

## Legalisation of Public Documents within the EU Member States

### POLAND

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#### Introductory Remarks

The topic of legalisation is not popular in the Polish legal literature. Case law hasn't been developed for some reasons, either. Although there is a huge difference in the quantity of legal thoughts in foreign public documents used in civil proceedings and in administrative proceedings, it should be pointed out that the bigger (first) group is a very small one.

In general, the Polish legal order is widely open to international legal phenomena, *inter alia* international sources of law or foreign documents. One of the signs of this feature is the fact that international systems of legal norms can become a part of a national legal order and cause direct effect under some conditions. International systems of legal norms entering the Polish legal order can be divided into two groups:

- a) the law established by an international organisation, and
- b) the international agreements.

The Conditions under which the direct effect of the above occurs are described below. The above will be often referred to in the Report.

#### **The rule of direct force (direct effect) of the law established by an international organisation**

If an international agreement establishing an international organisation (*inter alia* the EC) and ratified in Poland states so, the law established by that organisation becomes a directly effective part of the Polish legal order and it is of a higher level than the national statutes. This means, that provisions issued by international organisation are source of rights and obligations for legal or natural persons in Poland and in the case of a contradiction between the provisions of the law of an international organisation and a national statute, the provisions of the law of the international organisation repeal the provisions of the national statute (Article 91 Section 3 of the Constitution of the Republic of Poland).

Due to that rule the implementation of the EC Regulations requires no national legislative action. In some cases the national statutory provisions contradictory to the EC Regulations are removed. In other cases the implementation consists in changing the current practice. In very rare cases some national executive legislation can be issued. Sometimes the information of avoidance of repetition of the EU Regulations in the Polish legal order is stressed in Polish legal literature. But a translation of the EC

Regulations into the Polish language and their formal publication in the Official Journal of the European Union is also a part of the implementation process.

In the process of implementation of the EU law into the Polish legal order, the rule of direct force of the EU regulations plays a very important role.

### **The rule of direct force (direct effect) of an international agreement**

In general international agreements become a part of the Polish legal order and are directly effective as soon as they are ratified and published in the Polish Official Journal [*Dziennik Ustaw*], although the agreements state that the issuing of a national statute is needed (Article 91 Section 1 of the Constitution of the Republic of Poland).

An agreement, ratified after a prior statutory permission, comes into force at the relevant date and its force is of a higher level than in the event of any national statutes. This means that in the case of a contradiction between the provisions of a ratified international agreement and a national statute, the provisions of the international agreement repeal the provisions of the national statute (Article 91 Section 1 of the Constitution of the Republic of Poland).

International agreements that ratified without a prior statutory permission have also become parts of the Polish legal order but their level of force is not higher than of the national statutes.

There were several international agreements ratified before the Constitution of 1997 came into force. Those agreements have also become parts of the Polish legal order, pursuant to Article 241 Section 1 of the Constitution as they have met some conditions, especially as they have comprised matters previously regulated by the national statutes. In that case the international agreements have a higher level of priority than any national statutes. Other international agreements have also become parts of the legal order, pursuant to Article 91 Section 2 of the Constitution but they don't have the higher level than national statutes.

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Poland has been an EU Member State for 2 years and 2 months. During that time a lot of new legal matters have arisen and not all of them have been solved definitely. Probably, the next several years will be a time of a dynamic change, clarification of legal practice and development of the Community law application. Although the Polish legislation is harmonised with the EU legal system, its application seems not to be extremely advanced.

Also, for that reason several conclusions of the Report are the early ones and will be changed in the nearest future.

### **ABBREVIATIONS**

#### **STATUTES**

**CCP** – The Code of Civil Procedure [*Kodeks postępowania cywilnego*] – Dz. U. 2003.60.535

**Criminal PC** – The Code of Criminal Procedure [*Kodeks postępowania karnego*] – Dz.

U. 199.10.17

**APC** – The Administrative Procedure Code [*Kodeks postępowania administracyjnego*]  
– Dz. U. 2000.98.1071

**PACA** – The Proceedings before Administrative Courts Act [*ustawa Prawo o postępowaniu przed sądami administracyjnymi*] – Dz. U. 2000.98.1071

**PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements**

**OVERVIEW OF PART I**

**PART I.A. General**

**I.A.1. European Community Law**

**I.A.1.1. Introduction**

**I.A.1.2. Implementation of specific measures**

**Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)**

**Article 19 of Regulation (EC) No 1346/2000**

The obligation to publish and translate the Regulation in the Official Journal of the European Union has been fulfilled.

The implementation of the EC Regulations doesn't need any legislative action of the Polish authorities according to the rule of direct force (direct effect) of law established by an international organisation. No legislative action has been taken. Thanks to that rule the EC Regulation's provisions repeal the national legislation contradictory to it.

Anyway, in the Polish legal order, the insolvency proceedings are regulated by The Insolvency and Repair Act (Dz. U. 2003.60.535), supported by the Code of Civil Procedure (Dz. U. 2003.60.535).<sup>1</sup>

**A) Court**

According to Article 1138 of the Code of Civil Procedure (CCP), foreign public documents have the same force of evidence (probatory force) as the Polish public documents. There are two exceptions:

- a) a public document concerning the conveyance of the property right to immovables located in Poland, or
- b) a public document doubtful as to its authenticity.

The above groups of documents need legalisation.

Article 1138 of the CCP regards all proceedings before court in civil cases.

The sense of that regulation is to make equal (in terms of a proof) the foreign and the Polish public documents in general, unless the falsehood of the document is proved.

<sup>1</sup>Hereinafter: CCP.

The evidence force of the public documents in civil proceedings is that they prove the state of the facts certified in the documents (Article 244 § 1 of the Code of Civil Procedure). There is always a possibility to prove that state of the facts certified in the document is not true.

Specific court proceedings are administrative courts proceedings regulated by The Proceedings before Administrative Courts Act (Dz. U. 2000.98.1071) <sup>2</sup> According to Article 106 § 3 thereof Administrative Courts are allowed in some cases to institute evidence proceedings. In that case the general rules of the CCP referring to evidence proceedings are applied (106 § 5 ACPA).

If the liquidator acts in court in cases to which the above procedures are applied, he/she doesn't need either the legalisation of the document appointing him as a liquidator or any other foreign document. Unless the two above exemptions are concerned.

The provision of Article 1138 was established in the first version of the CCP and came into force on 1 January 1965.

The Code of Criminal Procedure (Dz. U. 199.10.17) <sup>3</sup> doesn't regulate the matter of foreign public documents. This means that judges evaluate evidence force of documents individually, from their personal point of view (personal experience).

#### B) Public administration

The procedures followed by the public administration bodies are generally contained in the Administrative Procedure Code <sup>4</sup> (Dz. U. 2000.98.1071). Provisions regarding evidence proceedings use the phrase „public documents” (Article 75 § 1 APC), but they are considered as regarding national documents only. There are no rules concerning foreign documents only in APC. It is of importance that Polish commentators of Article 1138 of the CCP say, that the general rule of the equal force of evidence of the Polish and the foreign documents is a legislator suggestion also in the case of criminal and administrative proceedings. <sup>5</sup> This is a possible interpretation, but not applied in practice now. According to the conducted interviews, the current legal practice requires legalisation of all public documents, coming from countries that didn't ratified the 'Apostille' convention. Reviews have been made in public agencies which settle cases of a big value. It is possible that in the cases of little value legalisation isn't required.

In the case of the liquidator's action before the public administration bodies, one can

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2 Hereinafter: PACA.

3 Hereinafter: Criminal CP.

<sup>4</sup> Hereinafter: APC

5 J. Ciszewski, Commentary on the Code of Civil Procedure (International Proceedings), Lex Polonica Maxima 2006.

apply directly Article 19 of Regulation (EC) No 1346/2000 if he/she wants to avoid legalisation or another similar requirement, according to the rule of direct force (direct effect) of law established by an international organisation.

In Poland public notaries are *sui generis* actors considered between courts and public administration. In their practice, notaries apply the CCP, although they are not obligated. So in most cases a liquidator doesn't have to legalise a document of his/hers appointment.

Finally, it can be concluded that the EU law implementation in the Polish legal order, regarding the analysed matter is effective. There is no contradiction between the EU Regulation and the Polish legal order. The only problem is the administrative procedure, but it can be avoided by the direct application of the provisions of the Regulation.

Besides, according to Article 386 Section 1 of the Insolvency and Repair Act (Dz. U. 2003.60.535), if a liquidator starts in Poland proceedings of recognition of foreign insolvency proceedings, he/she must attach *inter alia* a proof of his/her appointment as a liquidator. The only formality for this proof is an official (certified) translation of the document. In this provision the lack of legalisation or similar or equivalent act is stated *expressis verbis*. Legalisation can be required only in a case that a court has doubts as to the document.

**Article 4(4) of Regulation (EC) No 1348/2000**

The requirement of the translation and publication in the Official Journal of European Union has been fulfilled.

Apart from the Regulation (see: The rule of direct force (direct effect) of law established by an international organisation (Introductory remarks)) this matter is regulated by Articles 131 – 147 of the Polish Code of Civil Procedure (CCP) and the executive regulation of Ministry of Justice on detailed procedure of service of judicial documents by mail in civil proceedings (Dz.U.1999.62.697).

