NATIONAL REPORT FOR POLAND ON CROSS-BORDER SERVICE OF DOCUMENTS

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Questionnaire for National Reports

POLAND

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On the Cross-border Service of Documents

This questionnaire addresses practical and theoretical aspects regarding the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Each partner should provide substantive answers for their respective Member State (or additional Member State, if specifically stipulated by the coordinator). Where the term "Regulation" is used below, it refers to Regulation (EU) 2020/1784 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

For useful information please refer (among other sources) to:

- Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1784)
- Impact assessment of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2018:287:FIN)
- Opinion of the European Economic and Social Committee on a) Proposal for a Regulation of the European Parliament and of the Council amending Council 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 (COM[2018] 378 final — 2018/203 [COD]) and on b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (COM[2018] 379 final — 2018/204 [COD]) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2019.062.01.0056.01.ENG&toc=OJ%3AC%3A2019%3A062%3ATOC)
- The provided information in the European Judicial Atlas in civil matters on the service of documents (https://e-justice.europa.eu/38580/EN/serving_documents_recast)
- Briefing of the European Parliamentary Research Service (EPRS) on the reform of the service of documents regulation (2019) (https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642240/EPRS_BRI(2019)642240_EN.pdf)

- 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-1393-2007-on-the-service-in-the-member-states-of-judicial-and-extrajudicial-documents-in-civil-or-commercial-matters-service-of-documents/)

The structure of each individual report should follow, to the utmost extent possible, the list of questions enumerated below and the given structure. If authors choose to address certain issues elsewhere within the questionnaire, they are urgently requested to make cross-references and specify where they have provided an answer for the respective question (e.g. "the/an 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 to be regarded conclusive. It might be that important issues in certain jurisdictions are not mentioned. 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; in this case, you are requested to add a reference to the lack of relevance.

Please provide representative references to court decisions and literature. You are also asked 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, if possible 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.

Language of national reports: English.

Deadline: 31 March 2023.

In case of any questions, remarks or suggestions please contact the project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si.

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NATIONAL SERVICE OF DOCUMENTS

1. **What is the legal basis for service of documents in your Member State? Is there a special act regulating the service of documents within your national legal system.**
(e.g. in Germany: The Code of Civil Procedure (hereafter: ZPO) offers a legal basis for service of documents. Section 2 of the third chapter gives a general overview on the procedure for the service of records or documents. The ZPO differentiates between service ex officio (sub-section 1, §§ 166 et seq. ZPO) and service of records or documents at the instigation of the parties (sub-section 2, §§ 191 et seq. ZPO).)

   In Polish law, the service of court letters and pleadings is governed by the Code of Civil Procedure (hereinafter: CCP). Chapter 2 "Service" of Part One of the Code deals with this issue. It covers service by the court, by attorneys at law. Service by post, bailiff and electronic service. In addition to the general rules, exceptions to the basic rule of electronic service are also provided for, e.g. in enforcement proceedings.

2. **Explain the term "service" as used in your national legal system. If there is a legal definition, please quote it.**
(e.g. in Germany: We do have a legal definition in § 166 (1) ZPO, "(1) The term "service" designates the issuance of a document to a person in the form stipulated in the present Title" Service means to enable a person to be inform about a document. For the service itself and its legal validity a documentation of the service is not necessary. The documentation is regulated in a separate paragraph, 182 ZPO. The definition of service applies for service which is carried out ex officio, § 166(2) ZPO. The effectiveness of service requires intent.[1] A notarisation of delivery is no longer a constitutive part of service,[2] it only has an evidentiary function.)

   In Polish law, service is understood as delivery of a document to the addressee or allowing access to information on the content of the document (as in the case of electronic service).The provision of Article 15 zzs(9) of the Covidium Act provides for service of court letters by allowing access to the content of these letters in the ICT system , which is called the Information Portal of the Courts.

3. **How do you define "civil and commercial matters" in your national legal system? Does this definition differ from the term of the Regulation, and if so, in what way?**
(e.g. Germany does not use this term in pure domestic cases.)

   In Polish law, civil cases are distinguished from commercial cases (in Polish law called -business cases). The blurring is due to the fact that there is a separate commercial proceeding in the CCP, which contains a number of differences from civil proceedings. However, separate proceedings in commercial matters constitute a chapter of the CPC, and therefore, in matters not regulated in this chapter, the general provisions apply, e.g. concerning entities, legal capacity, procedural capacity, power of attorney, filing of pleadings, service of court and procedural writs, taking of evidence, conducting a hearing, passing a sentence. Commercial cases are, according to Article 4582 of the CCP, cases:
   1) from civil relations between entrepreneurs within the scope of their business activity;

[1] BGH NJW 1956, 1878; MüKoBGB/*Häublein/Müller*, § 166 para. 3.
[2] MüKoBGB/*Häublein/Müller*, § 166 para. 3.

2) specified in item 1, even if any of the parties has ceased to conduct business;
3) from a partnership relationship
4) against entrepreneurs for the cessation of environmental violations and restoration of the previous state of affairs or for compensation for damage related thereto and for prohibition or restriction of activities threatening the environment;
5) from construction contracts and from contracts related to the construction process for the performance of construction works;
6) from leasing contracts;
7) against persons who are liable for the entrepreneur's debt, also in the alternative or jointly and severally, by operation of law or legal transaction;
8) between organs of a state enterprise;
9) between a state enterprise or its bodies and its founding or supervisory authority;
10) in the field of bankruptcy and restructuring law;
11) for an enforceability clause to be appended to an enforcement title, which is a final or immediately enforceable decision of a commercial court or a settlement concluded before that court;
12) for deprivation of enforceability of an enforceable title based on a final or immediately enforceable decision of a commercial court or a settlement concluded before that court.

Separate proceedings in commercial cases relate only to cases conducted in a trial and not in non-trial or registration proceedings.

In commercial proceedings, the statement of claim and the statement of defence should, in addition to the usual formal requirements of pleadings, also include an e-mail address. In order to facilitate contact. Moreover, in these proceedings, the plaintiff should provide all claims and evidence already in the statement of claim on pain of losing the right to rely on them in further proceedings, and the defendant is obliged to do so in the statement of defence. An evidentiary agreement is permissible, which is not possible in civil proceedings. Witness evidence is also restricted in favour of documentary evidence, and counterclaims are prohibited.

4. For what purpose does your legal system define the concept "civil and commercial matters"?
(As we [in Germany] do no not us the term in your legal system, we only us the definition for the application of European Law.)

As indicated above, the definition of civil and commercial matters is relevant for determining the functional jurisdiction of the court. In Poland, we have civil courts (Civil Sections) and commercial courts (Commercial Sections) in district and county courts. At the level of the Court of Appeal and the Supreme Court, this division no longer exists. Appeals and cassation appeals against judgments of the civil and commercial courts are heard by the courts of appeal or the Supreme Court. In addition to the fact that only the commercial divisions of the courts are designated to hear cases, for example, commercial cases, a separate procedure regulated in Section IIa Proceedings in Commercial Matters is applied. This procedure is designed to speed up the hearing of commercial cases, which is of great importance to entrepreneurs, but at the cost of numerous restrictions and special rules regarding the submission of claims and evidence and allegations, e.g. offsetting.

5. How is the concepts "judicial and extrajudicial documents" defined in your legal system? Does your national legal system distinguish between judicial and extrajudicial documents in the context of (official) service? If yes, please define these categories and give examples.
(*e.g. in Germany: Extrajudicial service is understood as the service of a document outside of a court proceeding and not only the service of documents related to a court proceeding.*)

In Polish law there is a distinction concerning the service of court documents (orders, decisions, judgments) and the service of extrajudicial documents, i.e. not originating from the court (e.g. expert opinions, letters from administrative authorities, etc.). If extrajudicial documents are presented as evidence in a case, then they are served by the court on the other party, just as court documents will be served.

6. What is the purpose of service of documents? Are there overarching principles of procedures that are intertwined with the service of documents in your Member State?

*(e.g. in Germany: The purpose of service is to give the addressee (§ 182 II Nr. 1 ZPO) the opportunity to take notice of the document and to prepare his legal defence or prosecution thereon.[3] This purpose is a consequence of the **right to be heard**, which is considered as a fundamental right, Article 103(1) of the German Constitution.[4] Hence, the purpose of service is based on the **rule of law** for the area of judicial proceedings. Furthermore, the right to service promotes the course of proceedings and thus relieves the process, which serves the principle of **effective access to justice** (Article 19(4) of the German Constitution).[5] In addition, **legal certainty** is to be established.)*
(e.g. in Austria: The continuance of the trial, the right to be heard, ...)

In Polish law, the purpose of service of a court document is for a party, attorney or other participant in the proceedings to become acquainted with its contents in order to take a specific action. When the court serves a decision on which there is a complaint, the party, after becoming acquainted with the decision, decides to appeal against it, i.e. exercises its right to defence. The same applies to service of extrajudicial documents which, for example, constitute evidence in a case. The service of such documents gives rise to the possibility of questioning the authenticity of the document or its evidentiary value, for the evidentiary thesis defined by the party. If the court or a party represented by a professional representative fails to serve a court document or an out-of-court document, this may be the basis for a plea alleging a breach of the party's right of defence and lead to the nullity of the court proceedings. The service of court or extrajudicial documents is therefore a guarantee of the right to a court, which also stems from Article 45 of the Constitution.

7. Who is responsible for the service of documents?
(e.g. in Germany: "The court registry shall perform service of documents pursuant to §§ 173 to 175, § 168(1) ZPO. Hence, the court is responsible for sending the documents but the claimant is responsible for enabling the court to do so by providing enough/sufficient information.)

[3] BVerfG NJW 1984, 2567, 2568.
[4] BVerfG NJW 1984, 2567, 2568.
[5] cf. VGH München NJW 2012, 950, 951.

(e.g. in Austria: The court is generally responsible for transmitting the documents and is obligated to monitor the service process. The recipient of the documents has a duty to collaborate.)
In accordance with the *ex officio* delivery principle (*zasada oficjalności doręczeń*), unless otherwise provided by law, documents shall be served by the court *ex officio*. The Code of Civil Procedure provisions on service of documents are mandatory, and therefore the parties to the proceedings are excluded from deciding on the mode of service of court documents.[6]

The above *ex officio* delivery principle is enshrined in Art. 131 Code of Civil Procedure. Pursuant to Art. 131 § 1 Code of Civil Procedure, documents shall be served through a postal operator defined in the Postal Law of 23 November 2012, hereinafter Postal Law[7] court employees or court delivery service. The court may also serve documents through court enforcement officers in the manner specified in the Act of 22 March 2018 on court enforcement officers, hereinafter Act on court enforcement officers.[8] In the istances provided for by law, the court may serve documents by the Police or the Military Police (Art. 131 § 1^1 Court of Civil Procedure).

Exceptions to the *ex officio* delivery principle regard service of copies of pleadings by legal practitioners representing the parties (attorenys) directly to one another in the course of the proceedings (Art. 132 Code of Civil Procedure) as well as service of documents by the claimant on the defendant in case the latter, despite repeated notice, has not collected the statement of claim or another pleading giving rise to a need to defend his or her rights (Art. 139^1 Code of Civil Procedure) (see point 7.2).

7.1. If the court is responsible for service: What can be done if the court has failed to act? Can one sue the state and claim damage? Or can one sue the court to initiate the service?

The *ex officio* delivery principle implies that the court shall be liable for due service of documents.[9] In case of failure to serve documents as required by respective procedural

[6] E. Rudkowska-Ząbczyk and P. Rodziewicz, [Commentary on Art. 131 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz [Code of Civil Procedure: Commentary] (Legalis 2023), paragraph 2; M. Michalska-Marciniak, 'Uwagi ogólne', in A. Marciniak (ed.), Kodeks postępowania cywilnego, vol 1: Komentarz. Art. 1–205 [Code of Civil Procedure, vol. 1: Commentary. Art. 1–205] (Wydawnictwo C.H. Beck 2019), paragraphs 1, 12; A. Kościółek, 'Doręczenia elektroniczne w Kodeksie postępowania cywilnego' [Electronic Service in the Code of Civil Procedure], in J. Gołaczyński (ed.), Postępowanie cywilne w czasie pandemii. E-doręczenia, rozprawa zdalna, posiedzenia niejawne, składanie pism procesowych [Civil Proceedings during the Pandemic: E-service, Remote Hearing, Closed Sessions, Filing of Pleadings] (Wydawnictwo C.H. Beck 2022) p. 65 at p. 65 – 71. See also decree of the Supreme Court of 8 September 1993, III CRN 30/93.

[7] *Ustawa z dnia 23 listopada 2012 r. – Prawo pocztowe* (Journal of Laws of 2022, item 896, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220000896/U/D20220896Lj.pdf>, visited 10 March 2023.

[8] *Ustawa z dnia 22 marca 2018 r. o komornikach sądowych* (Journal of Laws of 2022, item 2224, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000771/U/D20180771Lj.pdf>, visited 10 March 2023

[9] P. Rylski, 'Skuteczność doręczeń w procesie cywilnym' [Effectiveness of Service in Civil Proceedings], 15 Prawo w Działaniu. Sprawy Cywilne (2013) p. 55 at p. 56.

provisions, general rules on the State Treasury's liability for damage, laid down in the Polish Civil Code,[10] hereinafter: Civil Code, may apply.[11]
In general, the court serves documents through a postal operator. As laid down in Art. 3 point 12 Postal Law, a postal operator is an entrepreneur authorised to perform postal activities, based on an entry in the register of postal operators. The provisions on the postal operators' liability for failure to perform or improper performance of the postal service are set out in the Chapter 8 of Postal Law.[12]

7.2. If the parties are responsible for service: Within what time frame must service be affected?

Pursuant to Art. 132 § 1 Code of Civil Procedure, in the course of the proceedings, advocates, legal advisors, patent attorneys or attorneys of the State Attorney Office of the Republic of Poland shall directly serve copies of pleadings with appendices on one another. A statement confirming the delivery or dispatch by registered letter of a copy of the pleading to the other party should be made in the pleading filed with the court. Pleadings which do not contain such statement shall be returned without prior request to rectify the defect. The provisions of § 1 do not apply to a counterclaim, appeal, appeal to the Supreme Court, opposition to a default judgment, opposition to an order for payment, objection against an order for payment, application for security or injunction, petition to reopen proceedings, petition for a final and non-revisable judgment to be declared unlawful, appeal against a court refendary's decision, all of which must be filed with the court together with copies for the opposing party (§ 1^1). The provisions of § 1 do not apply to pleadings filed via the ICT system, to be served on advocates, legal advisors, patent attorneys or attorneys of the State Attorney Office of the Republic of Poland who have chosen to file pleadings via the ICT system (§ 1^2). Moreover, in line with Art. 132 § 2 Code of Civil Procedure, service on the addressee may also be effected in person at the court secretariat. In case of direct service on the addressee, the attorney shall be liable for the correctness of service, however, it is the court that shall assess whether the service is valid.[13]

According to Art. 139^1 Code of Civil Procedure, if, despite repeated notice in accordance with Art. 139 § 1 second sentence, the defendant has not collected the statement of claim or another pleading giving rise to a need to defend his or her rights, and in the case he or she has not been served with any document in the manner provided for in the preceding articles, and neither Art. 139 § 2–3^1 nor another special regulation providing for the effect of service applies, the president shall notify the claimant, sending him or her a copy of the document for the defendant and obliging him or her to deliver the document to the defendant through the court enforcement officer (§ 1). Within two months from the service of the court order referred to in § 1, the claimant shall file a proof of service of the pleading on the defendant by the court enforcement officer, or shall return the pleading with an indication of the defendant's current address or a proof that the defendant is staying at the address provided in the statement of claim. After the expiry of the time limit,

[10] *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.
[11] According to Art. 417 § 1 Civil Code, the State Treasury or an entity of local government or some other legal person who by virtue of law exercises public authority shall be liable for the damage inflicted by an illegal act or omission committed while exercising the public authority. See further T. Demendecki, Doręczenia w procesie cywilnym [Service in Civil Proceedings] (Towarzystwo Wydawnictw Naukowych Libropolis 2015) p. 639 – 654.
[12] As follows from Art. 87 para. 1 Postal Law, postal operators' liability for failure to perform or improper performance of the postal service is governed by the Civil Code, unless the provisions of Postal Law provide otherwise.
[13] Rylski 2013, supra n. 9, p. 56.

the provision of art. 177 § 1 point 6 shall apply (§ 2).[14] As follows from Art. 177 § 1 point 6 Code of Civil Procedure, the court may stay proceedings on its own initiative if the proceedings cannot be continued because the claimant's address is unavailable or incorrect, or if the claimant fails to provide the defendant's address or particulars that would allow the court to determine the numbers referred to in Article 208[1], within a prescribed time limit, or if the claimant fails to comply with any other orders.[15]

7.3. If the responsibility of service is shared between the court and the parties: Under your Member State's law, how is it determined who is responsible for the service of documents?

See points 7.1 and 7.2.

7.4. What are the national requirements for a valid service of documents in your Member State?

As follows from the foregoing, it is required for service of documents to be valid that it is effected in accordance with the provisions of the Code of Civil Procedure on service of documents (Art. 131 ff. Code of Civil Procedure).

Under the Code of Civil Procedure, service of documents is governed by the principle of personal service, also called direct service. It is based on the assumption that service shall be effected directly on the addressee. The service may be either proper or substitute (indirect). In the former case, a document is served directly on the addressee, whereas the latter category encompasses service on entities other than the addressee (Art. 138 Code of Civil Procedure), service effected in any other manner than by handing over a document to a specific entity that is not its addressee through a notification (Art. 139 Code of Civil Procedure), and keeping a document in the case files. In the case of appointment of an attorney or a person authorised to receive court documents, documents shall be served on these persons. Service on the State Treasury is effected through the body authorised to representation before the court or on an employee authorised to receive documents.[16]

8. What documents must be sent to the respondent? Who prepares the documents?

(e.g. in Germany: The claim must be sent to the respondent (prepared by the claimant) in pursuance with § 253 ZPO as well as an information form prepared by the court to inform the respondent about their procedural rights [§ 499 ZPO])

The legal scholarship shows inconsistencies on the character of documents served in the civil proceedings. The reason is that different terms are used in the provisions governing service of documents. They include the following: "court document" (*pismo sądowe*), "letter" or "document" (*pismo*), "pleading" (*pismo procesowe*) and "judgment" (*orzeczenie*). Accordingly, there are basically two positions on the subject of service. In line with the first one, the subject of service are court documents, including pleadings (i.e.

[14] See e.g. J. Szachta, 'Doręczenie korespondencji pozwanemu przez komornika sądowego. Zagadnienia wybrane. Problemy praktyczne' [Service of Correspondence on the Defendant through the Court Enforcement Officer: Selected Issues. Practical Problems], 6 Forum Prawnicze (2019) p. 45 at 47 – 54.

