtaining the consent of the director of the relevant state archive.[108] If minutes of a public hearing have been made with the use of the device recording the image and sound, it is allowed to destroy the image recording without the consent of the director of the relevant state archive after the decision concluding the proceedings in the case becomes final, and as for a case in which it is possible to file a cassation appeal, after the expiry of the time limit for filing it, and if the complaint has been filed – after the completion of the proceedings caused by its lodging. In this case, only the sound recording is left in the ICT system.[109]

### 4.5. Who may access electronic evidence in a particular case and how?

*(Please explain who has access to electronic evidence, which conditions must be met, and which procedure must be followed.)*

Data on the case, the content of the minutes and court and procedural documents may be made available to the parties or participants in non-contentious proceedings and their representatives, attorneys and defenders via accounts in the ICT system at the order of the president of the court.[110] After authentication on the account, the party, participant in non-contentious proceedings or their representative, attorney or defender gain access to data on the case.[111] A party, a participant in non-contentious proceedings or their representative, attorney or defender may, through the ICT system, with the consent of the president of the court, grant access to data on the case to other persons with accounts in this system, provided that these persons have the right to view them. Access is limited to viewing the data on the case.[112] A party, a participant in non-litigious proceedings or their representative, attorney or defender must withdraw access to data on the case granted via the ICT system to other person, if these persons are no longer entitled to view them.[113]

The Regulation of the Minister of Justice of 30 November 2021 on an account in the ICT system supporting court proceedings defines the mode of setting up and sharing an account as well as the method of using an account and closing an account in the ICT system supporting court proceedings.[114]

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[104] § 24c(1) of the Storage Regulation.
[105] § 26(1) of the Storage Regulation.
[106] § 26(3) of the Storage Regulation.
[107] § 27(1) of the Storage Regulation.
[108] § 29(1) of the Storage Regulation.
[109] § 29(3) of the Storage Regulation.
[110] § 132(1) of the Common Courts Regulation.
[111] § 132(2) of the Common Courts Regulation.
[112] § 132(3) of the Common Courts Regulation.
[113] § 132(4) of the Common Courts Regulation.
[114] § 1 Rozporządzenie Ministra Sprawiedliwości z 30 listopada 2021 r. w sprawie konta w systemie teleinformatycznym obsługującym postępowanie sądowe [Regulation of the Minister of Justice of 30 November 2021 on an account in the ICT system supporting court proceedings] ((henceforth: the ICT Regulation).

An account of a natural person is set up in the ICT system that supports court proceedings, after specifying the username, e-mail address for notifications, as well as password, and signing it with a trusted signature, qualified electronic signature, personal signature or authenticating it with the use of means of electronic identification issued in the electronic identification system connected to the national electronic identification gate.[115] Upon creating an account, the natural person who created it becomes the account administrator and authorized user.[116]

An account of an entity that is not a natural person is set up in the ICT system by:

1) the court – after submitting a pleading via the ICT system on behalf of that entity, or
2) the Minister of Justice – after reporting the need to have an account via the ICT system,

– together with an indication of the administrator or administrators of the account.[117]

In electronic proceedings by writ of payment, an account is set up in the ICT system at the request submitted via this system.[118]

In land and mortgage register proceedings initiated via the ICT system, an account for a notary public, substitute notary public, retired notary public, bailiff, assistant bailiff, head of the tax office or deputy head of the tax office, chairperson of the Commission for the reprivatisation of real estate in Warsaw delivered in violation of the law, or its member is established in the ICT system at their request submitted to the Minister of Justice.[119]

**4.6. How is the accessibility of stored electronic evidence preserved over time?**

*(Which measures are taken to guarantee the accessibility of stored electronic evidence in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)*

Electronic evidence is kept in the case files. The party is obliged to provide evidence that can be opened in an electronic system by a common court. However, there may be a situation in which the court *ex officio* transfers the data on the data carrier to another, newer data carrier.

**4.7. How is the transmission of electronic evidence to other courts (e.g. to an appellate court) carried out in order to preserve the integrity of evidence?**

*(Please explain whether there are any special procedures to be followed by another court to access the stored electronic evidence and/or protocols for transmitting such evidence intended to preserve the integrity of the evidence and to prevent any manipulation.)*

Presentation of the files to the court of appeal as a result of the lodged appeal is made immediately after the effective service of the appeal on the opposing party or other participants in non-contentious proceedings, unless specific provisions provide otherwise. Simultaneously with the presentation of the files to the court of appeal, the court of first instance sends an electronic version of the judgment issued together with the justification, or enable the download of these documents via the ICT system. In this respect, § 83(3) of the Common Court Regulation applies, which states that after the return of the case files, the substitute files are attached to the case files.[120]

In the case of recording the course of a public hearing or a trial with the use of a device recording sound or image and sound, the court of appeal and the Supreme Court gain access to the recording via an ICT

[115] § 3(1) of the ICT Regulation.
[116] § 3(3) of the ICT Regulation.
[117] § 5(1) of the ICT Regulation.
[118] § 9(1) of the ICT Regulation.
[119] § 12(1) of the ICT Regulation.
[120] § 138(1) of the Common Courts Regulation.

system or on an IT data carrier. The court of appeal may return the case files to the court of first instance in order to prepare copies of minutes or other documents contained in the files and supplement substitute files if they are illegible, attach missing documents to the files, in particular return confirmations of service of court documents or copies of judgments, and attachments.[121]

In electronic proceedings by writ of payment, the court of appeal gains access to the case files via the ICT system that supports these proceedings together with the transfer of the appeal.[122]