According to the CCP and executive regulation's provisions there is no requirement of legalisation or similar or equivalent requirement. This means that all documents under Article 4(4) of Regulation (EC) No 1348/2000 are not required to fulfill any formalities.

The Polish doctrine's analyses of Regulation 1348/2000 don't refer to the provision abolishing the requirement of legalisation or equivalent requirements.<sup>6</sup>

It is worth stressing that the CCP provisions 1130 – 1135 regulating legal aid in a scope of service of the documents by the Polish court do not require legalisation or equivalent requirements to be fulfilled, either.

All the necessary agencies were indicated (receiving and transmitting). The Ministry of Justice has taken several measures to apply the Regulation, e.g. the information was distributed among the relevant courts and several trainings for judges and court officers have been performed.

It can be stated that the implementation of the EC legislation is adequate.

**Article 56 of Regulation (EC) No 44/2001**

The obligation to publish and translate the Regulation in the Official Journal of the European Union has been fulfilled.

The matter should be considered together with the rule of direct force (direct effect) of the law established by an international organisation (see: Introductory Remarks). Accordingly, the provisions of the Regulation should be enough to state an exempt from the legalisation or an equivalent requirement. The same legal effect (exempt from legalisation requirement) is reached by the rule of Article 1138 of the CCP (see: I.A.1.2)

It can be concluded that there was no need of legislative implementation of Article 56 in conjunction with 53 and 54 of the Regulation.<sup>7</sup>

Other types of proceedings (criminal or administrative) are not discussed, due to Article 1 Section 1 of the Regulation: "This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal is. It shall not

<sup>6</sup> JOŃCZYK-PISKORSKA Kamila, STAŃKO Marek, Uwarunkowania prawno-organizacyjne stosowania rozporządzenia Rady WE nr 1348/2000 w sprawie doręczania dokumentów sądowych i pozasądowych, European Judicial Review (Europejski Przegląd Sądowy) 2006 No 5; Weitz Karol in: Wróbel Andrzej (academic editing), Stosowanie prawa europejskiego przez sądy, Zakamycze 2006.

extend, in particular, to revenue, customs or administrative matters”.

Probably, there is one mistake in the Polish official translation of the Regulation. Article 56 regards representative *ad litem*. In the official translation it was translated as “power of attorney for a lawsuit”, which is a private document. Most of legal dictionaries explain representative *ad litem* as a person appointed by a court or a public agency for a lawsuit. If the meaning of the Polish translation is wrong, it should be corrected in order to state *de facto* an exempt from legalisation requirement.

**Article 57 of Regulation (EC) No 44/2001**

The requirement of the translation and publication in the Official Journal of the European Union has been fulfilled.

The matter of authentic instruments should be considered in the same way as all the public documents to which the Regulation is applied.

According to the rule of direct force (direct effect) of law established by an international organisation (see: INTRODUCTORY REMARKS) the provisions of the Regulation should be enough to state an exempt from the legalisation requirement. The same legal effect (stating an exempt from legalisation or equivalent requirement) is reached by the rule of Article 1138 of the CPC (see: I.A.1.2)

It can be concluded that there was no need to issue national legislation to implement Article 57 of the Regulation from the legalisation point of view.

**Article 58 of Regulation (EC) No 44/2001**

The matter of court settlements should be considered in the same way as all the public documents to which the Regulation is applied (the rule of direct force (direct effect) of law established by an international organisation + the Article 1138 of the CCP).

From the legalisation point of view it can be concluded that there was no need of legislative action for the implementation of Article 57 of the Regulation.

**Article 46 Regulation (EC) No 2201/2003**

The requirement of the translation and publication in the Official Journal of the European Union has been fulfilled.

As it was mentioned above, according to the rule of direct force (direct effect) of law established by an international organisation, the provisions of the Regulation are a part of the Polish legal order and have a higher level of priority than the national acts.

But the provision of Article 46 is very general and the notion of “documents registered as authentic instrument” is unknown in the Polish legal order. Agreements

<sup>7</sup> It was not considered if all the Regulation was implemented properly. The thesis regards only legalisation or an equivalent requirement.

between parties are not enforceable without a trial. That's why Article 46 of the Regulation in my opinion needs a detailed explanation (implementation) with regard to the Polish legal order. But the above problems refer rather to the recognition or enforcement than to the legalisation matters. Probably, if all was clear with regard to the legal matters of recognition or enforcement, legalisation wouldn't cause any problem.

For the purpose of Article 28 of the Regulation application it should be mentioned that in the national law, proceedings of recognition and of declaration of enforcement are regulated by Articles 1145 – 1153 of the CCP. They state general rules for recognition or enforcement of foreign judgments or settlements. Exemptions from legalisation or an equivalent requirement could be derived from the Regulation directly or just from Article 1147 § 2 of the CCP (recognition) and Article 1153 of the CCP read in conjunction with Article 1147 § 2 of the CCP (declaration of enforcement). Although the articles state several requirements, no legalisation or equivalent act is needed for these proceedings.

Finally, it can be concluded that from the legalisation point of view the Polish legislation doesn't need any implementation of the Regulation apart from the matter of the legislative explanation of the notion: "documents registered as authentic instrument".

Although Article 52 refers to documents appointed in Articles 37, 38 and 45 regarding court proceedings, it is worth noticing that a problem can arise while acting in the administrative proceedings. According to Article 21 Section 2 of the Regulation "no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State." Civil status registries are exercised according to APC and one can face doubts in interpretation of relevant provisions of APC regarding foreign documents (see A.I.1.2.). Moreover, the Polish doctrine is at dispute on the legalisation matters during the civil status registry proceedings (I.B.2.3 - the end). Anyway, Article 21 Section 2 of the Regulation is enough to state an exemption from legalisation or equivalent requirement.

It is worth noticing that the Polish official translation of the Regulation, published in the Official Journal of the European Union has a lot of mistakes ("representative *ad litem*" again was translated as a "power of attorney"), but none of them regards legalisation matters.

#### **Article 52 of Regulation (EC) No 2201/2003**

According to the rule of direct force (direct effect) of law established by an international organisation, the provisions of the Regulation are a part of the Polish legal order and have a higher level of priority than the national acts.

For the purpose of Article 28 of the Regulation application it should be stated that the exempt from the legalisation requirement can also be derived from Article 1147 § 2 of the CCP (recognition proceedings) and Article 1153 of the CCP read in conjunction with Article 1147 § 2 of the CCP (declaration of enforcement - enforcement clause).

**Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)**

See the above (Article 52 of the Regulation).

**Article 27 of Regulation (EC) No 805/2004**

The requirement of the translation and publication in the Official Journal of the European Union has been fulfilled.

No other act of implementation is needed thanks to the rule of direct force (direct effect) of law established by an international organisation. Provisions of the Regulation are a part of the Polish legal order and have higher level of priority than national acts.

**ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004**

According to Article 1153<sup>1</sup> of the CCP Member States' judgments, court settlements and authentic instruments, certified as a European enforcement order are enforceable titles and are enforced after the adjudication of a declaration of enforcement (enforcement clause). This is one of very rare examples of the implementation of the EU Regulations by creating of national law.

The declaration of enforcement (enforcement clause) is adjudicated according to Article 1153 of the CCP read in conjunction with Article 1147 § 2 of the CCP (declaration of enforcement). The exempt from legalisation requirement can also be derived from the above provisions.

It can be concluded that in this case of the implementation of the European law is proper.

**Article 13(5) of Directive 2002/8/EC**

The matter is regulated by the Legal Aid Right in Civil Proceedings in Member States Act (2004) Dz. U. 2005.10.67 supported by the CCP. The Act consists of three chapters. The second chapter regulates the legal aid in proceedings before the Polish courts. The third one regulates applying for legal aid in proceedings before courts of the Member States by means of Polish courts. In the whole Act there is no provision stating *expressis verbis* legalisation or equivalent requirement or lack of them.

According to Article 3 of the Act, its provisions are supplemented by the CCP. In proceedings before Polish courts Article 1138 of the CCP will be applied. According to this Article foreign public documents without legalisation or equivalent requirements fulfilled have the same force of evidence (probatory force) as the Polish public documents (see detailed information I.A.1.2)

It can be stated that the implementation of the Directive is effective, assessing from the legalisation point of view.

**Free movement of goods (Article 23 EC)**

**Article 250 of Regulation (EEC) No 2913/92**

The requirement of the translation and publication in the Official Journal of the European Union has been fulfilled.

According to the rule of direct force (direct effect) of law established by an international organisation, the Regulation came directly into force as a part of the Polish legal system with a higher level of priority. The National Customs Code (2004) Dz.U. 2004.68.622 has separate provisions on documents issued by foreign customs authorities. Article 86 Section 1 of the Polish Customs Code states that Polish customs authority has a right (but not an obligation) to examine as an evidence foreign documents issued by foreign customs authorities or other public bodies. Section 2 states that the Polish customs authority has a right to require from a party of customs proceedings *inter alia* legalisation of documents.

The above provisions of the Polish customs code are general and regard all customs proceedings. They comprise *inter alia* a customs procedure applied in several Member States and seem to be contradictory to Article 250 of the Regulation. But thanks to the rule of direct force (direct effect) of law established by an international organisation, Article 250 of the Regulation abolishes relevant provisions of the Polish Customs Code.