[15] According to Art. 208[1] Code of Civil Procedure, the court shall on its own initiative verify the personal identification number (PESEL) of a defendant who is a natural person if he is obliged to have one or if he has one without being obliged to, or a number in the National Court Register or, if unavailable, in another relevant register, or the taxpayer identification number (NIP) of a defendant other than a natural person and who is not obliged to be entered in a relevant register, if he is obliged to have one.

[16] E. Marszałkowska-Krześ, 'Zasady dokonywania doręczeń po nowelizacji k.p.c. wprowadzonej ustawą z 4 lipca 2019 roku' [Rules on Service Following the Amendment to the Code of Civil Procedure of 4 July 2019], 127 Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji (2021) p. 475 at p. 477 – 478; Michalska-Marciniak 2019, supra n. 6, paragraphs 13 – 14; Rylski 2013, supra n. 9, p. 56; Demendecki 2015, supra n. 11, p. 481 – 617.

documents sent by the participants in the proceedings to the procedural and enforcement authorities, containing requests and statements submitted outside the court hearing) and documents issued by the procedural and enforcement authorities, e.g. judgments, notifications, summons. As argued by other scholars, it is court documents and pleadings that shall be considered the subject of service because the provisions of the Code of Civil Procedure do not provide grounds for equating pleadings and court documents as one category.[17]

For further details on formal requirements regarding a pleading, and on the form in which documents are served, see point 9 below.

9. What information or other aspects must be included in the documents?
(e.g. in Germany: Formally, the claimant has to provide the name, address, and other information necessary to identify the respondent. Materially, the claimant has to provide the facts that are necessary to establish the legal claim [§ 253 ZPO]. Furthermore, the form in which a document is to be served (original, copy, transcript) is not governed by the law on service but by the substantive law [e.g. § 132 (1) in conjunction with § 2296 (2) cl. 2 of the German Civil Code (hereafter: BGB)] or other procedural law (§§ 377, 402). Without special provisions, the delivery of a certified copy is sufficient.[18])

Pursuant to Art. 126 § 1 Code of Civil Procedure, each pleading should include the following:

1) the name of the court to which the pleading is addressed,
2) forenames and surnames or business names of the parties, their statutory representatives and attorneys;
3) the type of pleading;
4) substance of an application or a statement;
5) if it is necessary to decide on the application or a statement – an indication of the facts on which the party bases its application or statement, and an indication of evidence to prove each of those facts;
6) signature of the party or the party's statutory representative or attorney;
7) list of appendices (§ 1).

The appendices listed in the pleading shall be attached thereto (Art. 126 § 1^1 Code of Civil Procedure).
As follows from Art. 126 § 2 Code of Civil Procedure, where a pleading is the first pleading in the case, it should also indicate the matter at issue and:

1) the place of residence or registered office and addresses of the parties, or, if the party is an entrepreneur entered into the Central Register and Information on Economic Activity (*Centralna Ewidencja i Informacja o Działalności Gospodarczej* – CEIDG) – correspondence address entered into the Central Register and Information on Economic Activity;
1^1) the place of residence or registered office and addresses of the parties' statutory representatives and attorneys;
2) the number of the personal identification number (PESEL) or the taxpayer identification number (NIP) of the claimant who is a natural person if he is obliged to have one or if he has one without being obliged to; or

[17] Michalska-Marciniak 2019, supra n. 6, paragraph 11; Marszałkowska-Krześ 2021, supra n. 16, p. 479 – 480. See also Demendecki 2015, supra n. 11, p. 139 – 210.
[18] MüKoBGB/*Häublein/Müller*, § 166 para. 9.

3) the number in the National Court Register (*Krajowy Rejestr Sądowy* – KRS) or, if unavailable, the number in another relevant register or the taxpayer identification number (NIP) of the claimant other than a natural person who is not required to be entered in a relevant register, if he is required to have one.

If a pleading is filed by an attorney that has not yet submitted his power of attorney, such power of attorney or a certified copy thereof should be attached to the pleading. If the attorney has chosen to file a pleading via the ICT system, a certified copy of the relevant power of attorney shall be filed via such system (Art. 126 § 3 Code of Civil Procedure). The provisions of § 3 do not apply to pleadings filed in electronic writ of payment proceedings (Art. 126 § 3^1 Code of Civil Procedure).

As laid down in Art. 126 § 4 Code of Civil Procedure, if a party is unable to sign, a pleading shall be signed by a person authorised by that party to do so and the reason for the party's inability to sign should be stated. A pleading filed via the ICT system shall bear a qualified electronic signature or signature confirmed by a trusted ePUAP profile (Art. 126 § 5 Code of Civil Procedure).

According to Art. 128 Code of Civil Procedure, a pleading should be accompanied by its copies (*odpisy*) and copies of its appendices to be served on the persons participating in the case, and, if the originals of appendices have not been submitted to the court, one copy of each appendix to be attached to the case files (§ 1). Copies of appendices certified electronically shall be attached to pleadings filed via the ICT system (§ 2).[19]

As for the form in which documents are served, it is provided for in Art. 140 Code of Civil Procedure. Accordingly, pleadings (letters) and judgments shall be served as copies (§ 1). A document generated from the ICT system may be delivered instead of a copy of the pleading or judgment as long as it bears features which allow for the existence and content of the pleading or judgment to be verified in the ICT system (§ 2). In case of electronic service, pleadings and judgments shall have the form of documents containing data generated from the ICT system (§ 3).

9.1. Please provide the definition of the term "address for service" under your national legal system.

The term "address for service" (*adres do doręczeń*) is not defined in the Code of Civil Procedure It is used, i.a., for notice of the court by a competent Regional Bar of Advocates or Regional Bar of Legal Advisors of the appointment of an advocate or legal advisor (Art. 117^3 § 2 Code of Civil Procedure), and service of pleadings or judgments on entrepreneurs and persons representing entities entered in the respective register (Art. 133 § 2^1, 2^2 and 2^3 Code of Civil Procedure).

According to Art. 117^3 Code of Civil Procedure, the court shall request a competent Regional Bar of Advocates or Regional Bar of Legal Advisors to appoint an advocate or legal advisor (§ 1). The competent Regional Bar of Advocates or Regional Bar of Legal Advisors shall appoint an advocate or legal advisor promptly, but no later than within two weeks, and shall notify the court thereof. Such notice shall include a full name and address for service of the advocate or legal advisor concerned (§ 2).

[19] Further requirements regarding a statement of claim are specified in Art. 187 Code of Civil Procedure.

As laid down in Art. 133 § 2^1 Code of Civil Procedure, pleadings or judgments addressed to an entrepreneur entered in the Central Register and Information on Economic Activity, shall be delivered to the address indicated in the CEIDG, unless the entrepreneur has designated another address for service. Pursuant to Art. 133 § 2^2 first sentence Code of Civil Procedure, pleadings and judgments addressed to an entrepreneur entered in the court register shall be delivered to the address indicated in the register, unless the entrepreneur has designated another address for service. Pleadings or judgments addressed to persons representing an entity entered in the National Court Register, liquidators, commercial proxies, members of bodies or persons authorised to appoint the management board shall be delivered to the address for service indicated in accordance with the provisions of Art. 19a para. 5 – 5b and 5d of the Act of 20 August 1997 on the National Court Register.[20]

Moreover, the term "address for electronic service" (*adres do doręczeń elektronicznych*) was introduced to the Code of Civil Procedure by way of the the Electronic Service Act of 18 November 2020, hereinafter Electronic Service Act[21]. According to Art. 125 § 5 Code of Civil Procedure, if the technical and organisational conditions of the court allow it, pleadings may also be submitted to the address for electronic service of the court, referred to in Art. 2 point 1 Electronic Service Act. Within the meaning of the Electronic Service Act, the address for electronic service is an electronic address referred to in Art. 2 point 1 of the Act of 18 July 2002 on the provision of electronic services[22] of an entity using a public electronic registered delivery service or a public hybrid service or a qualified electronic registered delivery service, enabling unambiguous identification of the sender or addressee of data sent as part of those services.

9.2. Provide definitions of other (mandatory) aspects mentioned in Question 9.

As mentioned in point 9, the first pleading in a case should contain an indication of the place of residence or registered office of the parties, their statutory representatives and attorneys. Place of residence and registered office are defined in Art. 25 and 41 Civil Code, respectively, and they cover only the locality. However, limiting the determination of the place of residence or registered office only to the name of the place is not sufficient to ensure the possibility of communication between the court and the participant in the proceedings. Hence, the address of the party should be specified, including – apart from the name of the locality (town) – also the name of the street (if there are streets in a given locality), house and flat number, postal code and the seat of the post office competent for deliveries.[23]

With regard to copies of pleadings, it should be noted that a copy is a reproduction of a pleading, and therefore it should reflect the full content of the original. At the same time, the legislator has not introduced any restrictions as to the method of preparing copies.

[20] *Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym* (Journal of Laws of 2022, item 1683, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971210769/U/D19970769Lj.pdf>, visited 10 March 2023.

[21] *Ustawa z dnia 18 listopada 2020 r. o doręczeniach elektronicznych* (Journal of Laws of 2023, item 285), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200002320/U/D20202320Lj.pdf>, visited 7 March 2023.

[22] *Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną* (Journal of Laws of 2020, item 344), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20021441204/U/D20021204Lj.pdf>, visited 10 March 2023.

[23] E. Rudkowska-Ząbczyk and P. Rodziewicz, [Commentary on Art. 126 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 26.

Pleadings can therefore be photocopied as well as take the form of computer printouts. A copy of the pleading does not require a signature of the party. The requirements provided for in art. 126 § 1 point 4 Code of Civil Procedure apply only to the pleading itself, and not to its copies because the term "appendix" is distinct from the term "pleading".[24]

10. How are documents <u>without a cross-border element</u> served in your national jurisdiction? What is the usual method of service? Please explain the different methods of service in detail.

(e.g. in Germany: National service of documents is done in accordance with §§ 168-176 ZPO, in practice mainly via postal services or fax. Following § 177 ZPO: "The document may be physically submitted to the person on whom it is to be served at any location at which the person is found". § 175(1) ZPO: "A document may be served on the persons referred to in § 173 (2) against receipt (e.g. lawyers, notaries, bailiffs as well as public authorities, corporations or institutions under public law)." It has to be noted, that service of electronic documents [§ 173 (1) ZPO] has only been recently allowed through safe communication methods. Since the change of the ZPO lawyers, notaries, and bailiffs as well as public institutions have to be attainable through such a safe communication method, § 173(2) ZPO, [a specialised e-mail system] while other persons have to explicitly agree to electronic communication methods, § 173(4) ZPO.)

(e.g. in Austria: Documents are mainly served via the Austrian Postal Service.)

Possible methods of service of documents in civil proceedings have been specified below with reference to the recent legislative changes.

I) General rules on service of documents in the Code of Civil Procedure

General provisions on service of documents by the court now in force are contained in the Code of Civil Procedure. There are two modes of serving documents: by traditional and electronic means (via the ICT system).

a) Service by traditional means

As indicated in point 7, according to Art. 131 § 1 Code of Civil Procedure, documents shall be served by the court through a postal operator defined in the Postal Law, court employees or court delivery service. The court may also serve documents through court enforcement officers in the manner specified in the Act on court enforcement officers. Moreover, pursuant to Art. 131 § 1^1 Court of Civil Procedure, in the istances provided for by law, the court may serve documents by the Police or the Military Police.

Detailed regulation regarding the service of documents by the entities specified in Art. 131 § 1 first sentence Code of Civil Procedure is provided in the Order of the Minister of Justice of 6 May 2020 on the detailed mode and manner of serving documents in civil proceedings.[25]

b) Service via ICT system

[24] E. Rudkowska-Ząbczyk, [Commentary on Art. 128 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraphs 1 – 3. See also dedcree of the Supreme Court of 6 November 2014, II CZ 72/14.

[25] *Rozporządzenie Ministra Sprawiedliwości z dnia 6 maja 2020 r. w sprawie szczegółowego trybu i sposobu doręczania pism sądowych w postępowaniu cywilnym* (Journal of Laws of 2020, item 819, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000819/O/D20200819.pdf>, visited 10 March 2023.

As laid down in Art. 131[1] § 1 Code of Civil Procedure, the court shall serve documents via the ICT system (electronic service) if the addressee has filed a pleading via the ICT system or has chosen to file pleadings via the ICT system. With respect to electronic service, a pleading shall be deemed duly served at the time stated in the electronic confirmation of receipt. Article 134 § 1 does not apply.[26] In the absence of such confirmation, electronic service shall be deemed effected after the expiry of 14 days of the pleading being entered in the ICT system (Art. 131[1] § 2 Code of Civil Procdure). The addressee who has chosen to file pleadings via the ICT system may decide to opt out of electronic service (Art. 131[1] § 2[1] Code of Civil Procdure).

The electronic method of service schall apply provided an ICT system exists allowing for filing and serving documents electronically in civil proceedings. So far such system is not yet operational. Pursuant to Art. 125 § 2[1a] Code of Civil Procedure, opting for filing pleadings via the ICT system and further submitting these pleadings via this system shall be admissible, provided it is possible for technical reasons attributable to the court.[27]

Electronic service is further regulated in the Order of the Minister of Justice of 20 October 2015 on the mode and method of electronic service.[28]

II) Electronic service of documents under the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them

Special regulation governing mandatory electronic service of documents in civil proceedings is provided for in the Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crsis situations caused by them, hereinafter the Act on special solutions relatd to COVID-19.[29] These privisions are of limited scope of application as they cover only the service of documents on legal practitioners representing the parties. Moreover, they are of a temporary nature.[30]

According to Art. 15zzs[9] para. 2 Act on special solutions relatd to COVID-19, during the state of epidemic emergency or the state of epidemic announced due to COVID-19 and within a year of cancellation of the last of them, in the absence of the possibility of using the ICT system that supports court proceedings, the court shall serve on the advocate,

[26] According to Art. 134 Code of Civil Procedure, documents may be served on public holidays and at night time only in exceptional cases, subject to a prior order of the court president (§ 1); night time is the time between 9 p.m. and 7 a.m. (§ 2).

[27] See further Kościółek 2022, supra n. 6, p. 66 – 71.

[28] *Rozporządzenia Ministra Sprawiedliwości z dnia 20 października 2015 r. w sprawie trybu i sposobu dokonywania doręczeń elektronicznych* (Journal of Laws of 2023, item 452), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20230000452/O/D20230452.pdf>, visited 10 March 2023.

[29] *Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych* (Journal of Laws of 2021, item 2095, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000374/U/D20200374Lj.pdf>, visited 7 March 2023.

[30] Kościółek 2022, supra n. 6, p. 65 – 66. See further M. Dymitruk, 'E-doręczenia cywilne w ustawie o doręczeniach elektronicznych' [Civil E-service in the Electronic Service Act], in J. Gołaczyński (ed.), Postępowanie cywilne w czasie pandemii. E-doręczenia, rozprawa zdalna, posiedzenia niejawne, składanie pism procesowych (Wydawnictwo C.H. Beck 2022) p. 79 at p. 79 – 91.

legal advisor, patent attorney or the State Attoreny Office of the Republic of Poland with court documents by placing their content in the ICT system for sharing these documents (Information Portal). This does not apply to documents that are to be served together with copies of pleadings of the parties or other documents not originating from the court. The date of delivery is the date on which the adsressee takes cognisance of the letter placed on the Information Portal. In case of the addressee's failure to take cognisance of the letter, it is deemed served after 14 days from the date of placing the letter on the Information Portal. The service of a document via the Information Portal entails procedural effects specified in the Code of Civil Procedure provisions applicable to the service of a court document. The president shall order the waiver of the service of the letter via the Information Portal if the service is impossible due to the nature of the letter (Art. 15zzs9 para. 3 – 5 Act on special solutions relatd to COVID-19).[31]

III) Electronic service of documents under the new provisions of the Code of Civil Procedure introduced by the Electronic Service Act

The existing model of service of documents by the court will be modified upon the entry into force of the amendments to the Code of Civil Procedure introduced by the Electronic Service Act, i.e. as of 1 October 2029. The new rules on service of documents by public entities, including courts, are based on the use of a public electronic registered delivery service or a qualified electronic registered delivery service within the meaning of the eIDAS Regulation,[32] and a public hybrid service within the meaning of the Postal Law. Electronic service of court documents will be mandatory for the entities with addresses for electronic service entered in the database of electronic addresses.

According to Art. 131^2 Code of Civil Procedure, if the technical and organisational conditions of the court allow it, service shall be effected to the address for electronic service referred to in Art. 2 point 1 Electronic Service Act, entered into the database of electronic addresses referred to in Art. 25 of this Act, and in the absence of such address – to the address for electronic service associated with the qualified electronic registered delivery service, from which the addressee submitted a letter (§ 1). The service referred to in § 1 can be effected to a party who is a natural person only if he or she has filed a letter from an address for electronic service or has indicated this address as an address for service. This does not apply to service on entrepreneurs entered into the Central Register and Information on Economic Activity (§ 2). Detailed procedure and manner of service referred to in § 1 shall be determined by the Minister of Justice in an order.[33]

10.1. Does the method of service differ from the cross-border service of documents within the scope of the Regulation?

See point 10.

[31] See further A. Zalesińska and G. Karaś, 'Doręczenia elektroniczne w trybie art. $15zzs^9$ KoronawirusU' [Electronic Service according to Art. $15zzs^9$ Act on Special Solutions Related to COVID-19], in J. Gołaczyński (ed.), Postępowanie cywilne w czasie pandemii. E-doręczenia, rozprawa zdalna, posiedzenia niejawne, składanie pism procesowych (Wydawnictwo C.H. Beck 2022) p. 25 at p. 25 – 64.

[32] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73 – 114).

[33] See further Kościółek 2022, supra n. 6, p. 71 – 77; Dymitruk 2022, supra n. 30, p. 79 – 91.

10.2. Are there several alternative methods of service in your Member State?

See point 10.

10.3. Does your national legal system provide for special means for the service of documents for professionals (e.g., lawyers, notaries etc.) or state authorities?How do the methods of service relate to each other?
(e.g. of equal rank, subordinate)

As mentioned in point 7.2, in the course of the proceedings, advocates, legal advisors, patent attorneys or attorneys of the State Attorney Office of the Republic of Poland shall directly serve copies of pleadings with appendices on one another (Art. 132 § 1 Code of Civil Procedure).

10.4. What considerations must the deciding court take into account when choosing the method of service?

The president or a court referendary may order the service of a court document, specifying the method of delivery, in particular when in specific circumstances such a method of delivery appears to be more effective. The order on the method of service is binding on the court director, regardless of the general methods of service used (§ 96 paras. 1 and 2 of the Order of the Minister of Justice of 18 June 2019 – Rules hovering the operation of common courts).[34]

As indicated in points 7 and 7.1, in principle, court documents are served through a postal operator. Service through court enforcementofficers, in turn, are usually fast, reliable and relatively cheap, as well as they provide more extensive information as to the actual place of residence of the addressee than postal deliveries. Therefore, the use of this method should be allowed in cases where the value of serving a document by post appears to be doubtful.[35] The functioning of the court delivery service is governed by the Order of the Minister of Justice of 4 May 2011 on the organisation and structure of the court delivery service.[36]

10.5. Have the methods of service laid down in your national legal system been extended <u>for domestic service</u> after the entry into force of the Regulation?