The presentation of the case files kept in the ICT system to the court of appeal or the Supreme Court, as well as making them available to other authorized entities is performed by granting access to these files in the ICT system. The presentation of the case files to the court of appeal or the Supreme Court takes place together with the transfer of the appeal. Access to the case files kept in the ICT system is granted to the Supreme Court on the basis of an order of the head of the registry department at the request of the head of the department of the court adjudicating in the second instance. The set of documents referred to in Article 9(6) of the Act on the National Court Register is sent to the court of appeal or the Supreme Court together with the presentation of the case files kept in the ICT system. The case files kept in the ICT system are made available to other authorized entities for a fixed period, not longer than six months, with the possibility of extension for further periods not exceeding six months.[123]

The court of first instance immediately makes available in the ICT system missing or illegible documents or missing or damaged sound or image and sound recordings at the request of the court of appeal or the Supreme Court. After the files of the proceedings conducted by the court of appeal or the Supreme Court are returned to the court of first instance, the head of the registry department orders the termination of access to the case files kept in the ICT system.[124]

### 4.8. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?

*(Please describe rules regarding the possibility of a conversion from electronic form to physical and from physical form to electronic when storing evidence.)*

The provision of Article 125 of the Code contains a definition of a pleading and specifies acceptable ways of submitting pleadings to the court. Pleadings include motions and statements by the parties submitted outside the trial. If a special provision so provides or a choice has been made to submit pleadings via the ICT system, pleadings in this case are lodged only via the ICT system. Pleadings filed not via the ICT system do not produce any effects of their filing in accordance with the law, of which the court instructs the person filing the pleading. Making the choice of submitting pleadings via the ICT system and further lodging of these pleadings via this system is admissible if there is such a technical possibility on the part of the court. In the event of submitting a pleading not via the ICT system, the presiding judge notifies the person lodging the pleading of the ineffectiveness of the action. If, for technical reasons attributable to the court, it is not possible to submit a pleading via the ICT system within the required time limit, the provisions of Articles 168-172 of the Code apply. A declaration of choice or resignation from the choice of submitting pleadings via the ICT system is made via this system. This declaration is binding only in relation to the person who submitted it.

The process of producing documents originally in paper form and then in electronic version may lead to discrepancies, which means that in such a case the provision of Article 248 of the Code applies, according to which everyone is obliged to present, at the court's order, at a specified time and place, a

[121] § 138(2) and (3) of the Common Courts Regulation.
[122] § 134(1) of the Common Courts Regulation.
[123] § 198a(1) to (5) of the Common Courts Regulation.
[124] § 198a(6) and (7) of the Common Courts Regulation.

document in their possession, which is evidence of a fact relevant to the resolution of the case. Electronic documents may be submitted to the case files in civil proceedings in three forms as: 1) electronic information carriers on which data are stored, 2) visualization on a computer monitor or 3) computer printout.

If the document was prepared in a paper version, it is required to certify it electronically. In this regard, the provision of Article 129 § $2^1$ of the Code adopts a solution that the electronic certification of a copy of a document by the representative of the party appearing in the case who is a lawyer, attorney-at-law, patent attorney or General Counsel to the Republic of Poland takes place when this representative enters the document into the ICT system.

Furthermore, the formats in which copies of pleadings, documents and powers of attorney may be certified electronically, taking into account the minimum requirements for public registers and the exchange of information in electronic form, are specified in the Regulation of the Minister of Justice of 5 September 2016 on the formats in which copies of pleadings, documents and powers of attorney can be certified electronically. A copy of a pleading, document or power of attorney may be certified electronically in the following format:

1) PDF - if the pleading, document or power of attorney are in paper form or if, for technical reasons, it is not possible to prepare a certificate in electronic form in the XML format;
2) XML - if the pleading, document or power of attorney is in electronic form.[125]

## 5. Archiving of electronic evidence

*(Archiving of electronic evidence only refers to the preservation of electronic evidence in closed cases that have already concluded with a final act. Please include all information regarding the storing and preserving of electronic evidence in active cases in the preceding part of the questionnaire.)*

### 5.1. How is the archiving of electronic evidence regulated within the law of your Member State?

*(Please list legal acts or other documents establishing rules for the proper archiving of electronic evidence (e.g. including guidelines, protocols, instructions) and shortly indicate their content or purpose. If relevant solutions have developed in practice, explain these as well. If the rules regulating the archiving of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

Archiving electronic evidence shall be governed by general rules on archiving case files.

As follows from Art. 53 § 2 of the Act of 27 July 2001 on the system of common courts,[126] case files shall be kept in the court or in the ICT system that supports court proceedings for the period necessary due to the type and nature of the case, limitation periods, interests of persons involved in the proceedings and the importance of the materials contained in the files as a source of information. After the period of storage in the court, the case files are transferred to the appropriate state archives (§ 3).

Pursuant to § 24 of the Order of the Minister of Justice of 5 March 2004 on the storage of court case files and their transfer to state archives or for destruction, hereinafter Order on the storage of

[125] § 1 Rozporządzenie Ministra Sprawiedliwości z 5 września 2016 r. w sprawie formatów, w jakich odpisy pism, dokumentów i pełnomocnictw mogą być poświadczane elektronicznie [Regulation of the Minister of Justice of 5 September 2016 on the formats in which copies of pleadings, documents and powers of attorney can be certified electronically].

[126] *Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych* (Journal of Laws of 2023, item 217, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf>, visited 7 March 2023.

court case files,[127] files of completed court cases shall be stored in the institution archives for the periods specified in the Order, using appropriate protection against access by third parties, and meeting the security requirements against loss and destruction. An electronic repertory or other recording device, including metadata, shall be stored in a way that ensures the security and integrity of their content and the possibility of extracting metadata (§ 24a para. 1 Order on the storage of court case files). According to § 24b Order on the storage of court case files, the ICT system that supports court proceedings serves as an institution archive with regard to case files kept in this system and enforcement titles covering judgments issued in proceedings conducted in this system. As laid down in § 24c Order on the storage of court case files, files of cases examined in electronic writ-of-payment proceedings, which, as a result of an objection, refusal to issue an order for payment or annulment of the order, have been transferred to a competent court other than the court conducting electronic writ-of-payment proceedings, shall be stored in that court (para. 1). Auxiliary collections of documents relating to court cases transferred from electronic writ-of-payment proceedings to other proceedings, which, in the absence of a request by the competent court, have not been included in the files, shall be transferred to the institution archives one year after the transfer of the case to another court (para. 2).