It can be declared that the current state of the Polish legal order could be harmonised with the Regulation by removing the indicated contradiction. But a legislative action isn't obligatory because of the rule of direct force of EU Regulations.

**Free movement of workers - social security (Article 42 EC)**

**Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72**

The matter of legalisation exemption was not regulated in the national legislation because of the rule of direct force (direct effect) of law established by an international organisation. The Regulation came directly into force as a part of the Polish legal system with a higher level of priority.

That's why Article 85 of the Regulation (EEC) 1408/71 and the Regulation (EEC) 574/72 are applied directly in Poland and need no legislative action at national level.

According to surveys conducted among persons that were involved in the implementation of the Regulations (The Ministry of Labour and Social Policy officers) foreign documents produced for the purpose of the coordination of the national social security schemes do not need legalisation or any equivalent requirement fulfilled.

However, because many national authorities are involved in the process of coordination it is possible that some of them require legalisation of documents introduced in relevant proceedings. In order to provide a correct and uniform application of the Regulation several trainings were offered for public agencies officers and judges. During the training project over 1.000 people were trained.

**I.A.1.3. Judicial control**

There is no national case law on the enumerated provisions of the Community law.

**I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

**I.A.2.1. Status**

The information in the first table are correct. The information in the second table should

be as follows:

S -

R/A – 15 October 2004 – the day of act of ratification by the President of the Republic of Poland

19 November 2004 – the day of deposition of instruments of ratification with the Ministry of Foreign Affairs of the Netherlands)

Type – R – the Convention was ratified. The information on the ratification was published in the Polish Official Journal – Dziennik Ustaw – Dz. U. 2005.112.939.

Entry into force is properly indicated – 14.08.2005

Ext -

Auth – 1

Res/D/n -

#### **I.A.2.2. Scope**

##### **Geographical Scope**

It was not extended beyond the states parties to the Convention.

##### **Material Scope**

Polish translation of the 'Hague' Convention into the Polish language is proper, but in practice a material scope of application of the Convention is a bit narrowed.

Documents that can't be apostilled are official copies (true copies, attested copies) of documents certifying one's education. For example PhD diplomas are issued in one original and in unlimited number of official copies. One can legalise only the original. This is a result of the national legislation that was applied to 'usual' legalisation (see remarks I.A.4.1.).

Official copies (true copies, attested copies) of the other public documents can be apostilled.

#### **I.A.2.3. Legislative implementation**

See the rule of direct force (direct effect) of an international agreement (p. A.1.1.1.1\*\*\*\*)

A statute of permission to ratify the Convention was issued on 22 July 2004 and was published in the Official Journal of the Republic of Poland (Dziennik Ustaw) Dz. U. 2004.194.1980.

see attached e-copy: Permission Act

Translation:

It is permitted for the President of the Republic of Poland to ratify the Hague Convention of 5 October 1961 abolishing the Requirement of Legalisation for Foreign Public Documents.

After the ratification, an official governmental statement on that fact was published in the Official Journal of the Republic of Poland – Dz. U. 2005.112.939 – where the competent authority was pointed out.

See attached e-copy: Governmental Statement

In the same issue of The Official Journal the translation of the Convention was published – Dz. U. 2005.112.938

Three and a half month later the governmental statement was supplemented. In the

supplement, published in Dz.U.2005.252.2122 all the parties to the Convention and all the competent authorities were stated.

**I.A.2.4. Practical implementation**

1. By which methods can an Apostille be requested (in person, by registered mail, mail, email, fax, etc.)?

Generally, an Apostille can be requested in person or by regular mail. This is because a competent officer needs to have an authentic document in order to issue the Apostille.

The Apostille cannot be obtained by fax or e-mail.

2. How, in practice, does the competent authority verify the authenticity of the signature, the capacity in which the person signing the document has acted, and the identity of the seal or stamp which the document bears? NB. Please describe the *precise mechanism* the authority uses to verify those elements.

There are three ways of verifying the authenticity of a signature, the capacity and the identity of the seal. Two or three methods can be executed simultaneously.

a) a competent authority has a wide collection of signatures and seals of several public bodies. The signatures and seals on a document that is going to be apostilled, are compared with the collected ones.

The capacity is verified by an active officers own knowledge. Usually, a small set of kinds of documents is apostilled, that's why officers know if the authority that issued the document is competent to issue it. .

b) authenticity of many kinds of public documents is verified by a certificate of authenticity, issued by another public agency (other than a body issuing the public document) before issuing the Apostille. For example a document confirming education level issued by a school is certified by a public supervising body. The certificate of authenticity is obtained by a person that wants to legalise a document. A person with an authentic document and with the certificate of authenticity can obtain the Apostille.

c) in specific cases a competent authority's officer verifies the authenticity of the above elements himself, by phone or in writing.

3. What is the form of the Apostille used (please provide a copy, with English translation of any parts in a foreign language)?

The Apostille is a small sheet of paper.

See attached e-copy: Apostille

4. Is the Apostille issued by the competent authority placed on the public document itself or is the Apostille placed on a so-called allonge?

The Apostille is placed on a document. As a matter of fact, it is stapled together with the document and one of the edges of the Apostille is sealed in such a way that a part of the seal is placed on the Apostille and another part of the seal is placed on the document.

5. How is the Apostille issued when the public document consists of multiple pages?

If a document consists of multiple pages, the Apostille is placed (as described in Section 4.) on the last page of a document. The document as a whole is protected against fraud by an issuer of the document if a party asks for it. The competent authority doesn't secure multiple pages documents.

6. Which language is used on the Apostille?

The Apostille is bilingual: Polish and English but all the entered information is in Polish.

7. Is the system used for the issuance of an Apostille mechanical or electronic?

The system used for issuance of Apostille is electronic. After entering relevant data into the system, the Apostille is printed on a piece of paper and then placed on the document.

8. What are the main measures taken in order to avoid fraud?

The main measures taken in order to avoid fraud are :

- a) verification of signature and seal or stamp authenticity as described in Section 2.
- b) training of officers issuing the Apostilles.
- c) in suspicious cases the police are asked for checking.

9. Are there any plans to modernize the system used to issue Apostilles?

For now there are no plans to modernise the system used to issue Apostilles. In my opinion, if there is a need to issue more Apostilles, more officers should work on it.

10. How long does the total process generally take?

If one applies for the Apostille in person, he/she gets it at once. Sometimes a few people wait in a queue, so it can take up to a half an hour. If one applies by mail, the Apostille is issued during the day the application has been received or the day or two days after. Usually, delivery by a regular mail in Poland takes 3 days. So the whole process can take from 7 up to 9 days.

11. What is the fee payable for the issuance of an Apostille? Who sets the fees? How is the level of the fees determined? Are they purely covering costs or can they also be said to be aimed at bringing revenue?

The fee for the apostille is PLN 60 (sixty Polish Zlotys) . The fee has been set in the Administrative Fees Act [*Ustawa z 9 września 2000 r. o opłacie skarbowej Dz.U. Nr 86 poz. 960*]. It is difficult to say if the fee covers costs exclusively or if it is aimed at bringing revenue. In my opinion, it is too much and can be aimed at revenues. Probably half of the fee would be enough to cover all the costs. During the legislative process of deciding on the fee, it was proposed by the Polish Senate to set the fee at PLN 30. The proposed amendment was rejected.

The second part of the fee (first in chronological order) is an administrative fee for certification of the authenticity issued by another public agency (see point 2 b) in this part). This certification is one of the important measures taken in order to avoid a fraud and it is obligatory in almost all cases. That's why the administrative fee should be

included into the fee for all the legalisation process. The fee is PLN 19 and the whole cost is PLN 89, which makes legalisation quite an expensive act in the Polish reality.

Generally speaking, the procedure of issuing the Apostille is the same for all the documents going to all the States, parties to the Hague Convention. The differences are in the system of verification of authenticity of different documents. The competent authority finds an agency which should confirm the authenticity of the document. The confirmation agency depends on the kind of the document and usually it is a supervisory body of the issuer. For instance:

- a) The authenticity of particular parts of notary deeds are confirmed by the President of the Circuit Court [*Prezes Sądu Okręgowego*] - the documents issued by all the notaries acting on the territory of its jurisdiction;
- b) The authenticity of particular parts of judicial documents are confirmed by the President of the Circuit Court [*Prezes Sądu Okręgowego*] - the documents issued by all the courts acting on the territory of its jurisdiction;
- c) The certificates or diplomas of primary or secondary education are to be confirmed by the Educational Supervisory Agency [*Kuratorium Oświaty i Wychowania*],
- d) The documents issued by public administration agencies are verified by the competent authorities themselves.

(see national legislation remarks I.A.4.1)

Please describe the system used to comply with the **registration or card index requirement**, see Article 7 of the Convention.

1. Is the system used electronic?

The system is electronic and is integrated with the system of Apostille issuance.

2. Are there any plans to modernize the system used?

There are no plans to modernise the system.

3. By which methods can the register or card be consulted in accordance with Article 7 of the Convention?

The register can be consulted by telephone, regular mail or e-mail. A competent authority's officer declared that there has not been a checking case so far.