[34] *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. See further: M. Michalska-Marciniak, [Commentary on Art. 131 Code of Civil Procedure], in A. Marciniak (ed.), Kodeks postępowania cywilnego, vol. 1: Komentarz. Art. 1–205 (Wydawnictwo C.H. Beck 2019), paragraphs 3 – 10.

[35] A. Banaszewska, [Commentary on Art. 5 Act on court costs in civil matters], in J. Gołaczyński and D. Szostek (eds.), Kodeks postępowania cywilnego. Komentarz do ustawy z 4.7.2019 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw [Code of Civil Procedure: Commentary on the Act of 4 July 2019 Amending the Act – Code of Civil Procedure and Some Other Acts] (Wydawnictwo C.H. Beck 2019), paragraph 4.

[36] *Rozporządzenie Ministra Sprawiedliwości z dnia 4 maja 2011 r. w sprawie warunków organizacji oraz struktury sądowej służby doręczeniowej* (Journal of Law No. 99, item 577), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20110990577/O/D20110577.pdf>, visited 10 March 2023.

See point 10.

11. How is service in third-party countries regulated?
(e.g. in Germany: § 183 (1) cl. 1 ZPO regulates the service in EU-countries, whereas § 183 (1) cl. 2 ZPO states: "Insofar as the aforementioned provisions do not apply to service abroad, paragraphs 2 to 6 shall apply to service abroad". § 183 (2) ZPO regards delivery via post or through authorities of the other country. When there are no international agreements, § 182(4) ZPO is applicable in pursuance to § 183 (3) ZPO. § 183 (6) ZPO recognises the jurisdiction of the local court of the respondent's domicile or habitual residence in regards to the service of documents abroad.)

The provisions of the Code of Civil Procedure concerning international civil procedure include rules on legal assistance. According to Art. 1130 Code of Civil Procedure, in cases involving the taking of evidence and other actions, and the service of court documents, the courts shall communicate with courts or other authorities of a foreign state and with Polish diplomatic missions and consular offices, unless otherwise provided by specific regulations (§ 1). Actions referred to in § 1, other than the taking of evidence, may be taken by a court referendary (§ 2).

Pursuant to Art. 1132 Code of Civil Procedure, a court may request the court or another authority of a foreign state to serve court documents on a person who has his or her place of residence or usual stay or a registered office abroad (§ 1). Requests may be sent directly if this is allowed by the law of the requested state or via a Polish diplomatic mission or consular office. This shall not preclude the application of other methods of sending requests (§ 2). As follows from Art. 1133 Code of Civil Procedure, the court may serve court documents on a person who stays or has his or her registered office abroad by registered letter against confirmation of receipt if the law of the state in which a court document is to be served so permits (§ 1). If service cannot be effected because a court or another authority of the requested state refuses to execute a request or a request is not executed for a long time, the court may serve court documents in accordance with § 1 even if the law of the state in which the court document is to be served does not permit so (§ 2). Articles 1132 and 1133 apply *mutatis mutandis* to the service of extrajudicial documents (Art. 1133^1 Code of Civil Procedure).

Furthermore, service may be effected through a diplomatic mission. According to Art. 1134 Code of Civil Procedure, a court may request a Polish diplomatic mission or consular office to take evidence or serve a court document if a person to be examined or the addressee of a court document is a Polish citizen residing abroad.

As laid down in Art. 1135 Code of Civil Procedure, Polish courts may take evidence and serve court documents on the request of courts and other authorities of a foreign state. In such event, jurisdiction shall be vested in the district court in whose district evidence is to be taken or the court document is to be served (§ 1). A Polish court shall refuse to perform the actions referred to in § 1 if:

1) performance of those actions would be contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause);
2) performance of those actions goes beyond the remit of Polish courts;
3) the requesting state refuses to perform such actions when requested by Polish courts;

4) the advance referred to in 1135[1] § 3 is not paid on time (§ 2).

Pursuant to Art. 1135[1] Code of Civil Procedure, a request filed by a court or other authority of a foreign state to take evidence or serve court documents shall be executed by Polish courts in accordance with Polish law. However, a delegated court may, at the request of a court or another authority of a foreign state, use a method to execute a request other than provided for by Polish law unless such method is forbidden by Polish law or contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause) (§ 1). If a court or another authority of a foreign state requests the court to serve a court document not accompanied by a Polish translation on a person residing in the Republic of Poland, the document shall only be served on the addressee if he or she accepts to receive it. An addressee who refuses to receive the document should be instructed of the possible negative legal consequences of his or her refusal abroad (§ 2). If execution of a request of a court or another authority of a foreign state is likely to involve costs related to the work of expert witnesses, translators, witnesses and other persons, the court shall only execute the request after a court or another authority of a foreign state makes an adequate advance within the prescribed time limit. The same shall apply to costs which may arise if a method other than those provided for by Polish law is used (§ 3).

According to Art. 1135[3] § 1 Code of Civil Procedure, court documents shall be served on persons residing in the Republic of Poland who are entitled to immunity from court proceedings or from enforcement and on other persons staying in buildings or premises entitling them to immunity on the basis of an act of law, agreement or generally accepted international customs via the Minister of Foreign Affairs. The provisions of § 1 apply *mutatis mutandis* to the service of court documents on Polish citizens residing abroad who are granted diplomatic or consular immunity (Art. 1135[3] § 2 Code of Civil Procedure).

It is also possible to appoint an attorney for service (*pełnomocnik do doręczeń*). On the basis of Art. 1135[5] Code of Civil Procedure, a party who does not have his or her place of stay or residence or registered office in the Republic of Poland or another Member State of the European Union, and who has not appointed an attorney domiciled in the Republic of Poland shall appoint an attorney for service in the Republic of Poland (§ 1). If no attorney for service is appointed, court documents addressed to such party shall be left in the case files and considered duly served. The party should be instructed thereof upon the first service. The party should also be instructed of the right to file a reply to the originating pleading and written explanations as well as of a person that may serve as an attorney (§ 2).

12. Are there special methods of service for certain types of documents – regardless of whether they qualify as judicial or extrajudicial? Please provide examples.

Special rules on service apply to cases being exceptions to the *ex officio* delivery principle, as indicated in point 7.

13. What is the usual time frame of the service of documents in your Member State?
(e.g. in Germany: A fax and an electronic service of documents via the secure communication methods is considered immediate; postal service takes 1-3 days with the exception that there is no postal service on Sundays.)

(e.g. in Austria: Service via the Austrian Postal Service takes around 1-2 days, service within the platform for the electronic service of documents is more or less instantaneous.)
Time limits for service by registered letter set by the Polish Post are the next working day following the day of dispatch in case of priority mail, and 3 working days following the day of dispatch in case of economic mail.[37]

14. At what moment is a document considered to be served according to the national law of your Member State?
(e.g. in Germany: A document is in general served once it is handed over to the respondent; actual knowledge is not important and, in some cases, service is even fictitious, §§ 180 cl. 2, 181 (1) cl. 4; 184 (2) cl. 1, 188 ZPO.)
(e.g. in Austria: a document is generally served once it is handed over to the respondent who thereby takes notice of the service.)

The moment of service shall be determined on the basis of the provisions of the Code of Civil Procedure on service of documents.

As laid down in Art. 142 Code of Civil Procedure, receipt of pleadings shall be acknowledged in writing by the addressee or via the ICT system of the postal operator referred to in Art. 131 § 1 or against a document generated from the ICT system (§ 1). In the case of written acknowledgement of receipt, a person who receives the service is obliged to acknowledge receipt thereof and the date of receipt with his own signature. If he is unable or unwilling to do so, the person effecting the service shall state the date of service himself and give the reasons for the missing signature (§ 2). The person effecting the service shall indicate the method and date of service on the acknowledgment of receipt, and confirm the same with his signature (§ 3).

A postal proof of delivery to the addressee of a court document is an official document confirming the fact and the date of delivery, but it is not the only proof thereof. The party who denies these circumstances may, using all admissible evidence, try to prove that the delivery did not take place at all or did take place, but at a different time than it results from the confirmation returned by the post.[38]

As far as service *per aviso* is concerned (see point 16.1), the date of delivery of a letter is the date of receipt of the letter by the addressee at the post office of the given postal operator or the office of the relevant municipality or the last day of the period in which the addressee could collect the letter, if the addressee did not collect it before the expiry of that period.[39] Leaving a notice of the place of submission of the letter in the manner provided for in Art. 139 § 1 Code of Civil Procedure justifies the adoption of the factual presumption that it reached the addressee at the latest on the date on which the cause that prevented ordinary service ceased to exist.[40]

[37] See: <poczta-polska.pl/paczki-i-listy/wysylka/listy/list-polecony/>, visited 10 March 2023.
[38] See decrees of the Supreme Court of 22 November 2013, III CZ 54/13; of 17 October 2001, III CZ 84/01; of 2 February 2001, IV CZ 104/00. See also E. Rudkowska-Ząbczyk, [Commentary on Art. 142 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 6.
[39] Resolution of the Supreme Court of 10 May 1971, III CZP 10/71.
[40] Decree of the Supreme Court of 14 February 2002, V CZ 14/02. See also E. Rudkowska-Ząbczyk and P. Rodziewicz, [Commentary on Art. 139 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 4.

In the case of electronic service, a letter shall be deemed served at the time indicated in the electronic confirmation of receiving correspondence. In the absence of such confirmation, service shall be deemed effected after 14 days from the date of placing the letter in the ICT system.[41] See point 10.

14.1. If and if so, under what circumstances is a document considered to be served according to the national law of your Member State when the recipient is served at an address they either do not use or do not know of?
(This question refers to the service to an official or known address of the recipient, but one which is not (anymore) used by the recipient. Please elaborate on national treatment of negligent behaviour (of the recipient who might have forgotten to de-register the address or to make arrangements to be informed about service of documents to this address), multiple places of residence, service to a "wrong" address (either unknowingly by the competent institution or maliciously of the opponent by providing/using the wrong address), and differences of the relevant address regarding the determination of jurisdiction (domicile) and the address used for the service of documents.)

According to Art. 136 Code of Civil Procedure, the parties and their representatives shall notify the court of any change of their respective places of residence (§ 1). Failure to comply with the above requirement shall result in a document being left in the case files and considered duly served unless a new address is known to the court. The court should instruct the party of this requirement and the consequences of non-compliance upon the first service (§ 2). The provisions of § 2 do not apply to the service of a petition to reopen proceedings or a petition for a final and non-revisable judgment to be declared unlawful (§ 3). A party who requested service of documents to the address of a designated post mailbox shall notify the court of any change thereof. The provisions of § 2 and § 3 apply *mutatis mutandis* (§ 4).

14.2. Please elaborate in this regard, how the national law of your Member State treats the following scenario: The claim contains the official, duly registered address of the respondent. However, when the postman (or responsible person of service) wishes to serve the document at that address, it is clear that the recipient does not live there any longer (i.e., the post-box has a different name, neighbours confirm that the person has moved or a new tenant opens the door and confirms that the recipient has moved there some months ago and he neither has any relation with the former tenant nor does he know where they live now).

See points 14.1 and 16.

15. With what electronic methods can a claim be filed in court?
(e.g. in Germany: Only lawyers can electronically a claim through a specialised lawyer's electronic communication system, BEA. Usual method of filing a claim at court is via postal service or through personally hand the document in at court.)
(e.g. in Austria: Parties can also file a claim themselves, if certain requirements are fulfilled.)

Currently, it is admissible to file a pleading electronically only via the ICT system, which is understood as the ICT system that supports court proceedings (Article 125 § 2^1 Code

[41] Marszałkowska-Krześ 2021, supra n. 16, p. 479.

of Civil Procedure). The possibility of filing a pleading via the ICT system shall be available to parties who opt for this method of filing. As indicated in point 10, the admissibility of the choice of filing pleadings via the ICT system depends on technical reasons attributable to the court. This means that the party may choose to file the first and subsequent pleadings via the ICT system only if the court to which the pleadings are to be filed has the appropriate technical infrastructure.

In the current state of the law, the requirement to file pleadings electronically in contentious proceedings (*postępowanie procesowe*) has been provided for only in the electronic writ-of-payment proceedings (*elektroniczne postępowanie upominawcze*, Art. 505^{28} – 505^{39} Code of Civil Procedure). Pursuant to Art. 505^{31} § 1 Code of Civil Procedure, the claimant may not file pleadings otherwise than via the ICT system.[42]

16. What is the procedure under the national law of your Member State if the exact whereabouts of the recipient are unknown?
(e.g. in Germany: The service by publication means that a notice of service is hanging on the courts bulletin board or an electronic equivalent; we do not know a central public register for publication of service. In an addition to the bulletin board the court can order that the notice of service by publication must be published in the Official Gazette (Bundesanzeiger). We only publish basic information like the person on whose behalf the document is served, the last known address or number of the document, but not the document to be served itself.)

The Code od Civil Procedure provides for a regulation on the appointment of the guardian ad litem for service (*kurator do doręczeń*). If a statement of claim or another pleading which gives rise to a need to defend a person's rights is to be served on a party whose place of stay is unknown, service may only be effected on the guardian ad litem appointed at the request of the interested person by the adjudicating court until the party or his or her representative or attorney appears (Art. 143 Code of Civil Procedure).[43]

According to Art. 144 Code of Civil Procedure, the president shall only appoint a guardian ad litem if the applicant substantiates that the place of stay of the party concerned is unknown. In cases involving maintenance claims and in cases to establish the child's parentage and related claims, the president shall, before appointing a guardian ad litem, conduct relevant investigation in order to determine the place of residence or stay of the defendant (§ 1). The president shall announce the appointment of a guardian ad litem in the courthouse and in the offices of the mayor of municipality (town/city) and, in more serious cases, also in the press, if he considers this necessary (§ 2). A document shall be considered duly served once it is served on the court-appointed guardian. The court may, however, decide that service of such document shall only take effect after the expiry of a certain period from the date when the announcement is displayed in the courthouse (§ 3). The actions referred to in § 1 to § 3 may also be performed by a court referendary (§ 4).

[42] E. Rudkowska-Ząbczyk and P. Rodziewicz, [Commentary on Art. 125 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraph 21.

[43] See e.g. E. Rudkowska-Ząbczyk, [Commentary on Art. 143 Code of Civil Procedure], in E. Marszałkowska-Krześ and I. Gil (eds.), Kodeks postępowania cywilnego. Komentarz (Legalis 2023), paragraphs 1 – 7; D. Rydlichowska, 'Rola kuratora dla doręczeń w postępowaniu cywilnym w kontekście zabezpieczenia interesu reprezentowanej strony' [The Role of the Guardian Ad Litem for Service in Civil Proceedings in the Context of Securing the Party's Interest], 3 Palestra (2016) p. 26 at p. 26 – 32.

Where the appointment of a guardian ad litem in accordance with the preceding provisions is not required, a document shall be served on a party whose place of stay is unknown by displaying it in the courthouse. Such document shall be considered duly served after one month from the date on which it is displayed (art. 145 Code of Civil Procedure).

16.1. Is a substitute method of service available under the national law of your Member State? If so, what factors does the deciding court have to take into account when assessing the admissibility of such service?

As mentioned in point 7.4, procedural provisions set out the possibility of substitute service. The aim of substitute service is to effect service without the addressee's participation. There are several methods of substitute service.

First, this is the case of service on entities other than the addressee. Pursuant to Art. 138 Code of Civil Procedure, if a person effecting the service cannot find the addressee at his home, he may leave the document with an adult member of the addressee's household or, if none is at home, with the building administrator or caretaker or head of the village, if they are not the addressee's opponents in the case and agree to hand the document over to the addressee (§ 1). If a person effecting service cannot find the addressee at work, he may leave the document with a person authorised to receive the service (§ 2).[44]

Other methods of substitute service are provided for in Art. 139 Code of Civil Procedure, regarding inability to serve documents. As laid down in Art. 139 § 1 Code of Civili Procedue, if it is impossible to serve documents in accordance with the preceding articles, a document delivered through a postal operator within the meaning of the Postal Law should be left at the operator's post office or, if otherwise delivered, at the office of relevant local authorities, whereupon a notice of delivery should be left in the door of the addressee's home or in the addressee's mailbox stating where and when the document was left and instructing that the document should be collected within seven days of the notification. The procedure shall be repeated if the document is not collected within the prescribed period. This method of substitute service is known as *per aviso* service. A document deposited at the post office of a postal operator within the meaning of the Postal Law may also be collected by a person authorised under a postal authorisation to collect mail within the meaning of the said Law (Art. 139 § 1^1 Code of Civil Procedure). If the addressee refuses to receive the service, a document shall otherwise be considered duly served. In such case, the person who effected the service shall return the document to the court with a notice to the effect that the addressee refused to receive it (Art. 139 § 2 Code of Civil Procedure).

As laid down in Art. 139 § 3 Code of Civil Procedure, documents addressed to parties subject to registration in a court register under separate regulations, which cannot be served in accordance with the preceding articles due to the fact that a change of address has not been made known in the relevant register, shall be left in the case files and considered duly served, unless a new address is known to the court. Documents addressed to persons representing an entity entered in the National Court Register, liquidators, commercial proxies, members of bodies or persons authorised to appoint the management

[44] See further e.g. M. Michalska-Marciniak, [Commentary on Art. 138 Code of Civil Procedure], in A. Marciniak (ed.), Kodeks postępowania cywilnego, vol 1: Komentarz. Art. 1–205 (Wydawnictwo C.H. Beck 2019), paragraphs 1 – 12; J. Świeczkowski, 'Doręczenie zastępcze w postępowaniu cywilnym' [Substitute Service in Civil Proceedings], 36 Gdańskie Studia Prawnicze (2016) p. 465 at 466 – 470.

board, which cannot be served in accordance with the preceding articles due to the failure to report the change of the address for service, shall be left in the case files with the effect of delivery, unless another address for service or place of residence and address are known to the court. According to Art. 139 § 4 Code of Civil Procedure, when announcing or serving a notice of the first entry, the registry court shall instruct the applicant of the consequences of failing to make known changes mentioned in § 3 in the relevant register. When delivering the decision on the entry in the National Court Register of persons representing the entity, liquidators, commercial proxies, members of bodies or persons authorised to appoint the management board, the registry court shall instruct the entity entered in the register of the consequences of failure to submit a statement on a change of service address specified in § 3^1. The instruction of the entity entered in the National Court Register is tantamount to the instruction of the persons referred to in the first sentence (Art. 139 § 4^1 Code of Civil Procedure).