Upon completion of the court proceedings, the president of a hearing or a session shall classify the files into the appropriate category and indicate the period of their storage (§ 26 para. 1 Order on the storage of court case files). The order on the transfer of files to the appropriate archive or for destruction shall be issued by the president of the court (§ 27 para. 1 Order on the storage of court case files). Transfer of files for destruction shall take place after obtaining the consent of the director of the relevant state archives (§ 29 para. 1 Order on the storage of court case files).

Regulation regarding the storage of material evidence is provided for in the Order of the Minister of Justice of 18 June 2019 – Rules governing the operation of common courts, hereinafter Rules governing the operation of common courts.[128] According to § 102 Rules governing the operation of common courts, after the conclusion of the proceedings or when, for other reasons, the evidence has become redundant, in a situation where a given item is subject to return to an authorised person, he or she shall be called upon to collect the item within the prescribed period, and shall be instructed of the consequences of not collecting the items. Bills of exchange and checks should be kept with particular care, in a place designated by the president with appropriate technical protection that prevent their destruction or removal by unauthorised persons (§ 103 para. 1 Rules governing the operation of common courts). Certified copies of the documents referred to in para. 1, with an annotation about the place of storage of original documents, shall be attached to the case files. Authentication consists in making a copy of the document and confirming its compliance with the original by an employee of the secretariat (para. 2). If the properties of an object allow it, material evidence and traces shall be kept in the case files. It shall be subject to destruction along with the files on the basis of separate provisions (para. 3). Pursuant to § 104 Rules governing the operation of common court, unless a special provision provides otherwise, items deposited or retained in connection with the proceedings shall be attached to the case files, and, if necessary, placed in an envelope sewn into the case file, with a description of its content, the date of receipt of the item and the name of the authority or the name of the person who submitted it (para. 1). If items deposited or seized in connection with the proceedings cannot be

[127] *Rozporządzenie Ministra Sprawiedliwości z dnia 5 marca 2004 r. w sprawie przechowywania akt spraw sądowych oraz ich przekazywania do archiwów państwowych lub do zniszczenia* (Journal of Laws of 2022, item 1697), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220001697/O/D20221697.pdf>, visited 10 March 2023.

[128] *Rozporządzenie Ministra Sprawiedliwości z dnia 18 czerwca 2019 r. – Regulamin urzędowania sądów powszechnych* (Journal of Laws of 2022, item 2514, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220002514/O/D20222514.pdf>, visited 10 March 2023.

attached to the case files due to their properties or importance, they shall be stored in the registry office, court cash register or other place properly secured. Information about the place of storage of items is provided in the case files (para. 2).[129]

**5.2. Shortly explain the requirements, standards and protocols for properly archiving electronic evidence.**
*(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of electronic evidence. If there are any special rules regulating the archiving of metadata, please describe them.)*

See point 5.1.

**5.3. Is electronic evidence archived in one central location, or is archiving decentralised?**
*(Please explain the "physical" location of archives, e.g. each court might be responsible for archiving electronic evidence collected before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to archive electronic evidence for all (or several) courts, etc.)*

So far, there is no wider practice in Polish courts in the field of taking of, storing and archiving electronic evidence. In most cases, electronic evidence is stored and archived on electronic data carriers which are kept in the case files. This refers primarily to audio or audio and video recordings as well as screenshots from social media.

**5.4. Who may carry out the archiving of electronic evidence?**
*(Please explain any potential requirements or limitations on who may carry out the archiving, e.g. private vs. public entities, certification or qualification requirements, etc.)*

See point 5.1.

**5.5. Must electronic evidence be archived indefinitely, or must it be deleted or destroyed after a certain period? How is the accessibility of archived electronic evidence preserved over time?**
*(As electronic evidence is generally kept in an archive for an extended period of time, which measures are taken to guarantee its accessibility in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)*

See point 5.1.

**5.6. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?** *(Please describe rules regarding the possibility of conversion from electronic form to physical and from physical form to electronic when archiving evidence.)*

See point 5.3.

[129] See further e.g. S. Kotecka and J. Połomski, 'Informatyczne centra archiwalne dla sądów powszechnych. System zarządzania aktami sądowymi' [IT Archive Centres for Common Courts: Court Records Management System], Wrocławskie Studia Sądowe (special issue, 2015) p. 104 at 104 – 121; S. Kotecka, 'Zagadnienia archiwizacji elektronicznych akt sądowych *de lege lata*' [*De Lege Lata* Issues Regarding Archiving of Electronic Court Files], 2 Na Wokandzie (2011) p. 57 at 57 – 62.

## 6. Training on IT development MARYSIA

**6.1. Are the judges, court personnel or other legal practitioners required to undergo any training on technological developments relevant to taking, using and assessing electronic evidence?**
*(Please explain whether there are any official requirements for judges or other professionals to undergo training aimed specifically at improving their skills related to technological aspects of taking evidence, and if any such trainings (voluntary or mandatory) are provided by ministries, state agencies or other entities.)*

The judges and court personnel of common courts take advantage of the assistance of IT departments (*oddziały informatyczne*) established in particular courts. Moreover, they participate regularly in training activities in the field of informatisation of courts.