#### **I.A.2.5. Judicial control**

There have not been judgments on the basis of the Apostille Convention so far.

#### **I.A.2.6. Empirical analysis**

The system doesn't count separate kinds of documents and I was refused to have that information. It was possible to obtain only synthetic data. The sample of a quantity of the Apostilles issued was taken during the working week 10 –14 July.

See: Empirical data format sheet – Annex II.

It was of importance to take a sample as soon as possible because on 15 July the eleventh month of application of the Convention in Poland passed.

In general, the number of the Apostilles issued every day varies from 100 to 150 . It happens on particular days that a huge number of Apostilles are issued. For example, at the week before the first interview a big number of certificates of education were apostilled.

**I.A.3. Parallel international agreements**

**I.A.3.1. Status**

1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers

In force since 12 April 1995. Published in Dz. U. 1995.76.381

1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities

Not in force.

**Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries**

The bilateral international agreements regarding legal cooperation between parties are of particular importance. Generally, most of them comprise provisions stating that all public documents within the scope of an agreement are exempt from legalisation or analogue requirements. Almost all the agreements regard documents concerning some kind of matters (e.g. the civil ones). Sometimes, the scope of documents is modified, which is specified in Annex IV in “*Specific scope of the Agreement (regards to)*” column.

Annex IV presents the majority of bilateral agreements, to which the Republic of Poland is a party.

See: Annex IV at the end of the Questionnaire – page 99.

**Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter, for example:**

...

**The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958)**

Based on Article 10 of the Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958) decisions in maintenance obligations falling within the scope of the Convention are exempt from the legalisation requirements of the States party to the Convention (currently 11: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Portugal, Spain and Sweden)

Probably, this one not in force.

But Polish legal information systems indicate that The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to the Maintenance Obligations Towards Children (1973) is in force in Poland since 1 July 1996. The Article 17 of the Convention is similar to the Article 10 indicated in the questionnaire (above).

**The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)**

Based on Article 3 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969) the documents used in the process of the service of judicial and extrajudicial documents in civil and commercial matters are exempt from legalisation or other equivalent requirements of

Member States party to the Convention (currently 23; Austria and Malta are the two Member States not yet party to the Convention).

In force since 1 September 1996. According to my sources, the Convention is of 15 November 1965.

**The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)**

Based on Article 3 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972) letters used by a judicial authority of a State party to the Convention to request the competent authority of another State party to the Convention to obtain evidence, or to perform some other judicial act are exempt from legalization or other like requirements of the Member States party to the Convention (currently 21; Austria, Belgium, Ireland and Malta are the 4 member States not yet party to the Convention).

In force since 13 April 1996. According to my sources, the Convention is of 18 March 1970.

**The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973)**

Based on Article 9 of the Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973) documents which attest the designation and powers of the person or persons entitled to administer the estate are exempt from the legalisation requirements of the Member States party to the Convention (currently 3: the Czech Republic, Portugal and the Slovak Republic have signed and ratified the Convention. Italy, Luxembourg, Malta and the UK have signed the Convention).

Not in force.

**The Hague Convention on Civil Aspects of International Child Abduction (1980)**

Based on Article 23 documents used by the competent authorities in the process of reinstating the right of custody or the right of access to children which have wrongfully be removed or retained are exempt from legalisation or analogous requirements of the Member States party to the Convention (currently all 25 Member States are party to the Convention)

In force since 1 November 1992. According to my sources, the Convention is of 25 October 1980.

**The Hague Convention on International Access to Justice (1988)**

Based on Article 10 legal aid request forms and their supporting documents are exempt from legalisation or other analogous requirements of the Member States party to the Convention (currently 14: Cyprus, Czech Republic, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden)

In force since 1 November 1992. According to my sources, the Convention is of 25 October 1980.

**The Hague Convention on Jurisdiction, Applicable Law, Recognition,**

**Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (2002)**

Based on Article 43 all documents forwarded or delivered under the Convention are exempt from legalisation or any analogous requirements applicable in the Member States party to the Convention (currently 5: Slovakia, Slovenia, Latvia, Lithuania and the Czech Republic. However, the Convention, which entered into force on 1 January 2002, has been signed by all the EU Member States – except Denmark – in compliance with the Council Decision of 19 December 2002 authorizing the Member States, in the interest of the Community, to sign the Convention and thus is expected to be ratified by all Member States, except Denmark)

Not in force.

**OTHER CONVENTIONS**

**The CIEC Convention for the Dispensation from the Requirement of Legalisation of Certain Documents (1977)**

Pursuant to Article 2 of the Convention ,the scope comprises :

- 1) Certificates regarding civil status, family relations, citizenship, legal capacity, address or whereabouts of natural persons.
- 2) Other documents issued because of getting married or issuing extract from registry of civil status.

Pursuant to Article 2 of the Convention the documents are exempt from legalisation or other analogous requirements of the Member States, parties to the Convention and recognised without any formality if they have a signature and seal if needed.

In force since 01 June 2003. Published in Dz.U.2003.148.1446

**The Vienna Convention on Issuance of Multilingual Extracts from Civil Status Registry (1976)**

Pursuant to Article 1 of the Convention, the scope comprises official extracts from civil status registry, certifying birth, marriage or death.

Pursuant to Article 8 of the Convention, documents are exempt from legalisation or other analogous requirements of the Member States, parties to the Convention.

Currently, Austria, Belgium, Bosnia and Herzegovina, Croatia, France, Germany, Italy, Luxembourg, Macedonia, the Netherlands, Poland, Portugal, Serbia and Montenegro, Slovenia, Spain, Switzerland, Turkey.

In force since 1 November 2003. Published in Dz.U.2004.166.1735.

**I.A.3.2. Scope**

The geographical scope hasn't been modified.

The material scope hasn't been modified. There were only reservations to the relevant conventions, but none of them regarded the legalisation or equivalent requirement matter.

**I.A.3.3. Legislative implementation**

There wasn't any particular legislative implementation. All the conventions, indicated above as in force, became parts of the Polish legal order according to rule of direct force (direct effect) of an international agreement.

Explanation of the rule – see Introductory Remarks.

**I.A.3.4. Practical implementation**

Most of parallel agreements abolish legalisation or equivalent requirements and don't indicate any authority responsible especially for ensuring the application of relevant provisions.

**The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)**

Several authorities were indicated as responsible for the practical implementation of that agreement:

Pursuant to Article 2 Section 1 – the central authority competent to receive applications for service of foreign documents is the Ministry of Justice.

Pursuant to Article 18 – other authorities competent to receive applications for service of foreign documents are presidents of circuit courts [*sąd okręgowy*]

Pursuant to Article 6 – the courts that serviced a document are authorities competent to confirm the service of documents. .

Pursuant to Article 9 Section 1 – circuit courts [*sąd okręgowy*] are the competent authorities.

**The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)**

Pursuant to Article 2 Section 1 – the central authority competent to receive applications for taking of evidence is the Ministry of Justice.

Pursuant to Article 8 – the authority competent to give permission is the Ministry of Justice.

Pursuant to Article 24 and 27 Section a) – the authority competent to receive applications for service of foreign documents (apart from the Ministry of Justice) are presidents of circuit courts [*sąd okręgowy*].

**The Hague Convention on International Access to Justice (1988)**

Although Article 3 makes it obliging to designate the authorities competent to receive and transmit applications for legal aid, no official statement has been published.

**The Vienna Convention on issuance of multilingual extracts from civil status registry (1976)**

Authorities competent to issue multilingual extracts from the civil status registry are district mayors [*wójt, burmistrz, prezydent miasta*] who usually transfer that competence to Directors of Civil Status Registry Offices.

The district is the first level of local government in Poland.

**I.A.3.5. Judicial control**

There has been no national case law based on parallel agreements so far.

**I.A.4. National Law**

**7. Legislative framework**

In the national legislation a legalisation process is regulated by the Act on the Consuls' Functions (1984) Dz.U.2002.215.1823. According to Article 21 thereof, the Consul is a competent authority to legalise public documents, issued in hosting State or in the Republic of Poland. Article 32a. Includes an obligation to keep a record (i.a. an electronic one) of the consul's acts, also acts of legalisation.

Consul's actions are paid for. The amount of the fees has been determined by the Executory Regulation of the Ministry of Foreign Affairs of the Republic of Poland (2003) Dz.U.2003.156.1530. According to the provisions thereof legalisation costs € 40.

Furthermore, certifying compliance of a document with the law of the state of issuance costs € 25. The cost of certifying the authenticity of a sign, a stamp or a seal is the same. There are no more provisions on legalisation of documents at all. Details are subject to the custom law.

Notwithstanding the above, there are several special executory regulations, covering a narrow scope. For legislation of lower level (executory regulations) no *travaux preparatoires* are available.

For the legalisation of judicial documents the regulation described below is applied.

REGULATION OF THE MINISTER OF JUSTICE on detailed actions of courts with regard to the case under international civil and criminal proceedings in international relations (Dz. U. 2002.17.164).