Pursuant to Art. 139 § 5 Code of Civil Procedure, at the party's request, a certificate shall be issued stating that a default judgment or order for payment has been deemed duly served to the relevant address in accordance with § 1. The certificate states *ex officio* the fact of repealing the order recognising the judgment or order as served.[45]

16.2. Is there a possibility of using fictitious methods of service in your Member State? Please elaborate.

As follows from the foregoing in point 16.1, the methods of substitute service stipulated in the Code of Civil Procedure imply the admissibility of using the fiction of delivery (service by default). In the abovementioned cases it is presumed that a document ha been duly served, despite the failure by the addressee to collect it. It should be highlighted that the abovementioned regulation is of special character and shall apply only in exceptional situations, when service cannot be effected in accordance with general rules.[46]

At the same time, an example of departure from the fiction of delivery can be the provisions of Art. 139^1 Code of Civil Procedure (see in point 7.2), introducing the possibility of service of the statement of claim or other pleadings by the claimant on the defendant through the court enforcement officer in case of failure by the defendant to collect the documents despite repeated notice. In this way, the protection of the defendant's rights is ensured.[47]

16.3. If yes: When does a fictitious method of service unfold its effects? Are these equivalent to the effects of service where the document is served directly to the recipient?

See point 16.1.

[45] See further e.g. M. Michalska-Marciniak, [Commentary on Art. 139 Code of Civil Procedure], in A. Marciniak (ed.), Kodeks postępowania cywilnego, vol. 1: Komentarz. Art. 1–205 (Wydawnictwo C.H. Beck 2019), paragraphs 1 – 23; Świeczkowski 2016, supra n. 44, p. 470 – 372.

[46] See e.g. K. Skrodzki, 'Fikcja doręczenia wobec przedsiębiorcy w świetle nowelizacji Kodeksu postępowania cywilnego z 4.07.2019 r.' [Fiction of Delivery against the Entrepreneur in the Light of the Amendment to the Code of Civil Procedure of 4 July 2019], 12 Przegląd Ustawodawstwa Gospodarczego (2020) p. 41 at p. 41 – 44; Szachta 2019, supra n. 14, p. 46.

[47] Szachta 2019, supra n. 14, p. 53.

16.4. Service of publication frequently do not assure that the document was actually made known to the recipient. Does your system try to ensure that the document was actually made known?
(e.g. in the USA: A Court can order to publish a whole page in a newspaper.)

The possibility to serve a document on a party whose place of stay is unknown by serving it on the court-appointed guardian ad litem or by displaying it in the courthouse is provided for in Art. 144 and 145 Code of Civil Procedure. See point 16.

16.5. Does the system include special remedies if actual knowledge was not obtained by the defendant?

In line with a dominant view in the legal scholarship and the judicature, incorrect service by the court, e.g. leaving a notice of delivery at an address that is not the actual address of the party, results in its ineffectiveness. As a consequence, the time limit for performing a procedural act cannot be considered to have started to run, and therefore it cannot expire. In that case, it is necessary to repeat the service in accordance with the respective procedural provisions, and an application for reinstatement of the time limit is not admissible.[48]

16.6. Please explain whether fictitious methods of service may in certain circumstances be in conflict with national procedural principles (e.g. right to a fair trial, right to be heard). If so, how is this issue dealt with?

See point 16.5.

16.7 Are different actions taken if the person's whereabouts are presumed to be within the country or abroad?

See point 11 and 16.

17. What is the procedure in your national jurisdiction if the recipient is responsible for a failure to serve?
(e.g. in Germany: The German ZPO provides rules for cases in which the acceptance of the document to be served is refused without justification [§ 179 ZPO]. It then should be left at the residence or business premises, in cases without such residences or business premises, the document shall be returned and is deemed served notwithstanding the refusal of acceptance.

See comments on inability to serve documents in point 16.1, and on service of documents by the claimant on the defendant in point 7.2.

[48] See e.g. M. Michalska-Marciniak, 'Wadliwość doręczenia w trybie art. 139 § 1 k.p.c. a wniosek o przywrócenie terminu do wniesienia środka zaskarżenia' [Defective Service according to Art. 139 § 1 Code of Civil Procedure and the Application for Reinstatement of the Time Limit for Filing an Appeal], 3 Polski Proces Cywilny (2011) p. 133 at p. 139; decree of the Supreme Court of 3 July 2008, IV CZ 51/08. See also J. Świeczkowski, 'Doręczenie pozwanemu wyroku zaocznego w sposób określony w art. 139 § 1 k.p.c. a ochrona jego praw. Zagadnienia wybrane' [Service of a Default Judgment on the Defendant in the Manner Specified in Art. 139 § 1 Code of Civil Procedure and the Protection of His Rights: Selected Issues], 4 Studia Prawnicze (2016) p. 103 at p. 103 – 116.

18. What language is to be used for domestic service?
(e.g. in Germany: Documents must be written in German, as this is the official language of the court, § 184 of the Courts Constitution Act [hereafter: GVG].)

According to Art. 27 of the Constitution of the Republic of Poland, the official language is Polish. Pursuant to Art. 4 point 1 of the Act of 7 October 1999 on the Polish language,[49] the Polish language is the official language of the constitutional organs of the state. Moreover, as follows from Art. 5 § 1 of the Act of 27 July 2001 on the system of common courts,[50] the official language before the courts is Polish.

As follows from abovementioned provisions, pleadings filed to common courts and the Supreme Court should be drawn up in Polish. The obligation to draw up pleadings in Polish does not allow for any exceptions.[51]

19. Are there specific claim forms to be used for domestic service in your Member State? If so, explain their content and the information required.
(e.g. in Germany: There are regularly no claim forms to be used with the exception of European orders for payments or other European forms such as in small claim procedures.)

In accordance with Art. 125 § 2 Code of Civil Procedure, if a specific regulation so provides, pleadings should be filed using official forms.

As a rule, it is up to the party to choose the form in which to file the pleading, i.e. using an official form or without it. The requirement to use official forms applies in cases specified in respective provisions on non-contentious proceedings (*postępowanie nieprocesowe*).[52]

20. How are the costs of service regulated in your Member State?
(e.g. in Germany: For services at the instigation of the parties, the law on costs of judicial officers [hereafter: GVKostG] governs the costs [Annex to § 9 GVKostG].)

According to Art. 5 para. 2 of the Act of 28 July 2005 on court costs in civil matters,[53] expenses related to the service of documents are not charged to the parties, with the exception of the costs of service by the court enforcement officer and additional costs of service abroad, including translation costs. Therefore, as a rule, expenses related to the service of court documents are incurred by the State Treasury.

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[49] *Ustawa z dnia 7 października 1999 r. o języku polskim* (Journal of Laws of 2021, item 672), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19990900999/U/D19990999Lj.pdf>, visited 10 March 2023.
[50] *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.
[51] Z. Zieliński and K. Flaga-Gieruszyńska, Kodeks postępowania cywilnego. Komentarz [Code of Civil Procedure: Commentary] (Wydawnictwo C.H. Beck 2022), [Commentary on Art. 125 Code of Civil Procedure], paragraph 3.
[52] Rudkowska-Ząbczyk and Rodziewicz 2023, supra n. 42, paragraph 19.
[53] *Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych* (Journal of Laws of 2022, item 1125, as amended), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20051671398/U/D20051398Lj.pdf>, visited 10 March 2023.

Pursuant to Art. 41 of the Act of 28 February 2018 on court enforcement officer costs,[54] the fixed fee for the order of the court or the claimant's request for direct and personal service of documents in the manner provided for in Art. 3 para. 4 point 1 Act on court enforcement officers is PLN 60. The fee is charged for delivery to one address of a letter in the case, regardless of the number of addressees of the letter residing there and of the number of delivery attempts (para. 1). The fixed fee for the application for taking steps to determine the addressee's current address of residence, referred to in Art. 3 para. 4 point 1a Act on court enforcement officers, is PLN 40 (para. 2). Since the expenses related to the service by the court enforcement officer are several times higher than the expenses related to the postal service, the party seeking its rights should cover these costs by way of an advance payment. Rules on advance payment provided for in the Code of Civil Procedure shall apply to additional costs related to service of document abroad, including costs of translations, as well.[55]

As laid down in Art. 130^4 Code of Civil Procedure, a party moving to the court to perform actions which involve costs shall pay an advance towards such costs in an amount and within a period to be determined by the court. If more than one party moves for such action to be performed, the court shall request each person for which such action will have legal effects to pay an advance in equal amount or in such other proportion as the court considers appropriate (§ 1). The president shall request the party who is obliged to pay an advance to pay an amount due within a prescribed time limit, which may not be longer than two weeks. If the obligated party has his place of residence or registered office abroad and there is no representative of the party in the country, the time limit referred to in § 1 is one month, and in case of the service of the summons to be effected outside the territory of the European Union, the time limit shall be set of not less than three months (§ 2). If the expected or actual costs prove higher than the advance paid, the president shall request the party to supplement the same in accordance with § 2 (§ 3). The court shall only perform actions which involve costs if the advance is paid in the required amount (§ 4). Failure to pay the advance shall result in the court omitting any action which involves such costs (§ 5).

LEGAL IMPLICATIONS OF SERVICE

21. What are the legal (minimum) requirements of an effective service? Please list them. The principle of official service (Article 131 of the Code of Civil Procedure)[56]

In Polish civil procedure, the provision of Article 131 of the Code introduces the principle of official service. The court performs service by: the postal operator within the meaning of the Act of 23 November 2012 – Postal Law, persons employed in the court, or the court delivery service. The court may also perform service through a bailiff in the manner specified in the Act of 22 March 2018 on court bailiffs.[57] In the cases specified in the Code, the court may perform service by the Police or the Military Police[58], which means that

[54] *Ustawa z dnia 28 lutego 2018 r. o kosztach komorniczych* (Journal of Laws of 2021, item 210), <isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000770/U/D20180770Lj.pdf>, visited 10 March 2023.
[55] See further: Banaszewska 2019, supra n. 35, paragraphs 2 – 5.
[56] Kodeks Postępowania Cywilnego [Code of Civil Procedure] (henceforth: the Code).
[57] Art. 131 § 1 of the Code.
[58] Art. 131 § 1^1 of the Code.

this form of service is applicable to proceedings in cases for obliging a person using domestic violence to leave the jointly occupied apartment and immediate surroundings or a ban on approaching the apartment and its immediate surroundings.[59]

Service is considered effective when it has been made in accordance with the rules resulting from Article 131 and other articles of the Code. On the other hand, service of a foreign document to a party may be considered effective in Poland only if it has been made in accordance with the rules provided for in Article 131 and other articles of the Code, or when the party confirmed the receipt of such a document.[60]

Rules for performing electronic service (Article 131^1 of the Code)

The court performs service via the ICT system (electronic service), if the addressee submitted a document via the ICT system or chose to submit documents via the ICT system.[61] (Article 1311 § 1 CCP). In the case of electronic service, a document is deemed to have been served at the time indicated in the electronic confirmation of receipt of correspondence. For the effectiveness of electronic service, the fact that it was performed on statutory holidays and at night is irrelevant, which means that in this case the provision of Article 134 § 1 of the Code does not apply.

In Poland, the following days are free from work: 1 January – New Year's Day; 6 January – Epiphany; the first day of Easter; the second day of Easter; 1 May – Public Holiday; 3 May – National Day of 3rd of May 3rd; the first day of Pentecost; Corpus Christi day; 15 August – Assumption of the Blessed Virgin Mary; 1 November – All Saints Day; 11 November – National Independence Day; 25 December – the first day of Christmas; December 26 – the second day of Christmas; and also Sundays. In Poland, Saturday is not a day off from work.[62]

In the event of an announcement of an epidemic threat or state of epidemic, a day off from work is also a day specified by the Prime Minister by way of a regulation. Night time is considered to be the time from 21.00 to 7.00.

In the absence of an electronic confirmation of receipt of correspondence, electronic service is considered effective after 14 days from the date of placing the document in the ICT system.[63] An addressee who has chosen to submit documents via the ICT system may opt out of electronic service.[64]

Service to an address for electronic service (Article 131^2 of the Code)

From 1 January 2030, the provision of Article 131^2 of the Code regulating service to an address for electronic service will enter into force. According to Article 131^2 § 1 of the Code, if the technical and organizational conditions of the court allow it, service is performed to the address for electronic service referred to in Article 2(1) of the Act of 18 November 2020 on electronic service, entered into the database of electronic addresses

[59] Art. 560^6 § 1 of the Code.
[60] See: decision of the Supreme Court of 9 March 2000, II CKN 39/00, Legalis.
[61] Art. 131^1 § 1 of the Code.
[62] See: decision of the Supreme Court of 3 February 2012, I CZ 163/11, Legalis.
[63] Art. 131^1 § 2 of the Code.
[64] Art. 131^1 § 3 of the Code.

referred to in Article 25 of this Act, and in the absence of such an address – to the address for electronic service associated with the qualified service of registered electronic service, from which the addressee submitted the document. Service to an address for electronic service may be performed to a party who is a natural person only if this party has submitted a document from an address for electronic service or has indicated this address as an address for service. This does not apply to service to an entrepreneur entered into the Central Business Register (*Centralna Ewidencja i Informacja o Działalności Gospodarczej*).[65]

Rules for performing service in the course of the case (Article 132 of the Code)

In the course of the case, the lawyer, attorney-at-law, patent attorney and the General Counsel to the Republic of Poland serve each other directly with copies of pleadings with attachments. The body of the pleading submitted with the court includes a statement on the service of a copy of the pleading to the other party or on its sending by registered mail. A pleading which does not contain the above statement is returned without any prior request for the removal of this defect.[66]

However, this rule does not apply to the filing of a counterclaim, appeal, cassation appeal, complaint, objection against a default judgment, objection against an order for payment, charges against an order for payment, application for securing a claim, application for revision, complaint for a declaration of non-compliance with the law of a final judgment and complaints against the decisions of the court referendary, which should be submitted to the court with copies for the opposing party,[67] and also does not apply to pleadings submitted via the ICT system, subject to service to a lawyer, attorney-at-law, patent attorney or the General Counsel to the Republic of Poland who have chosen to submit documents via the ICT system and have not opted out of electronic service.[68]

A lawyer, attorney-at-law, patent attorney and the General Counsel to the Republic of Poland serve each other's pleadings with attachments, excluding the pleadings listed in Article 132 § 1^1 of the Code, directly only in electronic form, if they submit to the court consistent statements of appropriate content and provide the court with contact details used for this purpose, in particular an e-mail address or fax number. Statements are not subject to appeal, and the stipulations of the condition or deadline are considered non-existent. At the joint request of the parties or in other justified cases, the court orders a waiver from this method of service.

The addressee may also be served directly in the court secretariat.[69]

Direct service performed to natural persons, legal persons, organizational units without legal personality, including entrepreneurs (Article 133 of the Code)

If a party is a natural person, the service is performed directly on this party, and if a party does not have *locus standi* – to the statutory representative of this party.[70]

[65] Art. 131^2 § 2 of the Code.
[66] Art. 132 § 1 of the Code.
[67] Art. 132 § 1^1 of the Code.
[68] Art. 132 § 1^2 of the Code.
[69] Art. 132 § 2 of the Code.
[70] Art. 133 § 1 of the Code.

Pleadings or judgments for a legal person, as well as for an organizational unit without legal personality, are served on the body authorized to represent them in court or to an employee authorized to receive documents.[71]

Pleadings or judgments for an entrepreneur entered in the Central Business Register are served to the address for service provided in this register unless the entrepreneur has indicated a different address for service.[72]

Pleadings or judgments for an entrepreneur entered in the court register are served to the address provided in this register, unless the entrepreneur has indicated a different address for service. If the last available address has been deleted as inconsistent with the actual state of affairs and no application has been submitted for the entry of a new address, the deleted address is considered as an address provided in the register.[73]

Pleadings or judgments for persons representing an entity entered in the National Court Register (*Krajowy Rejestr Sądowy*), liquidators, proxies, members of bodies or persons authorized to appoint the management board are served to the service address indicated in accordance with the provisions of Article 19a paragraphs 5-5b and 5d of the Act of 20 August 1997 on the National Court Register.[74]

If a legal representative or a person authorized to receive court documents has been appointed, court documents are served on this person. A document summoning a party to appear in person is served only directly on that party, with the exception of the party referred to in Article 1135^5 § 1 of the Code.[75]

A place where effective service can be performed (Article 135 of the Code)

Service to the addressee is performed at the addressee's home, workplace, or a place where the addressee is found.[76] At the party's request, service may be performed to a post office box address indicated by the party. In this case, a court document sent via a postal operator within the meaning of the Act of 23 November 2012 – Postal Law is deposited at the post office of this operator and a notice of this fact is placed in the addressee's post office box.[77]

The provision of Article 135 of the Code, which lists where a court document can be served on the addressee, concerns the so-called direct service, which means service to the addressee's own hands. Therefore, it cannot be referred to substituted service and it cannot be concluded that each service at the addressee's workplace to the hands of a person authorized by the employer to receive documents has legal effect for the addressee.[78]

Obligation of the parties to notify the court of a change of their place of residence and the consequences of omission of the obligation (Article 136 of the Code)

[71] Art. 133 § 2 of the Code.
[72] Art. 133 § 2^1 of the Code.
[73] Art. 133 § 2^2 of the Code.
[74] Art. 133 § 2^3 of the Code.
[75] Art. 133 § 3 of the Code.
[76] Art. 135 § 1 of the Code.
[77] Art. 135 § 2 of the Code.
[78] See: judgment of the Supreme Court of 4 February 1969, I CR 500/67, Legalis.

Parties and their representatives are obliged to notify the court of any change of residence.[79] If this obligation is neglected, the court document is left in the case file with the effect of service, unless the new address is known to the court. The court should inform the party about the above obligation and the consequences of failure to comply with it.[80] However, the provision of Article 136 § 2 of the Code does not apply to the service of an application for revision or a complaint for a declaration of non-compliance with the law of a final judgment.[81] The party who submitted the request for service to the address of a designated post office box is obliged to notify the court of any change of this address.[82] The provisions of Article 136 § 2 and 3 of the Code apply accordingly.

A special way of serving soldiers of compulsory military service, officers of the Police and the Prison Service, persons deprived of liberty (Article 137 of the Code)

Soldiers of compulsory military service, officers of the Police and the Prison Service are served by their directly superior authorities.[83] Service to persons deprived of liberty is performed by the management of the relevant institution.[84]

Conditions for the effectiveness of substituted service to persons other than addressees (Article 138 of the Code)

If the addressee is not found in the apartment, the serving person may serve the document to an adult member of the household, and in the absence thereof – to the house administration, the house caretaker or the village leader, if these persons are not opponents of the addressee in the case and have agreed to pass the document to the addressee.[85] If the addressee cannot be found by the server at the place of work, the document may be delivered to a person authorized to receive documents.[86]

Inability to perform the service (Article 139 of the Code)

In the event of inability to perform the service in the manner provided for in the preceding Article 131-138 of the Code, a document sent via a postal operator within the meaning of the Act of 23 November 2012 – Postal Law should be submitted at the post office of this operator, and served in a different way – at the office of the appropriate municipality, and a notification of this fact should be placed in the addressee's apartment door or in the return mailbox, indicating where and when the document was left, together with the instruction that it should be collected within seven days from the date of placing the notification. In the event of ineffective expiry of this period, the notification should be repeated.[87]

[79] Art. 136 § 1 of the Code.
[80] Art. 136 § 2 of the Code.
[81] Art. 136 § 3 of the Code.
[82] Art. 136 § 4 of the Code.
[83] Art. 137 § 1 of the Code.
[84] Art. 137 § 2 of the Code.
[85] Art. 138 § 1 of the Code.
[86] Art. 138 § 2 of the Code.
[87] Art. 139 § 1 of the Code.