A particularly significant role in developing the judges and other legal practitioners' skills in the application of digital technologies in the judicial system is played by the IT department carrying out the function of the Centre for Competence and Informatisation of the Judiciary (*Centrum Kompetencji i Informatyzacji Sądownictwa*) in the Court of Appeal in Wrocław (*Sąd Apelacyjny we Wrocławiu*). Among the Centre's tasks are the following:

- initiating and implementing activities aimed at improving the security of the network and data processing in the ICT systems of the Court of Appeal in Wrocław and the courts of the Wrocław appeal area;
- the development and implementation of uniform procedures for the safe and effective use of IT resources and supervision over their compliance by users in the Court of Appeal in Wrocław and the courts of the Wrocław appeal area;
- providing substantive and technical support for IT services in the courts of the Wrocław appeal area;
- the development of an IT purchase plan for the Court of Appeal in Wrocław and the courts of the Wrocław appeal area;
- keeping records of computer hardware and software;
- training of employees of the Court of Appeal in Wrocław and the courts of the Wrocław appeal area on the use of computer hardware and software;
- defining standards for the method of processing, selection of computer hardware, network equipment, peripheral devices and other devices related to data processing and protection in the Court of Appeal in Wrocław and the courts of the Wrocław appeal area.[130]

## 7. Videoconference

**7.1. In general, does the law of your Member State provide for videoconference technology to be used in civil proceedings?**
*(If you answered in the affirmative, please list the legal grounds (e.g. "Art. 100 of the Civil Code"). Please indicate when the legal grounds entered into force (e.g. 01.02.2010) and specify any amendments to the legal grounds. If an online (official or unofficial) English translation of the relevant provisions exists, please provide the URL (link). If there are "soft-law" instruments (e.g. guidelines) that supplement rules on conducting the videoconference, then please specify them.)*

[130] See: <wroclaw.sa.gov.pl/oddzial-informatyczny,m,m1,289,295,300>, visited 10 March 2023.

Polish law regulates videoconferencing in Article 151 par. 2 of the Code of Civil Procedure and in art. 235 par. 2 of the Code of Civil Procedure (hereinafter KPC). The first provision was introduced by the amendment of 10.7.2015, which came into force on 10.9.2016. There is no official English translation. The provision of Article 151 par. 2 of the CPC provides for the Chairman may order the holding of a public hearing by means of technical devices that allow the hearing to be held remotely. In such a case, the participants of the proceedings may participate in the court session while they are in the building of another court or in a penitentiary or detention centre when they are deprived of liberty and perform procedural actions there, and the course of procedural actions shall be transmitted from the courtroom of the court conducting the proceedings to the place of stay of the participants of the proceedings and from the place of stay of the participants of the proceedings to the courtroom of the court conducting the proceedings. At the place of residence of the person deprived of liberty, a representative of the administration of the penitentiary or detention centre, an attorney, if appointed, and an interpreter, if appointed, shall take part in the procedural activities. This version of the provision was introduced by the Act of 5.08.2022 (Journal of Laws of 2022, item 1855), which entered into force on 1.01.2023.

In addition, in the period of the COVID-19-induced pandemic, a provision was introduced in the special law of 2.03.2020 on special solutions related to the prevention , prevention of covid-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 1842) (hereinafter the covid Law) Art. 15zzs(1), which provides that in cases heard according to the Code of Civil Procedure, a public hearing or trial shall be held by means of technical means transmitting image and sound at a distance, whereby the parties, their attorneys, not including the panel of judges, may participate in the hearing outside the court building. At the same time, it is provided that a person who does not have the possibility to participate in the hearing remotely may apply to the court to ensure his/her participation in the hearing remotely in the court building.

**7.2. Does the law allow for videoconference technology to be used solely for the taking of evidence or also for conducting other procedural stages of the hearing? Videoconference in your Member State may be used for:**
a) Witness testimony
b) Expert witness testimony
c) Inspection of an object (and/or view of a location)
d) Document (document camera)
e) Party testimony
f) Other means of evidence (please elaborate)
g) Conducting the hearing in broader/general terms (please elaborate)
*(Specify whether videoconference technology can be used only for the taking of evidence by highlighting the categories of evidence. Please note that some Member States may not use the same categorisation of evidence or contain all above categories (e.g. party testimony). In such cases, please approximate your answer and provide additional explanation if needed. If the technology can be used in other stages of the procedure, please specify the scope of the technology's use.)*

In Polish law, videoconferencing may be used to conduct a public hearing (trial) remotely on the basis of Article 151 par. 2 KPC , but also only for the purpose of conducting evidence remotely. In court practice in Poland, parties, witnesses, experts are usually heard remotely. On the other hand, this form of evidence does not apply to inspection of objects, documents. However, if the court has e.g. an expert, it may show him/her the documents via camera, i.e. remotely. The taking of evidence at a distance is regulated by the provision of art. 235 par. 2 CCP This provision stipulates that "If the nature of the

evidence does not oppose it, the adjudicating court may decide that it shall be performed by means of technical devices enabling this action to be performed at a distance".
Furthermore, it follows from § 3 of Article 235 of the CPC that the Minister of Justice shall specify, by way of an ordinance, the types of technical devices and means enabling the taking of evidence at a distance, the manner of using such devices and means, as well as the manner of storing, reproducing and copying the recordings made during the taking of evidence, taking into account the necessity of appropriate protection of the recorded image or sound against the loss of evidence, its distortion or unauthorised disclosure (Ordinance of the Minister of Justice on the technical devices and means enabling the taking of evidence at a distance in civil proceedings of 24 February 2010. (Journal of Laws No. 34, item 185).

**7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?**
*(E.g. does the court appoint a court officer to operate the audiovisual equipment on site? For example, suppose there is a dispute between parties regarding the border/boundary between their immovable properties and the court needs to view the alleged border/boundary. Does a court officer carry the technical equipment to the site and follow instructions from the court, regarding the viewing angles etc.)*

Polish law does not allow videoconferencing by remote viewing of the place (inspection of the place). If necessary, the court conducts the inspection of the place by itself, e.g. in a case for the annulment of joint ownership of real property, or it appoints an appointed judge from its panel. If the inspection is to take place outside the jurisdiction of the court, the court may ask the court in whose district the property is located to conduct this inspection (summoned court).