§20. 1. If upon the motion of the interested person a document drawn up in the Republic of Poland and destined to be used abroad shall be attested, the attestation shall be done in the following manner: :

- 1) on a judicial document the authenticity of the signature of the judge, court division officer or court secretary shall be attested by:
  - a) the President of the competent circuit court, a judge or division officer authorised by him.
  - b) the President of the court of appeal or a judge authorised by him, provided that the attestation concerns a document drawn up by the court of appeal,
- 2) on the notary's document the authenticity of the signature of the notary and his court seal shall be attested by the President of the competent circuit court, or a judge or a court division officer,
- 3) on the translations of documents the authenticity of the signature of the sworn translator and his/her seal shall be attested by the competent Minister of Foreign Affairs.

2. If upon the motion of the interested person a document drawn up in the Republic of Poland and destined to be used abroad is to be attested by the diplomatic mission performing consular functions or the consular office of a foreign country in the

Republic of Poland, the authenticity of the signature of the President of the circuit court or a court of appeal, the authorised judge or court division officer and the authenticity of the official seal shall be attested by the competent Minister of Foreign Affairs.

3. After the attestation, specified in Section 1 Items 1 and 2 is completed, the interested person shall be instructed on the contents of Section 2.

§ 21. The attestation clause is as follows:

'I hereby attest the authenticity of the signature (name, surname and function of the person signing the document) and the official seal (name of the court or another name)

Stamp duty collected and received: PLN'

(date) (place) (signature of the attesting person and his/her official title) (official seal)

§ 22. 1. Presidents of the circuit courts and court of appeal shall send the specimen signatures of the persons authorised to attest documents, as well as the specimen official seals of these courts directly to the competent Minister of Foreign Affairs.

2. Sworn translators shall send the specimen signatures, as well as specimen seals directly to the competent Minister of Foreign Affairs. .

3. The specimen referred to in Section 1 shall be sent in January every calendar year, and when personal changes occur, they shall be sent immediately. ,

Legalisation of documents issued by educational institutions is regulated by the following laws:

I.

REGULATION OF THE MINISTER OF NATIONAL EDUCATION AND SPORTS of 18 July 2005 on the Documentation and the Course of Studies (2005)  
Dz.U.2005.149.1233

§ 13. 1. The documents issued by a higher education school and destined to be used abroad shall be legalised.

2. Legalisation shall consist in providing the document with the following:

- 1) a clause in the wording: 'The authenticity of the document has been attested' ;
- 2) the signature of the person authorised to legalise the document; ;
- 3) the official seal;
- 4) name of the place and the date.

3. For the purpose of legalisation only original documents shall be submitted. Multi-page documents shall be stitched and all the stitch areas shall be sealed with the official seal of the school that has issued such documents in a manner that prevents changing of the document's sheets.

§ 14. 1. University studies graduation diplomas, studies graduation certificates and the documents issued by a higher education school confirming graduation from postgraduate studies shall be legalised by the office providing service to the Minister supervising the higher education school that issued the document.

2. The documents not referred to in Section 1 shall be legalised by the higher education school that issued them.

§ 15. 1. The higher education schools shall submit to the office providing service to the Minister supervising the higher education school and the competent Minister of higher education the lists of persons authorised to sign the documents specified in § 14 Section 1, their specimen signatures and specimen official seals.

2. In the event of the replacement of a person authorised to sign documents the list specified in Section 1 shall be updated immediately.

Legalisation cost is PLN 19 (Annex to the Revenue Duty Act (2000) Dz.U.2004.253.2532)

The Regulation does not include a provision concerning the exemption from the legalisation of the documents destined to be presented in a country being a party of the 'Apostille Convention'.

II. As far as primary and secondary education are concerned, it is subject to the Regulation of the Minister of National Education and Sports of 2005 concerning the rules of the legalisation of diplomas and indexes destined to be used in legal transactions abroad as well as the rules of payment for these activities.

Pursuant to § 18. 1. Legalisation of certificates, diplomas and indexes destined to be used in legal transactions abroad, issued by schools shall be done by the education officer competent in terms of the seat of the school. Legalisation of i.a. certificates of graduation, diplomas confirming professional qualifications and other certificates destined to be used in legal transactions abroad and issued by circuit commissions, as well as certificates, issued by schools, coordinated school and school consulting points located at diplomatic missions, consular offices and military missions of the Republic of Poland shall be done by the competent Minister in charge of education and upbringing  
2. Legalisation shall consist in providing the school certificates, other certificates, diplomas, or indexes with the following:

- 1) a clause in the wording: 'The authenticity of the school certificate has been attested (of the diploma, another certificate or index);
- 2) the signature of the person authorised to legalise the school certificate (diploma, another certificate, index) and the name seal; the impression of the seal shall be clear;
- 3) the official seal of the authority referred to in Section 1;
- 4) the name of the place where the seat of the authority referred to in Section 1 is located;
- 5) the date of legalisation.

3. The multi-page school certificates, other certificates, diplomas and indexes shall be stitched, and all the stitch areas shall be sealed with the official seal of the authority referred to in Section 1 in a manner that prevents changing of the sheets of the school certificate, another certificate, diploma or index.

Legalisation cost is PLN 19 (Annex to the Revenue Duty Act (2000) Dz.U.2004.253.2532)

The school certificates, other certificates, diplomas and indexes destined to be presented in a country being a party to the 'Apostille Convention' shall be exempt from the legalisation duty.

III. THE REGULATION OF THE MINISTER OF EDUCATION AND SPORTS (2006)

Dz.U.2006.37.255 on validation of university degrees and degrees in the arts taken abroad allows to demand the legalisation of the of university degree diplomas or a degrees in the arts.

Pursuant to § 2 thereof, a person applying for the validation of a university diploma degree taken abroad submits to the selected council a petition with the original diploma taken abroad and the remaining attachments. Under § 2 Section 3 the competent council may demand legalisation of the diploma by the Consul of the Republic of Poland, residing in the country where the diploma has been taken, or the diplomatic or consular mission of the country in the educational system of which this institution operates (n/a to the countries – parties to the Hogue Convention 'Apostille').

IV. Act on State Compensation for Victims of Specific Intended Crimes  
(Dz.U.2005.169.1415)

There is another exempt from the legalisation or equivalent requirements established by the national law. Under Article 9 Section 4 of the Act on State Compensation for Victims of Specific Intended Crimes, the application for compensation and all the documents attached to the application are exempt from legalisation or equivalent requirements.

#### **8. Scope**

The Act on the Consul's Functions (1984) regards all the states and all the documents that require legalisation. Specific material scopes of particular legislations are described above (I.A.4.2).

#### **9. Practical implementation**

1. Which authorit(y)(ies) is/are responsible for legalisation?

In the general legalisation – it is the competence of consuls and the Ministry of Foreign Affairs (Consular Department). In the specific cases described above other bodies are competent to take part in the process of legalisation.

2. What is the procedure for legalisation or other similar or equivalent requirements (e.g. in person or by post)?

One can apply for legalisation in person or by regular mail.

3. Does the same procedure apply to all documents and to all (Member) States?

The procedure, as described below in point 5 is applied to all documents and to all States.

4. What documents must be provided?

For the purpose of legalisation one has to provide an authentic document with a certificate of authenticity (usually of the form of a particular seal).

5. How, in practice, does the official carry out the task of legalising a document? How long does the process take; what fee (if any) is payable?.

In practice if one wants to legalise a foreign public document in Poland he/she must go to the embassy of the country of the document's origin where the certificate of authenticity is obtained (usually of the form of a particular seal). With such a certificate one goes to the competent authority in Poland (Consular Department of the Ministry of Foreign Affairs of the Republic of Poland) where legalisation is done. In the Consular Department the process of legalisation is carried out at once.

Legalisation by Polish consuls of foreign public documents in the country of their origin also requires the certificate of authenticity usually issued by the Ministry of Foreign Affairs of the host state. After such a certificate is obtained the Polish consul legalises the document.

If one wants to obtain a foreign legalisation of a Polish public document in Poland he/she has to go to the Consular Department of the Ministry of Foreign Affairs of the Republic of Poland where a certificate of authenticity is obtained (of a form of a particular seal). Having got such a certificate one goes to the competent authority of the foreign state in Poland (consuls) where legalisation is done.

Legalisation carried out in Poland by Polish competent authorities costs PLN 19 (III. 6 of the Annex to the Revenue Duty Act (2000) Dz.U.2004.253.2532).

The fee for legalisation carried out by Polish consuls outside Poland costs € 40 (V.42. of the Annex to the Executory Regulation on Consular Fees (2003) Dz.U.2003.156.1530).

#### **1. Judicial control**

There is no judgment that regards to the matter of exempt from legalisation of documents within the scope of the Community law.

At this point it is worth noticing that the Polish legal doctrine states that if a party applies for legalisation of a document that is to be used in a state – a party to the convention or agreement abolishing legalisation or equivalent requirements, the legalisation should be done.<sup>8</sup> It can be interpreted as a person's right to have a legalised document in every case.

### **PART I.B. Specific**

#### **I.B.1. Introduction**

#### **I.B.2. Specific documents**

##### **1. Documents proving involuntary unemployment**

The document proving involuntary unemployment is called: certificate of involuntary unemployment.

##### **Identify and describe the authorities competent for issuing the specific actual documents listed**

The competent authority is the head of the powiat (powiat starost) [*starosta powiatowy*] who usually transfers his competence to the Director of Labour Office. The powiat is the second level of the local government in Poland.