A document submitted at the post office within the meaning of the Act of 23 November 2012 – Postal Law may also be collected by a person authorized under a postal power of attorney to collect postal items within the meaning of this Act.[88]

If the addressee refuses to accept the document, the service is deemed to be effective. In such a case, the server returns the document to the court with a note on refusal to accept it.[89]

If the party subject to entry in the court register cannot be served with a document in the manner provided for in the preceding articles because the change of address has not been disclosed in this register, the document is left in the case files with the effect of service, unless the new address is known to the court.[90]

Documents for persons representing an entity entered in the National Court Register, liquidators, proxies, members of bodies or persons authorized to appoint the management board, which cannot be served in the manner provided for in the preceding articles due to failure to submit a statement on changing the address for service, are left in the case files with the effect of service, unless another address for service or place of residence and address are known to the court.[91]

The registry court, when announcing or serving the decision on the first entry, instructs the applicant about the consequences of neglecting to disclose the changes referred to in Article 139 § 3 of the Code.[92]

The registry court, when delivering the decision on the entry into the National Court Register of persons representing the entity, liquidators, proxies, members of bodies or persons authorized to appoint the management board, instructs the entity entered in the register about the consequences of neglecting to submit a statement on a change of service address specified in Article 139 § 3^1 of the Code. Passing the instruction on the entity entered in the National Court Register is tantamount to passing the instruction on the persons referred to in the first sentence.[93]

At the request of the party, a certificate is issued confirming that the default judgment or the order for payment are deemed to have been served to the specified address in the manner provided for in Article 139 § 1 of the Code. If the service of the order recognizing the judgment, or the injunction is revoked, this is stated *ex officio* in the certificate.[94]

Service of documents on the defendant by the claimant (Article 139^1 of the Code)

If the defendant, despite repeating the notification in accordance with Article 139 § 1 second sentence of the Code, has not received a statement of claim or other pleading that evokes the need to defend the defendant's rights, and the defendant has not been served with any documents on the case in the manner provided for in the preceding articles, and

[88] Art. 139 § 1^1 of the Code.
[89] Art. 139 § 2 of the Code.
[90] Art. 139 § 3 of the Code.
[91] Art. 139 § 3^1 of the Code.
[92] Art. 139 § 4 of the Code.
[93] Art. 139 § 4^1 of the Code.
[94] Art. 139 § 5 of the Code.

Article 139 § 2-3[1] of the Code or another special provision providing for the effect of service does not apply, the presiding judge notifies the claimant of this fact by sending the claimant a copy of the documents for the defendant and obliging the claimant to serve the documents to the defendant through the bailiff.[95]

Within two months from the date of service of the obligation referred to in Article 139[1] § 1 of the Code, the claimant submits to the file a confirmation of service of the documents to the defendant through the bailiff or returns the documents and indicates the current address of the defendant or proof that the defendant is staying at the address indicated in the statement of claim. After the expiry of the deadline, the provision of Article 177 § 1(6) of the Code concerning the possibility of suspending the proceedings by the court *ex officio* applies if as a result of the lack or incorrect address of the claimant or failure to indicate by the claimant within the prescribed period the address of the defendant or information allowing the court to determine the numbers referred to in Article 208[1] of the Code, or the claimant's failure to comply with other orders, the case cannot be continued.[96]

22. What are the legal consequences (procedurally and, if applicable, materially) of the proper service of documents?

In Polish civil procedure, upon service of the statement of claim:

1) new proceedings for the same claim cannot be initiated between the same parties in the course of the case (*lis pendens*).[97] If the case for the same claim between the same parties has been suspended before a court of a foreign state earlier than before a Polish court, the Polish court suspends the proceedings. However, the court does not suspend the proceedings if the judgment to be issued by the court of a foreign state does not meet the conditions for its recognition in the Republic of Poland or it cannot be expected that the proceedings before the court of a foreign state will be legally concluded within a reasonable time;[98]
2) the defendant may file a counterclaim against the claimant;[99]
3) disposal in the course of the case of objects or rights covered by the dispute does not affect the further course of the case; the buyer may, however, take the place of the seller with the consent of the opposing party. The purpose of this regulation is to stabilize court proceedings at the moment of service of the statement of claim. Despite the sale of objects or rights covered by the dispute, either by one or the other party, or even by both parties, the seller retains the right to act in the case. In this way, the legislator protects the opposing party against the negative effects of the sale of objects or rights covered by the dispute. Therefore, as a rule the seller remains in the proceedings, and in exceptional cases the buyer takes the place of the seller.[100]

Procedural consequences of bringing an action:

1) Consolidation of the competency of the court (principle of *perpetuatio fori*).[101]

[95] Art. 139[1] of the Code.
[96] Art. 139[1] § 2 of the Code.
[97] Art. 192(1) of the Code.
[98] Art. 1098 § 1 of the Code.
[99] Art. 204 of the Code; Art. 192(2) of the Code.
[100] See: judgment of the Supreme Court of 21 January 2009, III CSK 248/08, Legalis; Art. 192(3) of the Code.
[101] Art. 15 of the Code.

2) Consolidation of the jurisdiction of Polish courts (principle of *perpetuatio iurisdictionis*) (Article 1097 of the Code of Civil Procedure).

Material and legal consequences of bringing an action:

1) Interruption of the limitation period for a claim.[102]
2) Interruption of the period of usucapion.[103]
3) Interruption of other substantive law deadlines.[104]
4) End of the prohibition on application of the principle of compound interest, which means that it is allowed to determine and collect interest on overdue interest.[105]
5) Strictly personal claims or rights may be transferred to the legal successors of the entitled person.[106]

23. What are the consequences of the respondent's failure to appear in the proceedings under the national law of your Member State?

Note: see also the explanatory notes to point 24 – What are the consequences of the claimant's failure to appear in the proceedings under the national law of your Member State?

If the defendant fails to appear at the preparatory hearing, the agenda of the trial is drawn up without the participation of the defendant. The findings contained in the agenda of the trial are binding on the defendant in the further course of the proceedings. In the case of unjustified failure to appear, the provision of Article 103 § 3 of the Code applies, because the court may, regardless of the outcome of the case, impose on this party the obligation to reimburse the costs in a larger part than would be required by the outcome of the case, and even reimburse the costs in full.

The court may issue a default judgment at a public hearing if the defendant has not filed a response to the statement of claim within the prescribed period.[107] A default judgment is issued by the court *ex officio*.[108] In such a case, the claimant's statements about facts contained in the statement of claim or pleadings served on the defendant before the hearing are deemed true, unless they raise reasonable doubts or were quoted in order to circumvent the law.[109] The court will issue a default judgment if, despite the failure to submit a response to the statement of claim, the case was referred for examination at a trial, and the defendant did not appear at this trial, or despite appearing, does not participate in it.[110] A judgment issued in the absence of the defendant will not be a default judgment if the defendant has demanded a trial to be held in the defendant's absence or has already submitted an explanation on the case orally or in writing.[111]

[102] Art. 123 Kodeks Cywilny [Civil Code].
[103] Art. 175 of the Civil Code.
[104] For example: Art. 64 Kodeks Rodzinny i Opiekuńczy [Family and Guardianship Code].
[105] Art. 482 of the Civil Code.
[106] For example: Art. 445 of the Civil Code; Art. 940 of the Civil Code.
[107] Art. 339 § 1 of the Code.
[108] See: decision of the Supreme Court of 7 November 1995, I PRN 45/95, Legalis
[109] Art. 339 § 2 of the Code.
[110] Art. 340 § 1 of the Code.
[111] Art. 340 § 2 of the Code.

If, after the default judgment is issued, it turns out that the defendant at the time of filing the statement of claim did not have judicial capacity, procedural capacity or a body appointed to for representation, and these deficiencies have not been removed within the prescribed period in accordance with the provisions of the Code, the court revokes the default judgment *ex officio* and issues a relevant decision.[112] A defendant against whom a default judgment has been issued may file an objection within two weeks from the service of the judgment.[113]

In matrimonial cases, if the defendant did not demand a trial to be held in the defendant's absence or did not submit any explanations on the case orally or in writing and did not appear at the trial or despite appearing, did not participate in the trial, the judgment in matrimonial cases is also default.[114]

23.1. What are the possibilities of legal remedy if the respondent claims incorrect service? Payment-order proceedings

In payment-order proceedings, the defendant may raise objections against the order for payment.[115] In the pleading containing the claims, the defendant should, in addition to the elements indicated in Article 480^3 § 2 of the Code, list the facts from which the claims are derived and the evidence to prove each of them.[116] In proceedings after the claims have been filed:

1) the provisions of Articles 194-196 and Article 198 of the Code do not apply;
2) a counterclaim is inadmissible;
3) it is not possible to make new claims instead of or in addition to the existing ones; however, in the event of a change in circumstances, the claimant may, instead of the original subject-matter of the dispute, demand its equivalent or another performance, and in cases for recurrent performance, the claimant may also extend the claim to include performance for subsequent periods.[117]

If there are grounds for rejecting the state of claims or discontinuation of the proceedings, the court *ex officio* revokes the order for payment and issues an appropriate decision. Otherwise, the court issues a judgment which upholds the order for payment in whole or in part or revokes it and decides on the claim.[118] If the charges are withdrawn, the court states by a decision that the order for payment remains in force and decides on the costs as in the case of withdrawal of the statement of claim.[119]

Proceedings by writ of payment

In proceedings by writ of payment, the defendant may raise an objection against the order for payment.[120] The order for payment loses its force in the part challenged by the objection. An objection by only one of the co-defendants for the same claim and with respect

[112] Art. 343^1 of the Code.
[113] Art. 344 § 1 of the Code.
[114] Cf. Resolution of the Panel of Seven Judges of the Supreme Court – legal principle of 12 May 1952, C 1572/51, Legalis.
[115] Art. 493 § 1 of the Code.
[116] Art. 493 § 2 of the Code.
[117] Art. 493 § 3 of the Code.
[118] Art. 493 § 4 of the Code.
[119] Art. 497 § 1 first sentence of the Code.
[120] Art. 505 § 1 of the Code.

to one or more of the accepted claims results in the loss of the force of the order only with respect to those claims.[121] At the request of the party, the court issues a decision stating that the order for payment is no longer in force in whole or in part.[122]

Simplified proceedings

In simplified proceedings, the defendant may file a response to the statement of claim. In simplified proceedings, cases for performance are examined if the value of the subject-matter of the dispute does not exceed PLN 20,000, and in cases concerning claims under warranty or guarantee – if the value of the subject-matter of the contract does not exceed PLN 20,000. The following types of cases are not examined in simplified proceedings: cases belonging to the jurisdiction of regional courts; matrimonial and parent-child relationships cases; cases in the field of labour law examined with the participation of lay judges; cases in the field of social security, with the exception of cases listed in Article 477^8 § 2 of the Code, and pension cases. The court may examine the case with the omission of the provisions on simplified proceedings if this may contribute to a more efficient resolution of the dispute.

Ordinary proceedings

The defendant may, in response to the statement of claim, submit to the court the position on the claim. It is obligatory for the defendant to file a response to the statement of claim. The presiding judge orders service of the statement of claim to the defendant and requests the defendant to submit a response to the statement of claim within the prescribed time limit of not less than two weeks. The claimant is notified of the order for the service of the statement of claim.[123] The court may issue a default judgment at a closed hearing if the defendant has not filed a response to the statement of claim within the prescribed period.[124] The presiding judge orders the return of the response to the statement of claim filed outside the deadline.[125] The organization of the proceedings is regulated in the provisions from Article 205^1 of the Code to Article 205^{12} § 1 of the Code.

24. What are the consequences of the claimant's failure to appear in the proceedings under the national law of your Member State? (e.g. due to the absence of a summons to the preparatory hearing)

In Polish civil procedure, it is allowed to conduct conciliation proceedings before the court at public hearing, which, however, is not a trial.[126] In conciliation proceedings, if the summoning party fails to appear at the hearing, the court, at the request of the opponent, will impose on the summoning party the obligation to reimburse the costs caused by the settlement attempt.[127] Conciliation proceedings in Polish civil procedure do not result in a court ruling, as minutes of the hearing are drawn up.[128] The court, as a rule, does not take evidence in conciliation proceedings. In cross-border cases, it is allowed to

[121] Art. 505 § 2 of the Code.
[122] Art. 505 § 3 of the Code.
[123] Art. 205^1 § 1 of the Code.
[124] Art. 339 § 1 of the Code.
[125] Art. 205^1 § 2 of the Code.
[126] Art. 148 § 1 of the Code.
[127] Art. 186 § 1 of the Code.
[128] Art. 185 § 3 of the Code.

conduct conciliation proceedings before a Polish court, but this depends on the existence of national jurisdiction.[129]

In court proceedings, if a party, despite being summoned to appear in person, fails to appear in order to participate in the court's activities and has not justified the failure to appear, the court may, regardless of the outcome of the case, impose on that party the obligation to reimburse the costs in a larger part than would be required by the outcome of the case, and even to reimburse the costs in full.[130]

In the event that both parties fail to appear at the trial, unless otherwise provided by law, and in the event of the claimant's failure to appear, when the claimant has not demanded the case to be examined in the defendant's absence, and the defendant has not filed an application to examine the case, the court may suspend the proceedings *ex officio*.[131]

In proceedings before the court of first instance, prior to the commencement of the preparatory hearing, the claimant may request to conduct it without the claimant's participation. The request cannot be withdrawn, and the stipulation of the condition or deadline is deemed non-existent. In such a case, the failure of the claimant or the claimant's legal representative to appear at the preparatory hearing does not lead to the discontinuation of the proceedings, the agenda of the trial is prepared without the participation of the claimant, and the arrangements contained in the agenda of the trial are binding on the claimant in the further course of the proceedings.[132] If the claimant fails to appear at the preparatory hearing without justification, the court discontinues the proceedings, settling the costs in the same way as in the case of withdrawal of the statement of claim, unless the defendant present at this hearing objects. If the claimant, within a week from the date of service of the order to discontinue the proceedings, justifies the failure to appear, the court will revoke this order and give the case the proper course. This provision does not apply in the event of a repeated unjustified failure to appear.[133]

In the event of a party's justified failure to appear, as well as at the joint request of the parties, the preparatory hearing may be adjourned for a specified period of time, not longer than three months.[134]

However, the failure of the parties to appear on the appointed date does not suspend the taking of evidence, unless the presence of the parties or one of them proves necessary.[135]

In matrimonial cases, the trial takes place regardless of the absence of one of the parties, which means that the parties are not obliged to appear at the trial in person. Parties may, in a pleading, demand a trial to be held in their absence.[136] In addition, the parties may be represented at the trial by professional representatives (attorneys-at-law and lawyers). However, in the event of the claimant's unjustified failure to appear at the first court hearing scheduled to conduct a trial, the proceedings are suspended, unless the prosecutor

[129] See: resolution of the Supreme Court of 28 March 2014, III CZP 3/14, Legalis.
[130] Art. 103 § 3(1) of the Code.
[131] Art. 177 § 1(5) of the Code.
[132] Art. 205^5 § 4 of the Code.
[133] Art. 205^5 § 5 of the Code.
[134] Art. 205^7 § 2 of the Code.
[135] Art. 237 of the Code.
[136] Art. 209 of the Code.

supports the request for annulment or determination of the existence or non-existence of the marriage.[137] Proceedings are resumed at the request of the claimant, but not earlier than after three months from the date of suspension of the proceedings. If no such request is made within one year after the suspension, the court will discontinue the proceedings. The discontinuation has the same effects as the discontinuation of proceedings suspended at the joint request of the parties or due to their failure to appear.[138]

In non-contentious proceedings, the failure of the participants to appear does not prevent the case from being examined. In such a case, the provisions on a default judgment do not apply.[139]

However, before the court of second instance, the trial is held regardless of the failure of one or both parties to appear. The judgment issued is not a default judgment.[140]

24.1. What are the possible legal remedies if the claimant claims incorrect service?

The claimant may amend the claim, which is admissible if it does not affect the jurisdiction of the court.[141] An unlimited change of claim is possible in proceedings before the court of first instance. However, in simplified proceedings, a change of claim is inadmissible.[142]

In appeal proceedings, it is not possible to extend the claim or make new claims. However, in the event of a change of circumstances, instead of the original subject-matter of the dispute, it is possible to demand its value or another performance, and in cases for recurrent performance, the claimant may also extend the claim to include performance for subsequent periods.[143] A similar solution applies in proceedings initiated by a cassation appeal before the Supreme Court[144] and initiated by filing a complaint for a declaration of non-compliance with the law of a final judgment[145].

In addition, the claimant has the option of withdrawing the statement of claim, which means that the claimant resigns from supporting the statement of claim in whole or in part. The claimant may withdraw the statement of claim with or without a waiver of the claim. The statement of claim may be withdrawn without the consent of the defendant until the start of the trial, and if the withdrawal is accompanied by a waiver of the claim – until the judgment is issued.[146] A withdrawn statement of claim does not produce any effects of its filing in accordance with the law. At the request of the defendant, the claimant reimburses the defendant for the costs, if the court has not previously issued a final decision on the obligation to pay the costs by the defendant. In the event of withdrawal of the statement of claim outside the trial, the presiding judge cancels the scheduled trial and notifies the defendant about the withdrawal shall, who may, within two weeks, submit to the court an application for costs. When the effectiveness of the withdrawal of the

[137] Art. 428 § 1 of the Code.
[138] Art. 428 § 2 of the Code.
[139] Art. 513 of the Code.
[140] Art. 376 of the Code.
[141] Art. 193 § 1 of the Code.
[142] Art. 505^4 § 1 of the Code.
[143] Art. 383 of the Code.
[144] Art. 383 in conjunction with Art. 398^{21} of the Code.
[145] Art. 383 in conjunction with Art. 398^{21} in conjunction with Art. 424^{12} of the Code.
[146] Art. 203 § 1 of the Code.

statement of claim depends on the consent of the defendant, failure of the defendant to submit a statement in this regard within the above period is tantamount to consent. The court may find it inadmissible to withdraw the statement of claim, waive or limit the claim only if the circumstances of the case indicate that the listed actions are contrary to the law or the principles of social coexistence or are intended to circumvent the law.