**7.3. Which applications (software) are used for videoconferencing in civil court proceedings?**
*(Please investigate whether the courts use multiple applications.)*

In Polish law, with regard to remote hearings, no provisions have yet been introduced regulating what software is to be used. However, on the occasion of the implementation of an IT system in civil courts in Poland that supports the recording of hearings (electronic protocol), software was also implemented to take evidence remotely pursuant to Art. 235 pairs 2 CPC. This is Avia Scopia software owned by the State Treasury and has been implemented in all courts. It can be used to conduct remote hearings. Moreover, the Court of Appeal in Wrocław, the IT department of the Center for Judiciary Competence and Computerization, launched the Jitsi software, based on open source software, which was also implemented in all orchards during the COVID-19 pandemic. However, courts may also use other commercially available systems, i.e. ZOOM, MS Teams, Skype, etc. The latter, however, are not harmonized with other software used during hearings, i.e. hearing recording system (Recourt), electronic office system, etc.

**7.3.1. Are the applications (see Question 7.3.) commercially available?**
*(If so, specify whether they are specially modified for use in court proceedings.)*

In Polish law, with regard to the remote trial, no regulations have yet been introduced governing what software is to be used. However, on the occasion of the implementation in the civil courts in Poland of an IT system supporting the recording of hearings (electronic protocol), software for the taking of evidence remotely pursuant to Article 235 par. 2 CCP. This software, Avia Scopia, is owned by the State Treasury and has been implemented in all courts. It can be used for conducting remote hearings. In addition, the Court of Appeal in Wrocław, the IT branch of the Centre for Competence and Informatisation of the Judiciary has launched Jitsi software, based on open source software, which has

also been implemented in all courts, during the COVID-19 pandemic. However, courts can also use other systems, commercially available, namely ZOOM, MS Teams, Skype, etc. The latter, however, are not harmonised with other software used during hearings, i.e. e.g. the hearing recording system (Recourt), the electronic office system, etc.

**7.3.2. Are the applications (see Question 7.3.) interoperable with other applications?**
(e.g. can a subject, using application X, join a videoconference, which is conducted via application Y)

It is not possible to participate in a videoconference using other programs, i.e. if the court uses Jitsi software, no one can connect via MS Teams software.

**7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?**
(whether and to what extent the court can restrict these functions (e.g., the parties can talk at any time, but only share their screen if permitted by the court.)

Avia Scopia and Jitsi software enable text chat. This is often used when, for technical reasons, audio or video and audio transmission fails. It is also possible to share a screen and present documents.

**7.4. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when taking evidence?**
*(E.g. may the court order the use of the technology on its own motion (ex officio); with or without consulting the parties; only with the consent of (both) parties; only with the consent of the person providing testimony; at the request of (both) parties; only in exceptional circumstances etc.)*

The holding of a hearing remotely , currently during the COVID-19 pandemic emergency under section 15 zzs(1) of the Covid Law, is mandatory unless the court assesses that there is no risk to the life and health of those attending the hearing. In the case of art. 151 par. 2 CCP, it is the presiding judge who decides whether the hearing will be held remotely or stationary. The parties may of course request a remote hearing, but the request is not binding on the court. The same applies to the taking of evidence remotely. It is up to the court to decide how the evidence is to be conducted, whether remotely or traditionally.

**7.5. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when conducting hearings?**
*(E.g. whether the court may order the use of the technology on its own motion (ex officio); with or without consulting the parties; only with the consent of (both) parties; at the request of (both) parties; only in exceptional circumstances etc.)*

See answer for question 7.5. (above).

**7.6. If the court orders the use of the technology, may the parties oppose that decision? If so, how do the parties make their opposition clear (e.g. appeal)?**

According to Article 151 par. 2 CCP , if the presiding judge orders a remote hearing, a party does not have the possibility to oppose this decision. Conversely, if a party requests a remote hearing and the presiding judge does not agree to it, there is no possibility to challenge such a decision. The assessment

of the court's conduct in this respect may be assessed by the appellate court on the basis of a plea of violation of the rules of procedure within the scope of the appeal (Article 233 CCP).

**7.7. Does the law of your Member State provide that courts can, in civil procedure cases, impose coercive measures against a witness or a party to provide testimony?**
(Explain also if the rules differ for videoconference testimony.)

In Polish law, coercive measures are only used to cause a witness, a party to appear at a hearing to give evidence. The court may fine a witness, a party for unjustified non-appearance at the trial, or even order his or her compulsory import (Article 274 of the CCP). The same applies when a witness has appeared at the hearing but unjustifiably refuses to testify (Article 276 CCP). The court may also apply detention to a witness who unreasonably refuses to testify (up to 7 days). All of these coercive measures may be applied when evidence is taken at a distance.

**7.7.1. Under which circumstances may a witness refuse testimony?**
(Explain also if the rules differ for videoconference testimony.)