##### **Indicate their legal basis**

Promotion of Employment and Labour Market Agencies Act (2004) Dz.U.2004.99.1001

##### **Answer the core questions as regards legalisation and other similar or equivalent requirements**

The general rules of proving one's involuntary unemployment are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

<sup>8</sup> National Legalisation of Documents (*Krajowa legalizacja dokumentów*), Czubik P., Zakamycze, 1998, p. 68.

A residence permit is issued by a provincial governor [*wojewoda*] who applies the Administrative Procedure Code (APC) at the proceedings.

**2. Documents proving a family relationship or other durable relationship**

There exists no registered civil partnership as a legal institution in Poland.

There are no separate documents proving a family relationship. The relationship between husband and wife is usually proved by an official copy [*odpis*] of a deed of marriage or by certificate [*zaświadczenie*] of marriage. The relationship between parent and child is proved by birth certificate, included in the civil state registry.

**Identify and describe the authorities competent for issuing the specific actual documents listed**

The competent authority is a district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of Civil Status Registry Office.

The district is the first level of the local government in Poland.

**Indicate their legal basis**

The Civil Status Registry Act (1998) Dz.U.2004.161.1688

**Answer the core questions as regards legalisation and other similar or equivalent requirements**

The General rules proving a family relationship are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

If a legalisation matter is considered in the context of obtaining a residence permit which is issued by a provincial governor [*wojewoda*], the Administrative Procedure Code (APC) is applied in the proceedings.

Please note that the Republic of Poland is a party to several conventions regarding civil status registry, e.g. the CIEC Convention on the Dispensation from the Requirement of Legalisation of Certain Documents (1977) and the Vienna Convention on Issuance of Multilingual Extracts from Civil Status Registry (1976).

**3. Documents proving or contesting a parent-child relationship**

The document proving a parent-child relationship is the certificate of birth, included in the civil status registry.

There is no separate document attesting parent-child relationship. The lack of the above relationship is proved with the same certificate of birth by opposition.

**Identify and describe the authorities competent for issuing the specific actual documents listed**

The competent authority for issuing the certificate of birth is the district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of Civil Status Registry Office.

The district is the first level of the local government in Poland.

**Indicate their legal basis**

The Civil Status Registry Act (1998) Dz.U.2004.161.1688

**Answer the core questions as regards legalisation and other similar or equivalent requirements**

The general rules of proving a family relationship are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

Please note that the Republic of Poland is a party to several conventions regarding civil status registry, e.g. the CIEC Convention for the Dispensation from the Requirement of Legalisation of Certain Documents (1977) and the Vienna Convention on Issuance of Multilingual Extracts from Civil Status Registry (1976).

For the purpose of the civil status registry matters some authors say that legalisation of foreign public documents (beyond the scope of relevant conventions) that are to be included into the Polish civil status registry is necessary<sup>9</sup> and others are of opposite opinion.<sup>10</sup>

**4. Documents proving the name and forenames of a child or adult**

The document proving the name of a child or an adult is the certificate of birth, included in the civil status registry. The above can also be proved by the identity card or an equivalent document (refers to adults only).

**Identify and describe the authorities competent for issuing the specific actual documents listed**

The competent authority for issuing the certificate of birth is the district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of Civil Status Registry Office.

The district is the first level of the local government in Poland.

**Indicate their legal basis**

The Civil Status Registry Act (1998) Dz.U.2004.161.1688

**Answer the core questions as regards legalisation and other similar or equivalent requirements**

<sup>9</sup> M. Albiniak „Civil Status Registry Act with Explanations”, Toruń 1996, s. 136.

<sup>10</sup> A. Czajkowska, E. Pachniewska „Civil Status Registry Act with Commentary, Case Law and Patterns of Documents”, LexisNexis 2005 (Lex Polonica Maxima), Commentary to Article 73.

The general rules of proving the name and forename of a child or an adult with the certificate of birth are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

Please note that the Republic of Poland is a party to several conventions regarding civil status registry, e.g. the CIEC Convention for the Dispensation from the Requirement of Legalisation of Certain Documents (1977) and the Vienna Convention on Issuance of Multilingual Extracts from Civil Status Registry (1976).

As it was introduced above, for the purpose of the civil status registry matters some authors say that legalisation of foreign public documents (beyond the scope of relevant conventions) that are to be included into the Polish civil status registry is necessary and others are of opposite opinion.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

There is no registered civil partnership as a legal institution in Poland.

The document proving the commencement of marriage is the official copy [*odpis*] of the deed of marriage or a certificate of marriage, included in the civil status registry. The document proving the annulment or termination of marriage is the official copy [*odpis*] of the deed of marriage with a comment on annulment or termination of the marriage on it or the certificate of marriage with a comment as above .

The competent authority for issuing the certificate of birth is a district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of Civil Status Registry Office.

The district is the first level of the local government in Poland.

Legal basis: The Civil Status Registry Act (1998) Dz.U.2004.161.1688

The general rules of proving a family relationship are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

If a legalisation matter is considered in the context of obtaining a residence permit which is issued by a provincial governor [*wojewoda*], the Administrative Procedure Code (APC) is applied in a proceedings.

Please note that the Republic of Poland is a party to several conventions regarding civil status registry, e.g. the CIEC Convention for the Dispensation from the Requirement of Legalisation of Certain Documents (1977) and the Vienna Convention on Issuance of Multilingual Extracts from Civil Status Registry (1976).

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

In Poland there are several dozen kinds of professional activities recognised as the regulated ones. Each of them requires meeting several conditions in order to establish such an activity. Many of them don't refer to qualification. There is no separate

document proving in general one's legal establishment in the Member State of origin for the purpose of pursuing a regulated activity.

**7. Documents proving a person's professional qualifications (diplomas)**

Documents proving one's professional qualifications

Professional qualifications are certified mostly by professional self-governments (which in Poland are considered a part of the public administration) or by other agencies of the public administration of the form of a professional activity permit. For example, professional qualifications in separate professions are certified by:

- a) in construction – chambers of construction engineers (construction self-government)
- b) in medicine – medical universities and medical chambers (medical self-government)
- c) in law – lawyers self-government – chambers of legal advisors [*Okręgowa Rada Radców Prawnych*] and chambers of advocates (*Okręgowa Rada Adwokacka*)

Each profession has its own act. The following acts constitute the legal basis for the examples described above:

- a) The Construction Law Act (1994)
- b) The Doctor and Dentist Professions Act (1996)
- c) The Legal Advisors Act (1982) and Advocacy Law Act (1982)

The general rules of proving one's professional qualifications are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

For the purpose of applying for a professional activity permit the provisions of APC are applied and read in conjunction with the above acts.

**8. Documents proving a person's death**

The document proving a person's death is the death certificate included in the civil status registry.

The competent authority for issuing the certificate of death is a district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of the Civil Status Registry Office.

The district is the first level of the local government in Poland.

The Civil Status Registry Act (1998) Dz.U.2004.161.1688

The general rules of proving one's death are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

**9. Documents proving a person's date of birth**

The document proving a person's date of birth is the certificate of birth included in the civil status registry. The above can also be proved by the identity card or an equivalent document, indicating the date (refers to adults only).

The competent authority for issuing the certificate of birth is a district mayor [*wójt, burmistrz, prezydent miasta*] who usually transfers his competence to the Director of the Civil Status Registry Office.

The district is the first level of the local government in Poland.

The Civil Status Registry Act (1998) Dz.U.2004.161.1688

The general rules of proving one's date of birth are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

#### **10. Documents proving the establishment by incorporation of a company**

Establishment of a company by incorporation is usually proved by a judgment of the district court [*Sąd Rejonowy – Sąd Rejestrowy*] or, more often, by an official excerpt from the National Court Register [*Krajowy Rejestr Sądowy*].

The competent authority to keep the National Court Register is the district court [*Sąd Rejonowy – Sąd Rejestrowy*]

The National Court Register Act (1997)  
The Code of Commercial Partnerships and Companies (2000)

The general rules of proving the establishment of a company by incorporation are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings).

#### **11. Documents proving the constitution of a company, including any official translation thereof**

The constitution of a company (limited liability and joint-stock company) is performed by a notarial deed (a kind of a public document in Poland) and court registration after.

The competent authority for issuing an act of constitution (a deed of constitution) is a notary public. An official translation is prepared by a sworn translator.

The Code of Commercial Partnerships and Companies (2000)  
The Act on Notaries Public (1991)  
The Act on the Profession of the Sworn Translators (2004)

The general rules of proving the constitution of a company are the same as described in II.A.1.2. (judicial proceedings) and II.A.1.3. (administrative proceedings), but it should be indicated that certified translations may be doubtful as to their public character in the sense of the term used in the CCP and the APC. There is no doctrine and no case law on this topic yet.

The practice shows that some authorities demand legalisation of sworn translations and others don't. The attitudes towards sworn translations are not uniform.

**12. Documents proving the latest banking accounts of a company**

There is no separate document proving the latest banking account of a company. The fact is usually proved by an account existence certificate issued by the bank. Such a document is not recognised as a public document in Poland.

**13. Documents proving the deposit of cash or certificates of deposit**

Proofs of the deposit of cash or certificates of deposit are usually issued by the bank and they are not recognised as public documents in Poland.