25. What are the consequences of improper service in your national jurisdiction?

At the stage when the defendant has not yet received a statement of claim or other pleading that necessitates the defence of the defendant's rights, and no document has been served on the defendant in the case,[147] a regulation was adopted that the court suspends the proceedings pursuant to Article 177 § 1(6) of the Code. Suspended proceedings are discontinued by the court if the application to resume them has not been submitted within 3 months from the date of issuing the decision on the suspension of the proceedings.[148]

However, in the course of the case, improper service of documents to the defendant may result in the court issuing a default judgment, which means that the defendant has the right to object to the default judgment.[149]. At the request of the defendant, the court will suspend the order of immediate enforceability given to a default judgment if the judgment was issued in violation of the provisions on the admissibility of its issuance or if the defendant makes it probable that the failure to appear was not at fault, and the circumstances presented in the objection raise doubts as to the legitimacy of the default judgment. By suspending the enforceability of the judgment, the court may order security measures.[150] In addition, the court may revoke the order of immediate enforceability given to a default judgment if the defendant proves that a copy of the statement of claim was served in the manner provided for in Article 139 § 1 of the Code to an address other than the defendant's place of residence at the time of service.[151]

If, for example, the defendant learned about the initiation of enforcement proceedings only from the notification of the court bailiff, the defendant may apply to the court for reinstatement of the deadline pursuant to Article 168 § 1 of the Code. If a procedural action has not been performed by a party within the time limit through no fault of the party, the court, at the request of the party, will decide to reinstate the deadline.[152] A document with an application for reinstatement of the deadline is submitted to the court where the action was to be performed within one week from the time when the reason for the failure to comply with the time limit ceased to exist.[153] Submitting an application for reinstatement of the deadline does not suspend the proceedings in the case or the execution of the judgment. However, the court may, where appropriate, suspend the proceedings or the execution of the judgment. If the application is granted, the court may immediately proceed to examine the case.[154]

[147] Art. 139[1] of the Code.
[148] Cf. E. Marszałkowska-Krześ and I. Gil, Kodeks postępowania cywilnego. Komentarz [*Code of Civil Procedure. Commentary*] (Legalis 2023).
[149] Art. 334 § 2 of the Code.
[150] Art. 346 § 1 of the Code.
[151] Art. 346 § 2 of the Code.
[152] Art. 168 § 1 of the Code.
[153] Art. 169 § 1 of the Code.
[154] Art. 172 of the Code.

Conducting enforcement proceedings may also lead the debtor, in order to defend the debtor's rights, to use:

1) a complaint against the bailiff's actions;[155]
2) a complaint against a decision of the court referendary;[156] and
3) a complaint against a court's decision.[157]

The debtor may also apply to the court:

1) to suspend the enforcement proceedings in whole or in part;[158]
2) to discontinue the enforcement proceedings in whole or in part;[159]
3) for deprivation by way of an action of the enforceability of the enforcement title in whole or in part or limitation.[160]

25.1. What is the procedure if the recipient nevertheless had the opportunity to prepare and therefore the principle of equality of arms was not affected?

On the basis of Polish civil procedure, the principle of equality of the parties has two aspects: equality of arms and the principle of the right to be heard. For the proper implementation of the principle of equality of the parties in civil proceedings, it is necessary to give instructions. The provision of Article 205^2 of the Code provides for the principle of giving instructions to the defendant together with the statement of claim and the requests to submit a response to the statement of claim, and to the claimant together with the notification of the order to serve the statement of claim on the defendant.

The provision of the Article 205^2 § 1 of the Code shows that simultaneously with the service of the documents referred to in Article 205^2 § 1 of the Code, the parties are instructed about:

1) the possibility of resolving the dispute through a settlement concluded before a court or mediator;
2) the obligation to participate in the preparatory hearing and present all claims and evidence at this hearing;
3) the consequences of failure to comply with the obligations referred to in point 2, in particular the possibility of issuing a default judgment by the court in closed hearing and the conditions for its execution, charging the costs of the proceedings, as well as the possibility of discontinuing the proceedings and omitting late claims and evidence;
4) the possibility of appointing a legal representative and that the representation by a lawyer, attorney-at-law or patent attorney is not obligatory;
5) the obligation to submit a preparatory document if the presiding judge issues such an order, the requirements as to its content and the consequences of failure to comply with them;
6) return of the preparatory document submitted without the order of the presiding judge.

The defendant is also instructed on the procedural steps that may or should be taken by the defendant if the defendant does not recognize the statement of claim in whole or in

[155] Art. 767 of the Code.
[156] Art. 767^{3a} of the Code.
[157] Art. 767^4 of the Code.
[158] Art. 821 of the Code.
[159] Art. 824 of the Code.
[160] Art. 840 § 1(1-3) of the Code.

part, in particular on the obligation to submit a response to the statement of claim, including the applicable requirements as to the deadline and form.[161] Instructions referred to in Article 205^2 § 1 and 2 of the Code, are served directly on the party, with the exception of the party referred to in Article 1135^5 § 1 of the Code. The instructions are not served on the General Counsel to the Republic of Poland or on a representative who is a lawyer, attorney-at-law, or patent attorney.

The provision of the Article 1135^5 § 1 of the Code refers to a party that has no place of residence or stay or registered office in the Republic of Poland or in another member state of the European Union, and states that if the party has not appointed a representative to conduct the case who resides in the Republic of Poland, the party is obliged to indicate a representative for service in the Republic of Poland. The provision of Article 1135^5 of the Code should be limited to parties from third countries outside the European Union.[162]

Efficiency of civil proceedings consisting in the fact that the parties to the proceedings had the opportunity to prepare for the case means that the court schedules a trial, which takes place in such a way that after the case is brought, the parties – first the claimant and then the defendant – verbally submit their demands and requests and present claims and evidence to support them. The parties may also indicate the legal grounds for their demands and requests.[163] The court conducts evidentiary proceedings, which take place before the adjudicating court.[164] After the trial is closed, the court issues a judgment on the basis of the state of affairs existing at the time of closing the trial; in particular, adjudication of a claim is not precluded by the fact that it has become due and payable in the course of the case.[165] As a rule, the judgment of the court of first instance may be appealed against to the court of second instance.[166]

25.2. Can a deficiency in service be cured in your national jurisdiction? If so, how?

Proceedings to supplement the formal deficiencies of a pleading or deficiencies in the payment for the pleading, as well as the effects of supplementing these deficiencies and ineffective expiry of the deadline for correcting or paying for the pleading.

If the pleading cannot be processed as a result of failure to comply with the formal conditions, or if the fee for the pleading has not been paid, the presiding judge calls on the party, under pain of returning the pleading, to correct, supplement or pay for it within a week. Mislabelling of a pleading or other obvious inaccuracies do not prevent the document from being processed and examined in the proper manner.[167]

[161] Art. 205^2 of the Code.
[162] Cf. justification to the draft act amending the Code of Civil Procedure Act of 17 August 2013 (form No. 1272); decision of the Court of Appeal in Poznań of 26 February 2013, I ACa 1212/12, Legalis. See: M. Zalisko, 'Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 1215/2012 z dnia 12 grudnia 2012 r. w sprawie jurysdykcji i uznawania orzeczeń sądowych oraz ich wykonywania w sprawach cywilnych i handlowych, Rozdział XI' [*Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Chapter XI*], in I. Gil and D. Kornobis-Romanowska (eds.), Meritum. Postępowanie cywilne, Tom II. Postępowanie egzekucyjne, arbitrażowe i międzynarodowe [*Merit. Civil Procedure, Volume II. Enforcement, arbitration, and international proceedings*] (Wolters Kluwer Polska 2021) p. 627 at p. 628.
[163] Art. 210 § 1 of the Code.
[164] Art. 235 § 1 of the Code.
[165] Art. 316 § 1 of the Code.
[166] Art. 367 § 1 of the Code.
[167] Art. 130 § 1 of the Code.

The jurisprudence aptly indicates that a request to supplement the formal deficiencies of the statement of claim pursuant to Article 130 of the Code is reserved and limited only to such deficiencies that actually make it impossible to proceed with the case. Thus, any arbitrariness is excluded and the practice of returning the statement of claim despite the failure to comply with the presiding judge's order to the extent that this failure does not prevent the case from being processed is unjustified.[168]

If the pleading was brought by a person residing or having its registered office abroad, who has no representative in the country, the presiding judge sets a time limit for correcting or supplementing the pleading or paying the fee, of not less than one month, and if the service of the request was to take place outside the territory of the European Union, the deadline is not shorter than three months.[169]

After the expiry of the deadline, the presiding judge returns the pleading to the party. The returned pleading does not produce any effects of its filing in accordance with the law.[170] On the other hand, a pleading that has been corrected or supplemented within the deadline has effects from the moment it is submitted.[171] The presiding judge's order to return the statement of claim is served only on the claimant.[172]

Pleadings prepared in violation of Article 87^1 of the Code are returned without prior request to remove the deficiencies, unless the law provides otherwise.[173] The provision of Article 87^1 of the Code concerns the compulsory representation by a lawyer or attorney-at law before the Supreme Court. In proceedings before the Supreme Court, parties are compulsorily represented by lawyers or attorneys-at-law, and in intellectual property matters also by patent attorneys. This representation also applies to procedural activities related to proceedings before the Supreme Court, undertaken before a lower court.[174]

If a special provision provides that the pleading may be brought only through the ICT system, the pleading is brought along with the fee. A pleading brought without the fee does not produce any effects of its filing in accordance with the law, of which the court instructs the person bringing the pleading. If more than one document subject to a fee is submitted via the ICT system at the same time, none of these documents produces any effects of its filing in accordance with the law, if the fee in the amount of the sum of the fees due for all documents has not been paid.[175] If a pleadings subject to a fee is submitted with violation of the provision of Article 130 § 6 of the Code, the presiding judge notifies the applicant of the ineffectiveness of the action.[176] However, the provisions of Article 130 § 6 and 7 of the Code do not apply if the person submitting the pleading is exempt by law from court costs in the scope of the court fee payable for this document, and also in the event of exemption from these costs granted by the court or in the event of an application for such exemption.

[168] See: decision of the Court of Appeal in Wrocław of 30 January 2013, I ACz 121/13, Legalis.
[169] Art. 130 § 1^1 of the Code.
[170] Art. 130 § 2 of the Code.
[171] Art. 130 § 3 of the Code.
[172] Art. 130 § 4 of the Code.
[173] Art. 130 § 5 of the Code.
[174] Art. 87^1 § 1 of the Code.
[175] Art. 130 § 6 of the Code.
[176] Art. 130 § 7 of the Code.

Proceedings to supplement the formal deficiencies of a pleading brought on an official form

However, if a pleading, which should be brought on an official form, has not been brought on such a form or cannot be processed as a result of failure to observe other formal conditions, the presiding judge calls on the party to correct or supplement it within a week by sending the submitted pleading. The request should indicate all the deficiencies of the pleading and contain the instruction that in the event of the ineffective expiry of the deadline or re-submission of the pleading with the deficiencies, the presiding judge orders the return of the pleading. An objection to a default judgment, charges against an order for payment and an objection to an order for payment are rejected by the court.[177]

Sanctions for submitting a pleading with formal defects by a professional representative

If a pleading brought by a lawyer, attorney-at-law, patent attorney or General Counsel to the Republic of Poland cannot be processed as a result of failure to comply with formal conditions, the presiding judge returns the pleading to the party without a request to correct or supplement it. Mislabelling of a pleading or other obvious inaccuracies do not prevent the document from being processed and examined in the proper manner.[178]

The order on the return of the pleading indicates the deficiencies that constitute the basis for the return. Within a week from the date of service of the order to return the pleading, the party may submit it again. If the pleading is not affected by deficiencies, it takes effect from the date of the original submission. This effect does not occur in the case of a subsequent return of the pleading unless the return was due to previously unindicated deficiencies. An order to return a pleading may also be issued by a court referendary.[179]

25.3. Please explain whether such a cure may in certain circumstances be in conflict with national procedural principles (e.g. right to a fair trial, right to be heard). If so, how is this issue dealt with?

The principle of truth

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.[180] 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.[181] This principle applies to proceedings aimed at resolving the merits of the case and extends to any incidental proceedings that must be undertaken in the course of the proceedings.[182] From this principle, the prohibition of falsehood in

[177] Art. 130^{1} § 1^{1} and 2 of the Code.
[178] Art. 130^{1a} § 1 of the Code.
[179] Art. 130^{1a} § 2-4 of the Code.
[180] Art. 3 of the Code.
[181] See: judgment of the Supreme Court of 11 December 1998, II CKN 104/98, Legalis.
[182] Cf. decision of the Supreme Court of 13 July 1966, II CZ 74/66, Legalis.

court addressed to the parties, other participants to the proceedings and their representatives is derived.[183]

Abuse of procedural rights clause

A general clause concerning the prohibition of abuse of procedural rights results from the provision of Article 4^1 of the Code. It provides that the parties and participants to the proceedings may not use the rights provided for in the provisions on the proceedings in a manner inconsistent with the purpose for which they were established (abuse of procedural rights). A manifestation of actions contrary to good practice is taking actions by a party, although provided for by law and formally admissible, which, however – in the circumstances of a specific case – are used contrary to the function of the provision, in a way that does not correspond to the actual purpose of the granted right and in a way that violates the other party's right to obtain effective legal protection. The prohibition of abusing procedural rights, derived from the principle of a fair trial, the obligation of the participants to the proceedings to act honestly and in accordance with good practices and the purpose (essence) of civil proceedings, makes it possible to prevent the use of a specific procedural right in a manner contrary to the function of the provisions and may be important for the interpretation and application of the provisions on proceedings by the court and may translate into specific procedural decisions.[184] The jurisprudence of the Supreme Court indicates that 'if a party incorrectly uses its right to appeal against a court decision and therefore meets with a justified rejection of the measure brought by it, the party cannot effectively refer to Article 45 (1) of the Constitution of the Republic of Poland, nor to Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950 (Journal of Laws of 1993, No. 61, item 284) to prove a deprivation of the possibility of a fair examination of the case by a higher instance court'.[185] In addition, the Supreme Court explains that 'procedural measures aimed at guaranteeing the parties' rights should be used in a way that serves their implementation. When the circumstances of the case so require, the court may oblige the parties to justify their absence at the trial in a manner it deems appropriate'.[186]

Whenever the behaviour of a party in the light of the circumstances of the case indicates abuse of the procedural rights, the court instructs the party about the possibility of applying measures against the party, and if the court finds that the party has abused the procedural rights, it may, in the judgment concluding the proceedings in the case:

1) impose a fine on the abusing party;[187]
2) regardless of the outcome of the case, according to the delay in its examination caused by this abuse of procedural rights, oblige the abusing party to reimburse the costs in a larger part than would be indicated by the outcome of the case, or even reimburse the costs in full;[188]
3) at the request of the opposing party:
    a) award against the abusing party the costs of the proceedings increased in accordance with the increase in the workload of the opposing party

[183] 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*] (Beck 2019), Legalis
[184] See: decision of the Supreme Court of 16 June 2016, V CSK 649/15, Legalis.
[185] See: decision of the Supreme Court of 10 September 1998, III CZ 114/98, Legalis.
[186] See: judgment of the Supreme Court of 1 June 2000, I CKN 64/00, Legalis.
[187] Art. 226^2 § 2(1) of the Code.
[188] Art. 226^2 § 2(2) of the Code.

to conduct the case caused by this abuse, but the costs may not be increased more than twice;[189]

b) increase the interest rate awarded against the party whose abuse caused a delay in the examination of the case, for the time corresponding to this delay, with the proviso that the rate may not be increased more than twice; the provisions on the maximum permissible amount of statutory interest for delay do not apply;[190]

The evidentiary proceedings should not aim at prolonging the proceedings, but only at demonstrating the party's claims, because the subject of evidence are facts that are of significant importance for the resolution of the case.[191] The party is obliged to mark the evidence in the request for the taking of evidence in a way that allows it to be taken and to specify the facts to be proved with this evidence.[192] However, the court may, in particular, omit evidence:

1) the taking of which is excluded by the provision of the Code;
2) which proves an indisputable fact, irrelevant to the resolution of the case or proven in accordance with the applicant's claim;
3) which is useless to prove a given fact;
4) which is impossible to take;
5) aimed only at prolonging the proceedings;
6) when the party's request does not meet the requirements of Article 235^1 of the Code, and the party, despite being requested, did not remove this deficiency.

Right to be heard

The provision of Article 226^1 of the Code concerns the hearing of the parties and other persons, because whenever the civil procedure provides for the hearing of the parties or other persons, depending on the circumstances, this may be done by summoning the parties to submit relevant statements at the hearing or by setting a deadline for taking a position in a pleading or by means of remote communication, as long as they provide certainty as to the person making the statement.

The provisions of the Code give the possibility or establish an obligation for the court to hear the parties or other persons, in particular in the following situations:

1) Article 110 of the Code – on the basis of this provision, the court may order a witness, expert, attorney, or statutory representative – after hearing them – to reimburse the costs caused by their gross fault;
2) Article 183^8 § 5 of the Code – on the basis of this provision, before the first hearing scheduled for the trial, the presiding judge assesses whether to refer the parties to mediation. For this purpose, the presiding judge, if there is a need to hear the parties, may summon them to appear in person at a closed hearing;
3) Article 205^{11} § 1 of the Code – on the basis of this provision, if the agenda of the trial has become obsolete, the court may amend it by way of an order. Before issuing the order, the court will hear the parties, at the same time informing them about the scope of the intended change;

[189] Art. 226^2 § 2(3)(a) of the Code.
[190] Art. 226^2 § 2(3)(b) of the Code.
[191] Art. 227 of the Code.
[192] Art. 235^1 of the Code.

4) Article 251 of the Code – on the basis of this provision, 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. The third party has the right to demand reimbursement of expenses related to the presentation of the document;
5) Article 276 § 1 of the Code – on the basis of this provision, for an unjustified refusal to testify or make an oath, the court, after hearing the present parties as to the legitimacy of the refusal, will sentence the witness to a fine;
6) Article 278 § 1 of the Code – on the basis of this provision, in cases requiring special information, the court, after hearing the parties' requests as to the number of experts and their selection, may summon one or more experts to obtain their opinion;
7) Article 281 § 2 of the Code – on the basis of this provision, the exclusion of the expert is decided by the court conducting the case after hearing the parties and the expert. Hearing the parties or the expert may be waived if it would lead to excessive delay in the proceedings;
8) Article 505^{20} § 3 of the Code – on the basis of this provision, before revoking the European order for payment, the court will hear the claimant at a hearing or request a written statement from the claimant;
9) Article 505^{27a} § 3 of the Code – on the basis of this provision, in the European Small Claims Procedure under Regulation No. 861/2007, the court may examine the request at a closed hearing. Before revoking the judgment, the court will hear the claimant at a hearing or request a written statement from the claimant.

25.4. Do the consequences of improper service differ within the scope of the Regulation due to the provisions in Art. 22 of the Regulation? If so, how?

In practice, the provision of Article 139^1 of the Code concerns the service on the defendant of a copy of the statement of claim or the first pleading that evokes the need to defend the rights of the defendant:

1) if the defendant fails to collect the statement of claim or other pleading, that evokes the need to defend the defendant's rights, the presiding judge notifies the claimant thereof by sending the claimant a copy of the document for the defendant and obliges the claimant to serve the document on the defendant via a bailiff;
2) if the 2-month period from the date of service of the obligation on the claimant to serve the document on the defendant via a bailiff has expired, the proceedings should be suspended pursuant to Article 177 § 1(6) of the Code;
3) the claimant is not obliged to submit a request for service of the document through a bailiff, as they may return the document to the court. In this case, the claimant must provide the court with the defendant's current address or proof that the defendant resides at the address stated in the statement of claim. If the court finds the evidence submitted by the claimant to be credible, the service of the document in the manner specified in Article 139 § 1 of the Code should be considered effective.[193]

[193] J. Gołaczyński and D. Szostek (eds.), Kodeks postępowania cywilnego. Komentarz do ustawy z 4.7.2019 r. o zmianie ustawy Kodeks postępowania cywilnego oraz niektórych innych ustaw [*Code of Civil Procedure. Commentary to the Act of 4 July 2019 amending the Code of Civil Procedure and certain other acts*] (Beck 2019), Legalis.