Article 261 of the CPC provides that no one has the right to refuse to testify as a witness, with the exception of the spouses of the parties, their ascendants, descendants and siblings and affinities in the same line or degree, as well as persons in an adoption relationship with the parties. The right to refuse to testify continues after the cessation of the marriage or the dissolution of the adoption relationship. However, refusal to testify is not admissible in state rights cases, with the exception of divorce cases. In addition, the same provision stipulates that a witness may refuse to answer a question put to him or her if the testimony could expose him or her or his or her relatives, mentioned in the preceding paragraph, to criminal liability, disgrace or severe and direct property damage, or if the testimony would be connected with a violation of an important professional secret. A clergyman may refuse to testify as to facts entrusted to him in confession. It should also be noted that it follows from the provision of Article 259 of the CCP that witnesses may not be:
1) persons incapable of perceiving or communicating their perceptions;
2) military officers and officials who are not exempted from maintaining the secrecy of classified information with the clause "reserved" or "confidential", as well as persons obliged to maintain the secrecy of the General Prosecutor's Office of the Republic of Poland, if their testimony would be connected with its violation;
3) legal representatives of the parties and persons who may be heard as parties in their capacity as organs of a legal person or other organisation with judicial capacity;
4) Uniform co-participants.
It should also be pointed out that it follows from Article 2591 of the CCP that a mediator may not be a witness as to the facts of which he or she has become aware in connection with the conduct of mediation, unless the parties release him or her from the obligation to maintain the secrecy of mediation.

**7.7.2 Does the law of your Member State allow for cross-examination?**
(Explain also if the rules differ for videoconference testimony.)

Polish law allows the examination of witnesses by way of confrontation. Thus, it follows from Art.
Art. 272 it follows that witnesses whose testimony contradicts each other may be confronted. In addition, it also follows from Article 2721 that if the court has doubts about the ability of a witness to perceive or communicate perceptions, it may order that the witness be examined with the participation of a medical

or psychological expert, and the witness may not object to this. These methods of questioning are also used in the case of videoconferencing.

**7.8. If videoconference technology is used to conduct hearings, how (if at all) can the court and/or parties terminate the use of videoconference technology and revert to regular (on-site) proceedings?**
*(Please explain the powers of the court and the parties in relation to choosing to conduct regular proceedings after the court has already decided that the hearing will be conducted through videoconference.)*

The presiding judge decides pursuant to Art. 151 par. 2 CCP on the form in which the hearing will be conducted, i.e. whether it will be held by videoconference or traditionally. However, this does not apply to remote hearings held during the COVID-19 emergency, as Article 15 of the SCA(1) provides that the case must be heard at a remote hearing.

**7.9. Does the law (or best practice) provide, that the court should – before ordering the use of videoconference technology – check (please elaborate):**
a) the internet connection availability (and/or speed) of the persons involved in the videoconference;
b) the technical equipment of the persons involved in the videoconference;
c) the technical literacy of the persons involved in the videoconference;
d) the physical capacity of the persons involved in the videoconference (e.g. if they are located in the Member State, their health status (hospitalisation; vocalisation, hearing and seeing));
e) other (please specify)?
*(In addition, please specify if the court has to conduct a "test" session" before the actual videoconference.)*

Polish law does not regulate these issues. However, it is good practice to instruct parties, witnesses, expert attorneys about the IT system to be used for the videoconference. A link is sent, which has to be entered into a web browser . The types of web browsers used are indicated in the instructions. The court also provides the telephone number of the court registry and the court IT specialist in the event of technical problems preventing the connection. If, despite attempts to connect with a party, witness or expert, the connection fails or the quality of the connection is poor, the court will always postpone the hearing and set a new date to enable all participants to attend the hearing.

**7.10. Does the law (or best practice) offer special safeguards for vulnerable persons?**
*(Please explain whether the use of the videoconferencing technology must follow any special rules for vulnerable partakers (e.g. children; persons with illness; persons located in hospitals; whistle-blowers; elder persons).)*

A party who does not have the possibility to participate in the hearing remotely may request the court to allow participation in the hearing in the court building. The court will then provide a connection to the courtroom where the hearing is taking place. The application must be submitted 7 days before the scheduled hearing date. The party, witness, expert is instructed about the right to participate in the remote hearing in the court building.

**7.11. Does the law of your Member State provide:**

**a) The location of the persons engaged in the videoconference (i.e. where the videoconference must or may be conducted) and the use of virtual filters and backgrounds?**
*(Member States' laws may allow only for court2court videoconference; other laws may not contain restrictions and the partakers may enter the videoconference from the location of their choice; explain whether, for example, a person may join the videoconference through their mobile device from their domicile or a car etc. Explain whether a person may use filters or change the background/backdrop. If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)*

In Polish law, Article 151 par. 2 CCP provides for the possibility of a remote hearing only from the building of another court. Hence, this method of videoconferencing has not been used in practice. This is because it required the involvement of another court, which had to provide a room in which the videoconferencing equipment was installed.

Article 15 zzs(9) of the Covid Law, on the other hand, provides for the possibility to participate in a remote hearing outside the building of the court conducting the proceedings. Also the composition of the court can participate in the hearing remotely. This particular solution has become so widespread that the legislator intends to amend Art. 151 par. 2 CCP so that the possibility for participants to take part in a remote hearing also outside the court building.

**aa) How does the law sanction a person who does not conduct the videoconference at the designated location?**

In the case of Article 15 zzs(9), there are no regulations that specify in which location a person participating in a remote hearing must be. Hence, there are situations where such persons participate in the remote hearing in inappropriate locations (e.g. school, train station, airport, car).

**ab) Are there any rules for the inspection of the location where the person heard is situated and the privacy it offers?**
*(If the person is situated at a private location, does the person have to "show" the court whether any other person is present at the location and/or – where (professional/business) secrecy is involved – whether the location offers sufficient privacy. Must the location adhere to any form of decency or décor? If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

At present, in the absence of provisions in the Covid Law, there is no possibility of control (If the person is in a private place, does he or she have to "show" the court whether there are other persons in the place and/or, as far as (professional/business) confidentiality is concerned, whether the place provides sufficient privacy. Does the venue have to meet any decency or decorum requirements? If possible, please specify whether the rules differ for the two forms of videoconferencing, i.e. during the taking of evidence and during the conduct of the trial).