**PART II – Incoming documents: Effects in the Member State's legal order**

**OVERVIEW OF PART II**

**II.A.1. European Community Law**

**II.A.1.1. The effect of the implementation of Community law**

Due to Poland's short EC membership and no case law the legal status of foreign public documents in question can't be concluded definitely. The matter of legalisation has not been considered in the Polish legal literature (juridical doctrine) in the context of the EU regulation at all. In spite of the above it can be stated that there are legal bases for considering foreign public documents as equivalents to comparable domestic public documents. It can be definitely stated that in the civil proceedings<sup>11</sup> foreign public documents are equivalent to the comparable domestic public documents (Article 1138) with the exception of:

- a) a public document concerning the conveyance of property right to the immovables located in Poland, or
- b) a public document doubtful as to its authenticity, which need legalisation.

In general it is possible to state that the documents in question are equivalent to the comparable domestic public documents thanks to the rule of direct force of law established by an international organisation and thanks to EC Regulations' provisions indicated in Part I. Of the Questionnaire.

*De iure* no distinction is made with regard to the documents originating in different Member States. *De facto* there is no established and clear distinction of the Member States. Sometimes it is possible to face a distinction resulting from the lack of knowledge of the community law.

*De iure* no distinction is made with regard to different types of documents. *De facto* there is no established and clear distinction of different types of documents. As it was mentioned above, sometimes it is possible to face a distinction resulting from the lack of knowledge of the community law.

<sup>11</sup> And others to which the CCP is applied.

**II.A.1.2. Admissibility and evidentiary weight in judicial proceedings**

In Poland different evidence weight (force of evidence) is vested on the public documents in the civil proceedings, and administrative courts proceedings and distinct in the criminal proceedings.

In both the cases foreign public documents falling under the community law are of the same evidence weight as national public documents.

Pursuant to Article 1138 of the Code of Civil Procedure (CCP), foreign public documents that are of the same force of evidence (probatory force) as Polish public documents. There are two exceptions:

- a) a public document concerning the conveyance of the property right to the immovables located in Poland, or
- b) a public document doubtful as to its authenticity.

The above groups of documents need legalisation.

Article 1138 of the CCP regards all proceedings before court in civil cases. That provision was established in the first version of the CCP and came into force on the 1 January 1965.

The sense of that regulation is to make equal (in terms of the proof) foreign and Polish public documents in general, unless the falsehood of the document has been proved.

The evidence force of public documents in civil proceedings is that they prove state of the facts that are certified in the documents (Article 244 § 1 of the Code of Civil Procedure). There is always a possibility to prove that the facts certified in the document are not true.

Specific court proceedings are administrative courts proceedings regulated by the Proceedings before Administrative Courts Act (Dz. U. 2000.98.1071)<sup>12</sup> According to Article 106 § 3 thereof in some cases administrative courts are allowed to take evidence proceedings. In that case the general rules of the CCP evidence proceedings are applied (106 § 5 PACA).

The Code of Criminal Procedure (Dz. U. 199.10.17)<sup>13</sup> doesn't regulate the matter of foreign public documents. This means that judges evaluate evidence force of documents individually, from their personal point of view (personal experience).

**II.A.1.3. Admissibility and evidentiary weight in administrative matters**

This is a matter of huge importance, but the clear and certain answer can't be given on the basis of the Polish legal order. Legal literature doesn't consider foreign public documents as a proof at all.

Administrative proceedings are regulated by the Administrative Procedure Code (APC) (1960) Dz.U.2000.98.1071. Pursuant to Article 76 § 1 of the APC public documents issued by public authorities [*organy państwowe – publiczne*] in their capacity are admitted as a proof of the facts stated therein. The term of "public authorities" regards all state authorities and local government authorities. The provision doesn't indicate only Polish public authorities so it can be interpreted as comprising also foreign public authorities.

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12 Hereinafter: PACA.

13 Hereinafter : Criminal CP.

Equivalent provisions are contained in the Tax Ordinance Act (1997) Dz.U.2005.8.60.

The Supreme Administrative Court [*Naczelny Sąd Administracyjny*] adjudicated in the cases in which a matter of foreign public documents were involved only twice. In the case No SA/Lu 2338/94 (in 1995) the Supreme Administrative Court – Centre in Lublin adjudicated that a foreign customs document is not an evidence preferred to another kind of evidence, especially national documents. In other words, it means that a foreign customs document is not treated as conclusive evidence.

In the case No V SA 2753/99 (in 2000) the Supreme Administrative Court adjudicated that certificates of origin of goods (EUR 1) are “official documents” [*dokumenty urzędowe*] (what one can interpret as “public documents”).

The above two cases show a direction of interpretation that seems to be applied in practice. In all the administrative cases that were checked for the purpose of the Report and where legalised (or apostilled) foreign public documents were involved, foreign public documents (meeting formal requirements) were considered equivalent to domestic public documents. Nevertheless, none of the cases comprised public documents regulated by the Community law can be considered in this Report.

It can be carefully concluded that public documents under the Community law are of the same evidence weight as domestic public documents.

## **II.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)**

### **II.A.2.1. The effect of completion of the requirements of the Hague Convention**

The ‘Apostille’ Convention has been in force since 14 August 2005. There were not many cases involving public documents under the Convention. Nevertheless, several interviews show that apostilled public documents are considered equal to national public documents.

It can be stated for sure that in civil proceedings Article 1138 of CPC is applied to the documents. According with that provision, foreign public document are recognised as equal to national ones.

In administrative matters, see remarks in II.A.1.3.

*De iure* no distinction is made with regard to the documents originating in different States – parties to the Convention. *De facto* there is no distinction too.

*De iure* and *de facto* no distinction is made with regard to different types of documents.

### **II.A.2.2. Admissibility and evidentiary weight in judicial proceedings**

A foreign public document that has been processed in accordance with the rules of the Convention is equally admissible in judicial proceedings and is of the same evidentiary weight as equivalent domestic public documents. In civil or administrative court proceedings it is confirmed by Article 1138 of the CCP. The Criminal CP includes no separate provisions on documents as evidence, which means that foreign and domestic public documents can be admitted and have the same evidentiary weight.

See II.A.1.2. above.

### **II.A.2.3. Admissibility and evidentiary weight in administrative matters**

The same remarks as in Section II.A.1.3. above.

## **II.A.3. Parallel international agreements**

**II.A.3.1. The effect of completion of the requirements of parallel agreements**

All the public documents under the parallel international agreements have the same status as all public documents.

*De iure* and *de facto* no distinction is made with regard to the documents originating in different states – parties to an agreement or to different types of documents.

**II.A.3.2. Admissibility and evidentiary weight in judicial proceedings**

The same remarks as in Section II.A.1.2.above.

**II.A.3.3. Admissibility and evidentiary weight in administrative matters**

The same remarks as in Section II.A.1.2.above.

**II.A.4. National Law**

**II.A.4.1. The effect of the completion of the requirements of national law**

The legal influence of foreign public documents on the Polish legal order was described in Section II.A.1.3.above.

In general, *de iure* and *de facto* no distinction is made with regard to the documents originating in different states.

**II.A.4.2. Admissibility and evidentiary weight in judicial proceedings**

The same remarks as in Section II.A.1.3. above.

**II.A.4.3. Admissibility and evidentiary weight in administrative matters**

The same remarks as in Section II.A.1.3. above.

**PART III – Incoming documents: Difficulties**

**OVERVIEW OF PART III**

**PART III.A. General**

**III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)**

**III.A.1.1. Legal**

Not many important problems of legal nature have been reported within the 11 month period of the validity of the ‘Apostille’ Convention.

The first one is the lack of settlement of the common attitude towards foreign public documents in administrative proceedings. But according to conducted surveys apostilled foreign public documents have the same evidence force as domestic ones.

The second one is the lack of a separate control procedure for the requirement of legalisation. If a judge or public administration officer wants one to get a legalisation or equivalent requirements to be fulfilled with regard to a public document, a party to the proceeding has no separate legal method to appeal this requirement. A party to the procedure could refuse to fulfil the requirement and as a consequence to be rejected with reference to what he/she has claimed. No one would take such a risk. Everybody prefers to get legalisation as a result of a request. That’s why there is almost no case law and probably will never be.

Of course, the financial and social cost of getting legalisation or equivalent requirements fulfilled is another problem.

In my opinion more research and educational effort should be devoted to legalisation in general.

**III.A.1.2. Practical**

No certain problems of practical nature can be reported.

**III.2. Parallel international agreements**

**III.A.2.1. Legal**

No problems can be reported.

**III.A.2.2. Practical**

No problems can be reported.

**III.3. National law**

**III.A.3.1. Legal**

It can be stated that national legislation concerning legalisation should be more detailed and of a higher level (statutory level).

**III.A.3.2. Practical**

No problems can be reported.

**PART III.B. Specific**

**1. Documents proving involuntary unemployment**

No problems can be reported.

**2. Documents proving a family relationship or other durable relationship**

No problems can be reported.

**3. Documents proving or contesting a parent-child relationship**

No problems can be reported.

**4. Documents proving the name and forenames of a child or adult**

No problems can be reported.

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

No problems can be reported.

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

No problems can be reported.