However, the solution adopted in Article 22(1) of Regulation No. 2020/1784 is to guarantee the right to a fair trial so that a default judgment is not issued. On the basis of the provision of Article 22(1) of Regulation No 2020/1784, the solution adopted was that where a document instituting proceedings or its equivalent has had to be transmitted to another member state for the purpose of service under this Regulation and the defendant has not entered an appearance, judgment cannot be given until:

1) it is established that the service of the document was effected in sufficient time to enable the defendant to enter a defence;
2) the document was served by a method prescribed by the law of the Member State addressed for the service of documents in domestic proceedings on persons who are within its territory; or
3) the document was in fact delivered to the defendant or to the defendant's place of residence or registered office by another means provided for by this Regulation.

However, the provision of Article 22(2) of Regulation No. 2020/1784 will not always guarantee the right to a fair trial, as a solution has been allowed that:

1) each Member State may communicate to the Commission the fact that a court, notwithstanding Article 22(1) of Regulation No. 2020/1784, may give judgment even if no certificate of service or delivery of the document instituting proceedings or its equivalent has been received, provided that all the following conditions are fulfilled:
   a) the document was transmitted by one of the methods provided for in this Regulation;
   b) a period considered adequate by the court in the particular case, which is not less than six months, has elapsed since the date of the transmission of the document;
   c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain one through the competent authorities or bodies of the Member State addressed.

The solutions adopted in Article 22(1) and (2) of Regulation No. 2020/1784 may make it necessary for the defendant to initiate additional legal measures under the national law of individual member states to defend the interests of the defendant. However, Polish law does not provide for the measure referred to in Article 22(2) of Regulation No. 2020/1784, therefore Poland did not submit the relevant notification.

25.5. Has your Member State made use of the option in Art. 22 No. 2 of the Regulation?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains general information for the purposes of Article 22 of Regulation No. 2020/1784, from which it follows that an application for relief from the effects of the expiry of a deadline brought one year after it expired is admissible only in exceptional cases. However, this notification does not apply to Article 22(2) of Regulation No. 2020/1784.

According to the information received from the Ministry of Justice, the Department of European Law on 16 February 2023, Polish law does not provide for the measure referred to in Article 22(2) of Regulation No. 2020/1784, therefore Poland did not submit the relevant notification.

25.6. How is the possibility of reinstatement in Art. 22 No. 4 of the Regulation regulated in your Member State? What is the deadline for filing an application for *restitutio in integrum*?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 22 of Regulation No. 2020/1784, from which it follows that an application for relief from the effects of the expiry of a deadline brought one year after it expired is admissible only in exceptional cases. However, this notification applies only to the provision of Article 22(4), third subparagraph of Regulation No 2020/1784. In fact, it concerns the institution of reinstating the deadline known to Polish civil procedure.

In Polish civil procedure, an application may be submitted to the court for reinstatement of the deadline pursuant to Article 168 § 1 of the Code. If a procedural action has not been performed by a party within the time limit through no fault of the party, the court, at the request of the party, will decide to reinstate the deadline.[194] A document with an application for reinstatement of the deadline is submitted to the court where the action was to be performed within one week from the time when the reason for the failure to comply with the time limit ceased to exist.[195] The application should substantiate the circumstances justifying the request. Simultaneously with the application, the party should perform a procedural action. Reinstatement of the deadline after one year from its expiry is admissible only in exceptional cases.[196]

In addition, it should be clarified that the debtor at the stage of enforcement proceedings may, in order to defend the debtor's rights, use, for example, a complaint against the bailiff's actions;[197] a complaint against a decision of the court referendary;[198] and a complaint against a court's decision.[199]

Moreover, it should be additionally clarified that in the Polish civil procedure on the basis of the provision of Article 338 § 1 of the Code it is indicated that a restitution application (*Restitutio in integrum*) should be submitted at the latest before the closing of the trial at which the decision on the judgment with immediate enforceability is to be made. A restitution application submitted later or inadmissible for other formal reasons is rejected, not dismissed.[200] In such a case, the defendant will be able to seek return of the performance or restoration of the previous state in separate proceedings.[201]

It is argued in the jurisprudence and literature that a restitution application should be submitted at the latest before the closing of the trial preceding the issuance of the ruling by which the court rules on the immediately enforceable judgment. This may take place before the court of first instance, when this court, after the default judgment is appealed

[194] Art. 168 § 1 of the Code.
[195] Art. 169 § 1 of the Code.
[196] Art. 169 § 2-4 of the Code.
[197] Art. 767 of the Code.
[198] Art. 767^{3a} of the Code.
[199] Art. 767^{4} of the Code.
[200] See: judgment of the Supreme Court of 6 June 2001, V CKN 1240/00, Legalis; judgment of the Supreme Court of 29 April 2003, V CKN 124/01, Legalis.
[201] 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}*] (Beck 2019), Legalis.

against, revokes the default judgment and dismisses the claim,[202] or adjudicates after the court of second instance revokes the judgment and refers the case for reconsideration, when it dismisses the claim, or before the court of second instance, which revokes the judgment of the court of first instance and rejects the statement of claim or discontinues the proceedings,[203] or changes the judgment under appeal and adjudicates on the merits of the case by dismissing the claim.[204] The court of second instance, which revokes the judgment under appeal and refers the case to the court of first instance for reconsideration, does not have the authority to consider a restitution application.[205] Similarly, when the Supreme Court revokes the judgment under appeal and refers the case for reconsideration, the court to which the case was referred adjudicates on the restitution application contained in the cassation appeal in the judgment closing the proceedings in the case.[206]

On the other hand, the provision of Article 415 of the Code regulates the issue of *restitutio in integrum* in connection with the revocation or amendment of a final judgment as a result of reopening the proceedings on the basis of the appellant's restitution application. The provision of Article 415 of the Code does not indicate the deadline within which the restitution application should be submitted. It is assumed that the application should be submitted within a time limit which would allow the court to recognize it and settle it in the decision concluding the proceedings in the case, which means before closing the trial during which the court reconsiders the case. A restitution application may be submitted together with a complaint for the resumption of proceedings, also in the content of the complaint itself (in one pleading).[207]

26. Can a decision be revoked due to incorrect service in your Member State even after it has become *res judicata*?

In the event of incorrect service on the defendant of a copy of the statement of claim or the first pleading, which necessitated the defence of the defendant's rights, which resulted in the issuance of a judgment by the court, the most correct way would be to submit an application to the court for reinstatement of the deadline pursuant to Article 168 § 1 of the Code. If the claimant provides an incorrect address of residence of the defendant in the statement of claim, the defendant is deprived of the opportunity to defend the defendant's rights. In such a case, when a procedural action has not been performed by a party within the time limit through no fault of the party, the court, at the request of the party, will decide to reinstate the deadline.[208] A document with an application for reinstatement of the deadline is submitted to the court where the action was to be performed within one week from the time when the reason for the failure to comply with the time limit ceased to exist.[209] The application should substantiate the circumstances justifying the request. Simultaneously with the application, the party should perform a procedural action. Reinstatement of the deadline after one year from its expiry is admissible only in exceptional cases.[210] In the jurisprudence of the Supreme Court, it is correctly assumed that Article

[202] Art. 347 of the Code.
[203] Art. 386 § 3 of the Code.
[204] Art. 386 § 1 of the Code.
[205] Cf. judgment of the Supreme Court of 18 December 1996, I CKN 28/96, Legalis.
[206] See: judgment of the Supreme Court of 22 March 2006, III CSK 30/06, Legalis; Szanciło, supra n. 138, Legalis.
[207] P. Rylski (ed.), Kodeks postępowania cywilnego. Komentarz [*Code of Civil Procedure. Commentary*] (Beck 2022), Legalis.
[208] Art. 168 § 1 of the Code.
[209] Art. 169 § 1 of the Code.
[210] Art. 169 § 2-4 of the Code.

169 § 2 of the Code, as a formal condition of the application for reinstatement of the deadline, requires the party to substantiate the circumstances justifying the application. This means that in the application, the party is obliged to indicate such circumstances that make it probable that a procedural act has not been performed within the time limit by the party through no fault of the party. Whether the party substantiated the failure to perform a given action within the time limit, and thus whether the indicated circumstances justify the assumption of lack of fault, is examined as part of the examination of the legitimacy of the application for reinstating the deadline, and the assessment that the party has failed to meet this obligation results in the application being dismissed, not rejected.[211] Since the defendant had no opportunity to get acquainted with the copy of the statement of claim or the first pleading that caused the need to defend the defendant's rights, it should be considered correct to submit an application for reinstating the deadline pursuant to Article 168 § 1 of the Code, because the time limits for appealing against it do not start to run.

Submitting an application for reinstatement of the deadline does suspend the proceedings in the case or the enforcement of the judgment. However, the court may, where appropriate, stay the proceedings or the execution of the judgment. If the application is granted, the court may immediately proceed to examine the case.[212]

Conducting enforcement proceedings may also lead the debtor, in order to defend the debtor's rights, to use:

1) a complaint against the bailiff's actions;[213]
2) a complaint against a decision of the court referendary;[214] and
3) a complaint against a court's decision.[215]

The debtor may also apply to the court:

1) to suspend the enforcement proceedings in whole or in part;[216]
2) to discontinue the enforcement proceedings in whole or in part;[217]
3) for deprivation by way of an action of the enforceability of the enforcement title in whole or in part or limitation.[218]

27. How is the service of documents proven or documented? How is the date of service determined in the national law of your Member State?

Service of documents is confirmed in writing by the recipient or via the ICT system of the postal operator referred to in Article 131 § 1 of the Code, or via a document obtained from the ICT system.[219] Confirmation of receipt of the documents made in accordance with Article 142 § 1 of the Code means that the date entered by the recipient on the proof of service is decisive for determining when the service took place.[220] In the case of a written confirmation, the recipient confirms the receipt and its date with a signature. If the recipient is unable or unwilling to do so, the serving person marks the date of service

[211] See: decision of the Supreme Court of 15 February 2018, IV CZ 9/18, Legalis.
[212] Art. 172 of the Code.
[213] Art. 767 of the Code.
[214] Art. 767^{3a} of the Code.
[215] Art. 767^{4} of the Code.
[216] Art. 821 of the Code.
[217] Art. 824 of the Code.
[218] Art. 840 § 1(1-3) of the Code.
[219] Art. 142 § 1 of the Code.
[220] See: decision of the Supreme Court of 22 November 2013, III CZ 54/13, Legalis

and the reasons for the lack of signature.[221] The serving person states the method of service on the confirmation of receipt and marks the date of service on the served document and signs this statement.[222]

However, during the period of the state of epidemiological threat or the state of epidemic announced due to COVID-19 and within a year from the cancellation of the last of them, in cases conducted in the manner specified in Article 15zzs[1], in the first pleading submitted by a lawyer, attorney-at-law, patent attorney or the General Counsel to the Republic of Poland, the e-mail address and telephone number for contact are provided. Failure to comply with this obligation constitutes a formal defect of the document.[223]

During the period specified in Article 15zzs[9] (1) of the COVID-19 Act, in the absence of the possibility of using the ICT system that supports court proceedings, the court serves the lawyer, attorney-at-law, patent attorney or the General Counsel to the Republic of Poland with court documents by placing their content in the ICT system which is used for making these documents available (information portal). This does not apply to documents that are to be served together with copies of the parties' pleadings or other documents not issued by the court.[224] The date of service is the date on which the recipient reads the document placed on the information portal. If the document is not read, it is considered served after 14 days from the date of placing the document on the information portal.[225] The service of a document via the information portal causes procedural effects specified in the Code of Civil Procedure applicable to the service of a court document.[226] The presiding judge orders the waiver of the service of a document via the information portal, if service is impossible due to the nature of the document.[227]

28. Except for the mentioned respondent, are there other authorised recipients, i.e. (temporary) representatives or persons authorised? Please provide the corresponding regulations within your national legal system.

Service on representatives and participants (Article 141 of the Code)

A court representative of several persons is served with one copy of the pleading and attachments. A person authorised by several participants in the dispute to receive pleadings is served with one copy for each participant. If there are several representatives of one party, the court serves the document only to one of them.[228]

Guardian of the services (Article 143 of the Code)
If a statement of claim or other pleading is to be served on a party whose place of residence is unknown, necessitating the defence of the party's rights, it may be served only

[221] Art. 142 § 2 of the Code.
[222] Art. 142 § 3 of the Code.
[223] Art. 15zzs[9] (1) Ustawa z 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych [Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them] (henceforth: the COVID-19 Act).
[224] Art. 15zzs[9] (2) of the COVID-19 Act.
[225] Art. 15zzs[9] (3) of the COVID-19 Act.
[226] Art. 15zzs[9] (4) of the COVID-19 Act.
[227] Art. 15zzs[9] (5) of the COVID-19 Act.
[228] Art. 141 of the Code.

to a guardian appointed at the request of the person concerned by the adjudicating court until the party or the party's representative or attorney emerge.[229]

Appointment of a guardian for a party whose whereabouts are unknown (Article 144 of the Code)

The presiding judge will appoint a guardian if the applicant substantiates that the whereabouts of the party are unknown. In cases of maintenance claims, as well as in cases to determine the origin of the child and related claims, the presiding judge, before appointing a guardian, will conduct an appropriate investigation to determine the place of residence or stay of the defendant.

The presiding judge will publicly announce the appointment of the guardian in the court building and the premises of the mayor of a municipality, town, or city, and in matters of greater importance, when the court deems it necessary, also in the press. Upon service of the pleading to the guardian, the service becomes effective. However, the court may make the effectiveness of the service dependent on the expiry of the specified time limit from the time of posting the notice in the court building. The appointment of a guardian for a party whose whereabouts are unknown may also be performed by a court referendary.

Display in the court building (Article 145 of the Code)

In cases where the appointment of the guardian is not required according to the preceding provisions, the pleading is served to the party whose whereabouts are unknown, by being displayed it in the court building. Such service becomes effective one month after the date of the display. If a party whose whereabouts are unknown is to be served with a document other than a statement of claim, which also does not evoke the need to defend the party's rights, the document is served to the party by being displayed in the court building.[230]

29. What are the legal consequences of an improper service of documents?

The consequences of improper service of documents are that the defendant did not have any opportunity to get acquainted with, for example, a copy of the statement of claim or the first pleading that evokes the need to defend the defendant's rights, which means that the deadlines for appealing against it do not start to run.

If the court finds an irregularity in the service of the summons or if the absence of a party is caused by an extraordinary event or other obstacle known to the court that cannot be overcome, the trial is adjourned. The court may impose a fine on a party if the party relied in bad faith on untrue circumstances which resulted in the adjournment of the trial. If the untrue circumstances that resulted in the adjournment of the trial were invoked in bad faith by the party's attorney, the court may impose a fine on the attorney.[231]

In electronic proceedings by writ of payment, the court may fine the claimant, the claimant's statutory representative or attorney who, in bad faith or as a result of failure to exercise due diligence, incorrectly marked the data referred to in Article 505^{32} § 2 point 1 or 2 of the Code, which are:

[229] Art. 143 of the Code.
[230] Marszałkowska-Krześ and Gil, supra n. 93, Legalis.
[231] Art. 214 of the Code.

1) Polish Resident Identification Number *(PESEL)* or Tax Identification Number (*NIP)* of the defendant who is a natural person, if the defendant is obliged to have it or has it without such an obligation; or
2) number in the National Court Register, and in the absence thereof – a number in another relevant register, records or *NIP* number of the defendant who is not a natural person, who is not obliged to make an entry in the relevant register or records, if the defendant is obliged to have it;

and in Article 126 § 2 point 1 of the Code, which states that when the pleading is the first document in the case, it should also contain the designation of the subject-matter of the dispute and the place of residence or registered office and addresses of the parties or, if the party is an entrepreneur entered in the Central Business Register – correspondence address entered in the Central Business Register.

30. What is considered a timely service of documents?

Note: please see explanations to point 27 – How is the service of documents proven or documented? How is the date of service determined in the national law of your Member State?

31. Who bears the risk of an untimely service of documents?

Note: please see explanations to point 21 regarding the rules for performing service in the course of the case (Article 132 of the Code).

CROSS-BORDER SERVICE WITHIN THE SCOPE OF THE REGULATION

32. Which bodies are considered to be "transmitting agencies" according to Art. 3 No. 1 of the Regulation in your Member State? If there are several transmitting agencies in your Member State, please describe their local jurisdiction.

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 3(1) of Regulation No. 2020/1784, from which it follows that the transmitting agencies are the courts conducting the proceedings – district courts, regional courts, court of appeal, or the Supreme Court.

District courts examine all cases, with the exception of cases for which the jurisdiction of regional courts is reserved.[232]

A district court is established for one or more municipalities; in justified cases, more than one district court may be established within the same municipality.[233] A district court is established for the area of one or more municipalities inhabited by at least 50,000 inhabitants if the total number of civil, criminal, family and juvenile cases brought to the existing district court from the area of this municipality or several municipalities is at least 5,000 during a calendar year,[234] with the proviso that:

[232] Art. 16 § 1 of the Code.
[233] Art. 10 § 1 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of 27 July 2001 - Law on the system of common courts] (henceforth: the Common Courts Act).
[234] Art. 10 § 1a of the Common Courts Act.

1) a district court may be established for one or more municipalities inhabited by less than 50,000 inhabitants if the total number of civil, criminal, family and juvenile cases brought to the existing district court from the area of this municipality, or several municipalities is at least 5,000 during the calendar year;[235]
2) a district court may be established according to the criteria specified in Article 10 § 1b of the Common Courts Act, only if the change in the area of jurisdiction of the district court competent for this municipality or municipalities does not cause that the existing district court will not meet the criteria set out in Article 10 § 1a or 1b of the Common Courts Act;[236]
3) a district court may be abolished if the total number of civil, criminal, family and juvenile cases brought in over the course of 3 consecutive years does not exceed 5,000 in each calendar year.[237]

A regional court is established for the area of jurisdiction of at least two district courts.[238] The competence of the regional courts includes cases concerning non-property rights and property claims pursued together with them, except for cases to determine or deny the parentage of a child, to determine the ineffectiveness of acknowledging paternity and to terminate adoption; cases for claims under the Press Law; property rights cases where the value of the subject-matter of the dispute exceeds PLN 75,000, except for cases for maintenance, violation of possession, establishment of property separation between spouses, reconciliation of the content of the land and mortgage register with the actual legal status and cases examined in electronic proceedings by writ of payment; cases for issuing a decision replacing the resolution on the division of the cooperative; cases for revocation, annulment or determination of the existence or non-existence of resolutions of bodies of legal persons or organizational units that are not legal persons, to which the law grants legal capacity; for compensation for damage caused by issuing a final and unlawful decision; for claims arising from the violation of rights under the provisions on the protection of personal data.[239]

The court of appeal is established for the area of jurisdiction of at least two court regions.[240] The court of appeal is the court of second instance for decisions issued by regional courts. The court of appeal is divided into divisions:

1) civil – for cases in the field of civil law, family and guardianship law, as well as economic cases and other cases in the field of economic and civil law belonging to the commercial court on the basis of separate acts;
2) criminal – for cases in the field of criminal law and the truthfulness of lustration declarations;
3) labour and social insurance – for cases in the field of labour law and social insurance.