**ac) Suppose a person lives in a one-room apartment with family or a room rented with friends, and cannot find another suitable location. Does the law allow the presence of family members, roommates etc. in such cases? If yes, do these persons have to identify themselves?**

As a general rule, the hearing is open to the public, meaning that third parties can attend as an audience. However, in the case of a hearing held pursuant to section 15 szs(9) of the Covenant Act, the presiding judge decides on the participation of the public, upon their request, by sending them a link. Hence, the

participation of family members during the hearing is not allowed simply because they are in the same room with the person being heard

**b) the time when the videoconference may be conducted?**
*(Member States' laws may provide that videoconferences should not take place before e.g. 06:00 and no later than e.g. 18:00; does the law provide rules for videoconferencing if the persons are located in different time zones? If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)*

Court hearings, both remote and traditional, only take place during the office hours of the court concerned, i.e. normally from 7.30 a.m. to 3.30 p.m. If there is an extended hearing, this will be an exception.

**c) the apparel and conduct of the persons taking part in the videoconference?**
*(Member States' laws may compel partakers to dress or conduct themselves in a special manner (e.g. toga outfit; standing in attention of the judge); please explain how these rules or traditions are followed if videoconference technology is used. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

There are currently no regulations on what attire attorneys who are lawyers are to participate in. Since, pursuant to art. 151par. 2 CCP the hearing is conducted remotely but from the building of another court, the general rules on the attire of official attorneys (toga) apply. In the case of a remote hearing pursuant to Article 15zzs(9) of the Covidium Act, there are no rules on what attire the attorney should wear, but good practice is also official attire. There is no doubt that a panel of judges attends the hearing in official dress, even if they will be attending the hearing remotely pursuant to Article 15zzs(9).

**d) the identification of the persons taking part in the videoconference?**
*(If the videoconference takes place in a court2court setting, this concern is usually dispelled, since court officials may check the identity; however, checking the identity of a person entering the videoconference from a private location may be troublesome. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

The chair may, if necessary, verify the identity of persons participating in the trial remotely, e.g. by producing an identification documents.

**7.12. Can (or must) a videoconference be recorded?**

In Polish law, under Article 157(1) of the CCP, a public hearing is subject to video or audio recording. This is because the registration replaces the minutes of the hearing. Hence, in the case of videoconferencing, it is necessary to record the hearing. The Avaia Scopia and Jitsi software has been combined with Recourt software for recording hearings Other software can potentially be used by courts to conduct videoconferencing, making Recourt-based recording impossible. The court may then apply the provision of Article 157(1) par. 1 CCP, which allows the court to dispense with the recording of the hearing if for technical reasons this is not possible.

**7.12.1. Does the recording of a videoconference contain video feedback from all cameras in the court or only the camera in focus?**

*(Many software applications pin or highlight only one of the persons during the videoconference and close or minimize other (usually non-active) persons. A recording might thus capture only the actions of one person at a time.)*

In the practice of Polish courts, recording takes place from cameras facing the parties. The court is not recorded.

**7.12.2. Which persons are shown on video during the videoconference?**
*(I.e. which persons have a camera pointed at them and can be seen on the screen; e.g. judge, party, advocate, expert witness, interpreter, court staff, witness, public.)*

During the videoconference, the parties, and their attorneys, witnesses, experts and the court are shown.

**7.12.3. How (which medium and format) and where is the footage of the videoconference stored and later archived?** *(For example, it may be stored on a local machine or at a remote server.)*

The recording of the hearing, including the videoconference, is stored on the local server of the court, and transferred to the electronic protocol archive operating in the Court of Appeal in Wrocław Centre for Competence and Informatisation of the Judiciary. All recordings of hearings in civil, criminal cases are stored there. A party has access to an audio recording after logging in to their case in the Internet Information Portal of Common Courts, or an audio video recording is issued on an electronic carrier at the request of a party. In the latter case, the court charges a fee.

**7.12.4. Does the footage of the videoconference enter the record of the case?**

Yes, DVDs are attached.

**7.12.5. Who has access to view the footage after it has been recorded?**

Persons entitled to access the case file, i.e. parties, attorneys, prosecutor, other court, Prosecutor General, Ombudsman, etc.

**7.12.6. Presume that the proceedings have concluded at the first instance and an appeal or other recourse has been submitted by the party. May the second instance court access and view the recording of the videoconference?**

The second instance court has access to the recording of the hearing through the Electronic Minutes Portal and there are tides on the audio video recording in the case file.

**7.12.7. If the court orders *ex post* transcription of the hearing, does the court reporter write the Minutes of the case by transcribing the footage of the videoconference or is there a separate audio log for transcription?**

In the practice of the Polish judiciary, already in 2013. , with the dissemination of the electronic protocol, court divisions called IT Service Centres were established, where the transcription of the audio video recording into text is performed. Software is used to support the transcriptions, but then an employee of such a Branch verifies the transcription.

**7.13. Concerning court interpreters – does the law (or best practice) provide for successive or simultaneous interpretation during the videoconference?**

There is no such possibility. A party can apply for automatic transcription on its own, but its quality for the Polish language is not perfect, about 75% effectiveness.

**7.13.1. Where is the interpreter located during the videoconference?**
*(E.g. in the court room; in the room with the person being heard etc.)*

The interpreter may be in the Courtroom when the videoconference is held pursuant to Art. 151 par. 2 CCP. This applies to the Courtroom where the court is located or the Courtroom where there is a witness, a party who requires interpretation. This issue is decided by the presiding judge on the basis of the efficiency of the proceedings (E.g. in the courtroom; in the room with the person being heard, etc.).

**7.14. Immediacy, equality of arms and case management**

**7.14.1. How does the law of your Member State generally sanction an infringement of the principle of immediacy?**

A breach of the principle of immediacy may result in a party being deprived of his or her rights of defense, i.e. constitute a very serious breach of procedural rules. This in turn may invalidate the proceedings in their entirety, or that part of them in which the rights of the defense have been infringed . A breach of the principle of equality of arms is precisely one example of a deprivation of the right of defense resulting in the invalidity of the proceedings.