**7. Documents proving a person's professional qualifications (diplomas)**

No problems can be reported.

**8. Documents proving a person's death**

No problems can be reported.

**9. Documents proving a person's date of birth**

No problems can be reported.

**10. Documents proving the establishment by incorporation of a company**

No problems can be reported.

**11. Documents proving the constitution of a company, including any official translation thereof**

No problems can be reported.

**12. Documents proving the latest banking accounts of a company**

No problems can be reported.

**13. Documents proving the deposit of cash or certificates of deposit**

No problems can be reported.

**PART IV – Outgoing documents: Difficulties**

**OVERVIEW OF PART IV**

**PART IV.A. General**

**IV.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

**IV.A.1.1. Legal**

The first problem is the lack of possibility to obtain the Apostille on official copies (true copies, attested copies) of documents certifying one's education level. For example PhD diplomas are issued in one original and in unlimited number of official copies. One can legalise only the original. This is a result of national legislation applied to 'usual' legalisation cases.

**IV.A.1.2. Practical**

Practical difficulties can be reported with regard to:

1. The financial cost – which in Poland seems to be set at a too high level. The whole

cost of obtaining the Apostille is PLN 79 ( PLN 60 + PLN 19) which is around 5% of the average wages in Poland.

2. The social cost (one's effort and time) – the procedure of obtaining the Apostille consists of two main stages:
- a) certifying of the authenticity of a document
  - b) issuing of the Apostille.

It is of importance that the social cost be increased by the lack of comprehensive information policy on the Hague Convention in Poland. More research and education effort should be devoted to this topic.

#### **IV.A.2. Parallel international agreements**

##### **IV.A.2.1. Legal**

No problems can be reported.

##### **IV.A.2.2. Practical**

No problems can be reported.

#### **IV.A.3. National law**

##### **IV.A.3.1. Legal**

No problems can be reported.

##### **IV.A.3.2. Practical**

No problems can be reported.

### **PART IV.B. Specific**

#### **1. Documents proving involuntary unemployment**

No problems can be reported.

#### **2. Documents proving a family relationship or other durable relationship**

No problems can be reported.

#### **3. Documents proving or contesting a parent-child relationship**

No problems can be reported.

#### **4. Documents proving the name and forenames of a child or adult**

No problems can be reported.

#### **5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

No problems can be reported.

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

No problems can be reported.

**7. Documents proving a person's professional qualifications (diplomas)**

No problems can be reported.

**8. Documents proving a person's death**

No problems can be reported.

**9. Documents proving a person's date of birth**

No problems can be reported.

**10. Documents proving the establishment by incorporation of a company**

No problems can be reported.

**11. Documents proving the constitution of a company, including any official translation thereof**

No problems can be reported.

**12. Documents proving the latest banking accounts of a company**

No problems can be reported.

**13. Documents proving the deposit of cash or certificates of deposit**

No problems can be reported.

**PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I**

**OVERVIEW OF PART V**

**PART V.A. General**

**V.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)**

**V.A.1.1 Requirements and procedures**

1. Are there legalisation requirements or other similar or equivalent requirements as regards incoming or outgoing public documents as identified in Part I (hereinafter 'requirements and procedures') or rules concerning the effects of foreign public documents satisfying such requirements and procedures as identified in Part II (hereinafter 'effects rules') that overtly discriminate on grounds of nationality (whether between your own Member State and other Member State or between different Member States)?

In the context of several conventions and bilateral agreements the legalisation requirement *per se* can be perceived as discrimination.

2. Are there requirements and procedures or effects rules that otherwise appear discriminatory or operate in a discriminatory matter?
3. Are the requirements and procedures or effects rules (potentially) liable to hinder or make less attractive the free movement of goods, persons, services or capital between the Member States of the European Union? How?

Every procedure that costs money or one's effort makes every project (*sensu largo*) less attractive.

4. What is the rationale for the requirements and procedures and effects rules, in particular those which you have identified in response to questions 1 to 3 above?

In general, this is a legal certainty. For some reasons some states' public authorities are more trusted than others.

5. Are there situations in which the requirements and procedures or effects rules appear irrational?

In general, in every case that the costs of the Apostille procedure exceed the value of the achieved aim (most of all in the cases of little value).

6. Are the requirements and procedures and effects rules effective? Do they in practice guarantee that their aims are achieved?

It can be stated that it is not much more difficult to counterfeit an original document than to counterfeit a legalised original document, but this statement requires empirical verification. In terms of legalisation procedures, including the Apostille they seem not to guarantee achieving of its aim.

7. Are there situations in which the requirements and procedures or effects rules appear ineffective?
8. Are requirements and procedures and effects rules necessary, or are there less burdensome ways of achieving the same aims?

In the contemporary globalised world all the legalisation procedures should be modernised and hi-tech solutions should be employed. This would shorten the "legalisation chain" and make the whole process less burdensome and more reliable

in terms of legal certainty.

9. Are the requirements and procedures and effects rules proportionate to the objectives pursued? Are there any particular cases where a requirement or a procedure or effects rules is excessively burdensome, given its aims?

In the Polish legal order, Article 1138 of the CCP seems to be proportionate to the objective of the legal certainty. That's why representatives of the doctrine who state that legalisation or equivalent requirements are necessary in all administrative cases propose a solution disproportionate to the objective of legal certainty.

10. What consequences flow from a failure to comply with the requirements and procedures? Are there any particular cases where the consequences appear disproportionate?

If one does not meet the requirement of legalisation or equivalent ones, the document one wants to use as evidence will not have an evidence (probatory) force. This may lead to unfavourable decision for this party.

11. Are there any areas where alternative requirements and procedures or effects rules have been adopted which might provide a general solution in the present context to reduce the administrative or other burdens? What are those arrangements and how do they operate? What is their advantage?

The provision of Article 1138 of the CCP has been in force since 1 January 1965. It works properly in practice and seems to be adequate for the purpose of legal certainty. It regards all civil proceedings and it operates correctly. There haven't been any proposals to repeal that provision so far. Furthermore, the Polish doctrine suggests the application of this provision in proceedings of other kinds.

12. Have there been any developments in this field in your country? Have requirements or procedures or effects rules recently been added, modified or abolished? What reasons (if any) were given for those changes?

The last change in the requirements of legalisation or equivalent ones came into force with the Hague Convention ('Apostille'). Generally speaking, Poland and its liberal legal order are going in the direction of further liberalisation at the field of the requirements or procedures or effects rules.

**V.A.1.2 Effects rules**

Several remarks hereinabove are general and regard effect rules, too.

**V.A.2. Parallel international agreements**

**V.A.2.1 Requirements and procedures**

Several remarks hereinabove are general and regard effect rules, too.

**V.A.2.2 Effects rules**

Several remarks hereinabove are general and regard effect rules, too.

**V.A.3. National law**

**V.A.3.1 Requirements and procedures**

See general remarks in V.A.1.1.

**V.A.3.2 Effects rules**

See general remarks in V.A.1.1.

**PART V.B. Specific**

**1. Documents proving involuntary unemployment**

**2. Documents proving a family relationship or other durable relationship**

**3. Documents proving or contesting a parent-child relationship**

**4. Documents proving the name and forenames of a child or adult**

**5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship**

**6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities**

**7. Documents proving a person's professional qualifications (diplomas)**

**8. Documents proving a person's death**

**9. Documents proving a person's date of birth**

**10. Documents proving the establishment by incorporation of a company**

11. Documents proving the constitution of a company, including any official translation thereof

12. Documents proving the latest banking accounts of a company

13. Documents proving the deposit of cash or certificates of deposit

## **PART VI – Suggested action**

### **OVERVIEW OF PART VI**

#### **VI.1. European**

In general, it is important not to lose sight of the aim of legalisation or equivalent requirements, which are the legal certainty in national legal orders.

In the past, the non-critical acceptance of foreign documents in the domestic proceedings was connected with a serious danger of fraud, i.a. resulting from the major differences between the legal systems, no cooperation between the authorities of distinct countries, no linguistic competence of the legal administration and public administration officials, as well as the lack of control procedures or no basis for the mutual communication between the authorities.

As an effect of progressing globalisation, and in particular, the development of European integration, the majority of importance of the above factors increasing the fraud risk has got diminished. Moreover, one should note a dynamic development of modern technologies, especially at the area of communication. For that reason, it is possible to consider the reduction or annulment of legalisation or equivalent requirements with no harm to the legal certainty.

Apart from the ideas suggested in the Explanatory Memorandum, the list of systemic solutions presented below makes the effect of the author's brainstorming:

1. The verification clause on documents and direct check procedure – on demand of a party applying for a document, the competent agency could insert on the issued document a clause specifying the verification channel; for the purposes of certainty it could be an indirect specification, for example the specification of contact information at the competent agency's website; It enables to avoid consuls' operations who request for a confirmation from national agencies anyway. This solution allows avoidance of one or more chain links. After the direct check procedure, the agency of the document's destination should note that verification has been carried out.

2. Issuing the apostille could be passed to the authorities that issued the document that is to be used abroad.
3. International verification procedure – available for a person who wants to verify a foreign document; the procedure could be of a standard form.
4. Public documents could be issued with the use of multilingual form.

**VI.2. Intergovernmental**

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**VI.3. National**

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