The Supreme Court is a judicial body established to:

1) administer justice by:

[235] Art. 10 § 1b of the Common Courts Act.
[236] Art. 10 § 1c of the Common Courts Act.
[237] Art. 10 § 1d of the Common Courts Act.
[238] Art. 10 § 2 of the Common Courts Act.
[239] Art. 17 of the Code.
[240] Art. 10 § 3 of the Common Courts Act.

a) ensuring compliance with the law and uniformity of jurisprudence of common courts and military courts by examining appeals and adopting resolutions resolving legal issues,
b) extraordinary review of final court decisions in order to ensure their compliance with the principle of a democratic state ruled by law that implements the principles of social justice by examining extraordinary complaints;

2) examine disciplinary cases within the scope specified in the law;
3) examine election protests and declare the validity of elections to the Sejm and Senate, the election of the President of the Republic of Poland, elections to the European Parliament and to examine protests against the validity of a national and constitutional referendums and to declare the validity of referendums;
4) issue opinions on bills and other normative acts on the basis of which courts adjudicate and operate, as well as other draft bills to the extent that they affect matters falling within the jurisdiction of the Supreme Court;
5) perform other activities specified in the law.

The Supreme Court is divided into the following Chambers: Civil; Criminal; Labour and Social Security; Extraordinary Control and Public Affairs; Professional Responsibility.

33. Which bodies are considered to be "receiving agencies" according to Art. 3 No. 2 of the Regulation in your Member State? If there are several receiving agencies in your Member State, please describe their local jurisdiction.

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 3(2) of Regulation No. 2020/1784, from which it follows that the receiving agency is the district court in whose jurisdiction the document is to be served.

Note: please see also explanations to point 32.

34. What means of communication is accepted by the receiving agencies when receiving documents?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 3(4)(c) of Regulation No. 2020/1784, from which it follows that documents may be sent by post.

35. Which public institution is the "central body" according to Art. 4 of the Regulation in your Member State?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 4 of Regulation No. 2020/1784, from which it follows that the central body is:

Ministry of Justice
Department of International Cooperation and Human Rights

Al. Ujazdowskie 11
00-950 Warsaw
tel.: +48 22 23 90 870
email: sekretariat.dwmpc@ms.gov.pl

36. How is it decided which method of service will be used by the authorities in your Member State?

The court conducting the proceedings in a specific case decides on the method of service. The provisions of the Code on service are obligatory, which excludes the free disposition of the parties as to the method of service of pleadings.[241]

37. What are the costs of service under the Regulation if your Member State is the receiving State?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 15 of Regulation No. 2020/1784, from which it follows that no fees are charged for the service of documents.

38. How are incomplete or insufficient requests for service to be dealt with?

The provisions of Article 130 § 1^1 of the Code may be applied to the situation in question in order to supplement the formal deficiencies of the pleading. If the pleading was brought by a person residing or having its registered office abroad, who has no representative in the country, the presiding judge sets a time limit for correcting or supplementing the pleading or paying the fee, of not less than one month, and if the service of the request was to take place outside the territory of the European Union, the deadline is not shorter than three months. The set period begins with the service on the party of the request to supplement the pleading.[242] After the expiry of the deadline, the presiding judge returns the pleading to the party. The returned pleading does not produce any effects of its filing in accordance with the law. The pleading that has been corrected or supplemented within the deadline has effects from the moment it is submitted.

39. In which languages can the standardised forms be completed (according to Art. 3 No. 4 lit. d of the Regulation) in your Member State?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 3(4)(d) of Regulation No. 2020/1784, from which it follows that in addition to Polish, the forms may be completed in English or German.

40. To what extent does your Member State support address tracing according to Art. 7 of the Regulation? Please describe the process in detail.

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information

[241] See: decision of the Supreme Court of 8 September 1993, III CRN 30/93, Legalis.
[242] Art. 164 of the Code.

for the purposes of Article 7 of Regulation No. 2020/1784, from which it follows that in the scope of addresses of residence of natural persons an entity with a legal interest in verifying the address of a person to be served with a document may apply to any mayor of a municipality, town or city for information on the person's address. This information can be obtained by submitting an application. The application may be submitted to only one municipal authority and is subject to a fee of PLN 31 (payable to the account of the municipal authority to which the application is submitted); proof of payment must be attached to the application. The applicant must also demonstrate the legal interest on the basis of which data from the register are to be made available. This interest can be demonstrated by means of a document establishing a legal obligation to act in a particular way (for example, lawsuit, document from a bailiff, contract).

Addresses of entrepreneurs (general partnerships, professional partnerships, limited partnerships, limited liability companies and joint-stock companies, cooperatives, state-owned enterprises, research and development units, foreign enterprises and their branches, as well as mutual insurance companies) are available on-line in the register kept by the National Court Register. The register is kept in accordance with the principles of formal openness (everyone has the right to access the data collected in the register).

Information available on-line can be found on the following websites:

1) search engine: https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu
Data of natural persons conducting economic activity are collected in the Central Business Register, access to which is open to everyone. Search engine of the Central Business Register:
https://prod.ceidg.gov.pl/ceidg.cms.engine/

Information referred to in Article 7(2)(c) of Regulation No. 2020/1784:
The authority which receives the application (the receiving agency in the Republic of Poland) is not obliged and generally does not request the registers in question to determine an address if the one indicated by the receiving agency proves to be incorrect. In practice, if the authority considers it appropriate, it may assess whether there is an obvious error in the address or, if the transmitting agency indicates that the address has been taken from a publicly accessible register, check whether the address is up to date in accordance with the data in that register.

41. Has your Member State lodged a national reservation concerning the service by consular or diplomatic agents provided for in Art. 17 of the Regulation?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 17 of Regulation No. 2020/1784, from which it follows that Poland opposes service by diplomatic or consular agents within its territory, unless documents are to be served on nationals of the Member State transferring the document.

42. Is the direct service method provided for in Art. 20 of the Regulation compatible with the national law of your Member State?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information

for the purposes of Article 20 of Regulation No. 2020/1784, from which it follows that Poland opposes the method of service referred to in this Article within its territory.

At the same time, it should be clarified that the Polish civil procedure introduces the principle of official service, as Article 132 § 1 of the Code allows for a solution that in the course of the case, the lawyer, attorney-at-law, patent attorney and the General Counsel to the Republic of Poland serve each other directly with copies of pleadings with attachments. The body of the pleading submitted with the court includes a statement on the service of a copy of the pleading to the other party or on its sending by registered mail. A pleading which does not contain the above statement is returned without any prior request for the removal of this defect.

43. Is there a bilateral or multilateral agreement within the meaning of Art. 29 of the Regulation between your Member State and one or more other Member States? If yes, please give reference to the agreement and elaborate. Please leave out the generally applicable agreement between the EU and the Kingdom of Denmark of 19 October 2005 on the service of judicial and extrajudicial documents in civil or commercial matters.

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 29 of Regulation No. 2020/1784, from which it follows that cases concerning the relationship with agreements or arrangements between member states do not concern Poland.

44. Has your Member State exercised the option for early use of the decentralised IT system as defined in Art. 33 No. 2 of the Regulation?

As of 16 February 2023, the European e-Justice portal at: https://e-justice.europa.eu/38580/EN/serving_documents_recast?POLAND&init=true contains information for the purposes of Article 33(2) of Regulation No. 2020/1784, from which it follows that the notification on the early use of the decentralized IT system does not apply to Poland.

RIGHT OF REFUSAL

45. Is there a possibility under your national law to refuse to accept a document?

No, under Polish law there are no provisions which entitle correspondence recipient refuse to accept a documnet. Only refusal to receive correspondence is possible on the basis and in accordance with the rules resulting from the Regulation.

45.1. On what grounds can the acceptance of a document be refused?

Only on grounds which follows from the Regulation.

45.2. How can the acceptance of documents served electronically be refused?

It is not possible to deliver documents electronically, with the exception of court documents addressed to professional attorneys via the information portal of common courts

(orig. "portal infomacyjny sądów powszechnych"). This issue is not regulated because practically, there is currently no basis for its occurrence.

45.3. What factors does the deciding court have to take into account when assessing the admissibility of the refusal to accept?

There is no possibility of refusing to accept correspondence, with reservation to provisions contained in the Regulation.

45.4. What are the consequences of such a refusal? Please distinguish between justified and unjustified refusals when responding.

Refusal to accept the correspondence is tantamount to its delivery, wIth exception which concern situations covered by the Regulation.

46. How do the courts in your Member State review the admissibility of the refusal to accept a document under Art. 12 of the Regulation?

There are no provisions on the method of examining whether the grounds for refusal of a document acceptance refusal have been meet. In practice, courts rely only on the statement of the addressee of the correspondence.

ELECTRONIC METHODS OF SERVICE

47. Does your Member State's national law allow documents to be served electronically? If so, how?
(e.g., in Germany: Court documents may only be served electronically on addressees in the Federal Republic of Germany in accordance with Article 19 (1) (a) of the Regulation, § 1068 ZPO. In addition to that, § 173 ZPO regulates the general service of electronic documents.)

According to article 15zzs[9] sec. 1 act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (hereinafter: "**COVID ACT**"), during the state of epidemic threat or the state of epidemic announced due to COVID-19 and within a year of cancellation of the last of them, the court shall serve the advocate, legal adviser, patent attorney or the General Prosecutor's Office of the Republic of Poland with court documents by placing their content in the ICT system for sharing these documents (information portal). This does not apply to documents that are to be served together with copies of pleadings of the parties or other documents not originating from the court. The date of delivery is the date on which the recipient reads the letter placed on the information portal. If the correspondence is not read, the corespondnecne is deemed delivered after 14 days from the date of placing the correspondencne on the information portal. The delivery through electronic means of coimmunication does not apply to persons who are not professional attorneys.

47.1. If dedicated internet portals are used for this purpose: Please describe the platform. Do users have to register beforehand?

Service is carried out via the information portal of common courts. Each appellate court maintains a separate information portal. There are 16 of them in Poland. It is enough to set up an account in one of the appellate courts and then be able to clone it to other appeal courts. The Ministry of Justice is responsible for maintaining the system. In order to use the portal, a registration form must be submitted electronically. Then you should go to the court to which the form was sent to confirm your identity.

47.2. How is the e-identification (and possibly e-signature) of electronically served documents executed in the national legal system of your Member State?

According to § 100a Regulation of the Minister of Justice Regulations of common courts documents posted in the court information and communication system and recorded in it as issued may be sent without a signature. The court document, and if a copy of the judgment is sent, the cover letter with which the copy is sent, contains an indication of the official position or function and the name and surname of the person who would sign the document if it were not possible to send it without a signature. The requirements of placing an official seal and certification of compliance with the original on the sent copy of the judgment and signing the copy of the sent letter left in the files do not apply.

47.3. How is it ensured that the right person receives the documents? How is the identity of the user verified?

Professional attorney has data enabling logging into the information portal, such as login and password. The attorney is not allowed to disclose this data. The attorneys details are verified at the stage of creating an account within information system when he has to personally verify his identity in court.

47.4. How is the time of service determined?

The delivery time is determined by the IT system. In order to receive the correspondence, you must confirm twice that the corespondence is picked up, then the system changes the correspondence status to delivered. This is to prevent a mistaken single click and accidental receipt of the documents. If the corresponmdnecne is not read, the correspondencne is deemed delivered after 14 days from the date of placing the correspoondnecne on the information portal.

48. Is electronic service dependent on the consent of the person concerned in your Member State?

No, electronic service is dependent only on court and it concern only correspondence for professional attorneys.

48.1. If consent is required, can it be given universally or must consent be obtained for each individual case?

This does not apply to Poland.

48.2. If universal consent is permissible, can certain matters (e.g. family law disputes) be exempted from the consent?

This does not apply to Poland.

49. Is every citizen obliged to accept electronic service of documents in your Member State?
(e.g. in Austria: Not everyone is obligated to accept electronic service via dedicated internet portals.)

No, only prffesional attorneys namely advocates, legal advisers, patent attornneys or the General Prosecutor's Office of the Republic of Poland.

49.1. If yes: What provisions does your Member State's national law provide in case the recipient has no possibility to receive electronic deliveries? (e.g. for elderly people)

Correspondence is delivered to the parties and participants of the proceedings in the traditional way. Electronic delivery is applicable only to a professional representative. Formally, a professional attorney is not required to have an account on the court information portal, but if he does not have one, he will not be able to receive correspondence. However, such behavior may be considered as failure to exercise due diligence in the performance of the profession.

50. Is there a central body responsible for electronic service in your Member State?
(e.g. in Austria the "Bundesrechenzentrum" (Federal Computing Centre) is responsible)

The Ministry of Justice ensures technical conditions for the functioning of information portals. However, each court, based on technical means provided by the ministry, runs its own portal.

51. What measures are taken in your Member State to ensure the security of electronic service?

Deliveries are handled by the ICT infrastructure managed by the Ministry of Justice, under which users have specific accounts set up.

52. What measures are taken in your Member State to ensure the efficiency of electronic service?

Within the information portal, a special tab has been introduced through which correspondence is received. So that the user knows for sure what letter is being delivered to him with all procedural rigors.

53. What are the consequences if electronic service is not possible? (e.g. disrupted internet access)

The court may order service in the traditional form. it is possible to file a complaint about the correct functioning of the system.

54. What are the costs of electronic service?

Deliveries via the portal are free of charge for the parties and participants, as well as their attorneys.

55. What measures does your Member State take with regard to data protection in connection with electronic service?

Setting up an account on the information portal involves the need to process personal data of attorneys. The data administrator, which is the Ministry of Justice, as well as each of the courts, performed information obligations towards users. In addition, the information portal has been adapted to the principles and assumptions of personal data processing resulting from the GDPR.

56. How could the rules on service in your national law be improved in order to facilitate cross-border service and to avoid legal uncertainty?

There should be strictly defined when the court may serve documents electronically and when in traditional form. In addition, the possibility of bilateral communication with the court should be created, i.e. so that not only the court can serve documents electronically, but also that the parties as well as their attorney-at-law can also obtain such a possibility. There should be possibility of defining a party's e-mail inbox and introduction correspondence via this channel could also be created to the parties to the proceedings and their proxies. However, this solution should allow for confirmation and certainty whether the correspondence has been delivered via this channel.

57. Please explain how the E-CODEX system operates if your Member State took part in the E-CODEX project concerning procedures in the case of European Small Claims and European Payment Order.

Poland participated in the e-codex project, however, it is currently not possible to file a claim for a European order for payment and a small claims case electronically.

PROBLEMS RESULTING OUT OF CROSS-BORDER SERVICE

58. What national issues arise out of the service of documents in your member state?

The provisions of the Polish procedure provided that if a party residing abroad did not appoint an attorney for service on Polish territory, then documents for such a party were left in the case files with the effect of delivery (fication of delivery). The courts found this provision to be incompatible with the EU Service Regulation and concluded that it could only apply to parties residing or having their seat in third countries. Finally, art. 1135^1 § 1 of the Code of Civil Procedure has been amended in a manner consistent with the interpretation of the courts.

59. What European issues arise out of the service in your member state?

Practical problems arose with the use of direct service by post, as not all Member States honored the receipt of the documentation and the documentation sent by the Polish court was delivered, but no confirmation of delivery was included in the case file. This problem before Brexit concerned especially Great Britain.

60. How could the provisions on service in your national legislation be improved in order to facilitate cross-border service and prevent legal uncertainty?

Preparation and implementaion legal framework for introduction of an ICT system that allows not only for the delivery of selected documents by the courts, but also for full communication with the court using electronic means of communication, including by the parties and proxies, as well as the delivery of court documents with attachments by the courts. The system should be prepared for its integration with the e-CODEX platform

61. Please list national cases in which problems occurred regarding the cross-border service of documents. If possible, please shortly summarise the respective issues and decision.

The issue of equating the effects of posting a pleading at a post office of a universal operator in another EU member state with posting a pleading at a Polish post office.

- **decision Court of Appeal in Bialystok on 5th of December 2013 case No I ACz 1479/13:**
  The Court of Appeal assessed that also in the period before Art. 165 § 2 of the Code of Civil Proceedings in the wording applicable from August 17, 2013, posting a pleading at a post office of the operator providing universal postal services in another Member State of the European Union was tantamount to bringing it to court. This provision in the former version was contrary to Art. 1 sec. 1 of Regulation 1393/2007, understood as laid down in the judgment of the ECJ of 19 December 2012 C -215/11 and inconsistent with the implementation of the right to a fair trial, protected by art. 47(2) of the Charter of Fundamental Rights and Art. 6 sec. 1 ECHR and IPC.

One of the issues concerned whether the fictitious service if the party with its place of residence or registered office abroad did not appoint an attorney for service on Polish territory. Court found that fictious service can not be applivable to entities with place of residence or seat in nother EU member state.

- **judgement Court of Appeal in Warsaw on 13th of June 2019 case No VI ACa 273/19:**

  Art. 1135 § 2 of the Code of Civil Proceedings in the wording prior to December 8, 2008, nor Art. 11355 § 2 of the Code of Civil Proceedings in the wording prior to August 17, 2013, cannot constitute - in the light of Art. 1 sec. 1 of Regulation No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents) and repealing Council Regulation (EC) No. 1348/2000 (Official Journal EU of 10 December 2007 L 324/79), grounds for leaving a court package to a party residing, having their habitual place of residence or registered office in a Member State of the European Union. Considering the above, it should be stated that leaving a court parcel in the case files with the effect of delivery pursuant to Art. 1135 of the Code of Civil Proceedings in the wording in force before August 17, 2013, does not have legal effects in the form of a notice of the date of the hearing. Also, leaving a notice of the date of the hearing pursuant to Art. 1135^5 § 1 of the Code of Civil

Proceedings in the wording applicable after August 17, 2013, because this provision does not apply to parties that have their place of residence, habitual residence or registered office in a Member State of the European Union.

- **judgement Court of Appeal in Warsaw on 24th of May 2013 case No VI ACa 1299/12:**
  Article 1 para. Article 1 of Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters ("service of documents") and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State which provides that judicial documents intended for a party domiciled or habitually resident in another Member State are to be placed on the file with the effect of service where that party has not appointed a representative for service resident in that first Member State where the court proceedings were taking place.