**7.14.2. Does the law of your Member State specify any special aspects regarding the principle of immediacy when using videoconferencing technology?**

Polish law does not contain such rules, as the general procedural rules apply.

**7.14.3. Have your courts dealt with cases alleging an infringement of the principle of immediacy or the impartiality of judges in videoconference proceedings?**
*(If so, please provide the core of the legal question addressed and the resolution, as well as citations.)*

In the practice of the Polish judiciary, there has not yet been a case in which there has been a violation of the equality of the parties or the principle of directness in a situation where the court conducted a remote hearing or evidence. The practice is short in this case, as it only covers the functioning of courts during the COVID-19 pandemic (from March 2020 until today).

**7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?**
*(This may be especially important when "leading questions" are posed.)*

Both parties and their attorneys can, during a remote hearing or remote evidence, ask questions of witnesses, parties, and address the court. Order in the courtroom, in terms of giving the floor, is administered by the presiding judge.

**7.14.5. How does an inspection of an object take place during a videoconference?**
*(For example, imagine a court has to examine a knife, which was submitted as evidence by a party in physical form to the court.)*

The court inspects the object, e.g. a document, computer, etc., by passing the object to the camera.

**7.14.6. Can documents only be presented by means of a document camera or also through the use of file/screen sharing in the videoconference application?**

There are no special document cameras in Polish courts, so the presentation of documents is done via an ordinary camera, and then the document is submitted to the court, and copies to the other parties.

**7.14.7. During the videoconference, does the application (software) highlight only the person actively speaking or are all participants visible at all times (and at the same size)?**
*(Often, the application will minimize or close the video of the person who is not active (speaking) during the videoconference.)*

The videoconferencing software automatically increases the image of the party, the attorney, the court, while they are speaking.

**7.14.8. Suppose that the connection becomes unstable, and the quality of the audio and/or video feed drops. One of the parties considers that the quality does not allow for correct testimony. Consider also that the video feed breaks down before or in the middle of the videoconference and only the audio feed is available. What options do the court and parties have in regards to the continuation of the videoconference? Can a continuation in such circumstances constitute grounds for appeal?**

In the practice of the Polish judiciary, technical problems consisting in the poor quality of the connection occur during the remote hearing. If the problems make it impossible at all (lack of connection0, or seriously impede the connection (poor quality of the image or sound), the court is obliged to postpone the hearing in order to repeat it.

**7.14.9. If one party enjoys a better audio-visual experience due to better technical equipment and/or internet connection than the other, and the court allows the continuation of the proceedings, can the other party allege a breach of equality of arms?**

There are no grounds for discontinuing the remote hearing. A party, as noted above, but also a witness, an expert or even the parties' attorney, has the right under Article 15 zzs(1) of the Covidium Act to request to attend the hearing in the court building. On the other hand, if a videoconference is held pursuant to art. 151 par. 2 CCP, there is no such problem, because the quality of the transmission is the responsibility of another court.

**7.14.10. During the videoconference, the court suspects that a person being heard is receiving outside help/suggestions or is under duress. Can the court order the person to turn the camera and show the apartment or share their screen? Can the court request the person to shut down other technological devices in their vicinity during the videoconference? Can the court request that other persons be removed from the location of the videoconference?**

Yes, the presiding judge is in charge of the hearing and has a duty to ensure that the hearing is conducted properly. If there are attempts to influence the course of the evidence, e.g. by means of coercive measures, the presiding judge is obliged to react in any way he/she can, e.g. by repeating the hearing in another court building or in the building of the court which is conducting the proceedings.

**7.15. Does the law (or best practice) provide any special rules for the participation of the party's advocate (e.g. together with the party at the same location, or in separate locations)?**

No, Polish law does not provide special rules for the lawyer's participation in a remote hearing. Usually, he or she takes part from the seat of his or her law firm, and often the party he or she represents participates in the hearing together with him or her.

**7.16. Are there any special rules pertaining to the distribution of costs in case of videoconferencing?**
*(Generally, a videoconference will have the effect of reducing the costs of the proceedings; nevertheless, does the law provide special rules on who bears the costs if, for example, one party opposes the videoconference but the court decides on it anyway? Are there special rules regarding the bearing of costs incurred for technical equipment? Are there special rules regarding the bearing of costs for interpreters?)*

In Polish law there are no rules governing the costs of court proceedings which may include the costs of videoconferencing. Usually, standard computer equipment is used, as well as ordinary Internet access. If a party does not have a computer or the ability to use the equipment, it may request to participate in the videoconference at the court building (free of charge).

**7.17. How does the law guarantee the publicity of videoconference hearings?**
*(Please also explain legal measures to avoid problems that could arise due to the public nature of the hearing (e.g. too many participants in the video conference).)*
At the request of a person interested in participating in a remote hearing, the Presiding Judge may allow him/her to participate as an audience member. In this case, the court will send that person a link to the remote hearing. The person may participate passively, without being able to speak. The presiding judge may also verify the person's identity by showing proof of identity to the camera.

**7.18. The Recast Regulation (EU) 2020/1783 on the taking of evidence in civil or commercial matters provides in Article 20 the primacy of direct taking of evidence through videoconference if the court considers the use of such technology to be "appropriate" in the specific circumstances of the case. What do you consider would fall in the category of "inappropriate"? In addition, should form N in Annex I of said Regulation be supplemented in your opinion (explain how and why)?**

In my opinion, it is about the nature of the evidence. E.g. the hearing of a minor child in a guardianship case should take place in a special room with the participation of a psychologist and not by videoconference. It may also be that in guardianship cases, where the court also has to contact the party in person, land-based hearings are preferable.