

POLAND – national procedures for mutual legal assistance in criminal matters

States Parties are requested to fill in this table with the necessary information and return it to the Secretariat of the PC-OC. The information contained in this table should be updated on a yearly basis.

<p>The competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for rendering mutual legal assistance:</p>	<p>Mutual legal assistance requests may be sent to Poland via Central Authority or directly to the competent judicial authority executing such requests as provided for in the European Convention on Mutual Assistance in Criminal Matters of 1959 and in the Second Additional Protocol to that convention of 2001.</p> <p>In case the request deals with the <u>evidence or information which is requested in the investigative stage of criminal proceedings</u>, the MLA requests should be directed to the competent prosecutorial unit having territorial jurisdiction or to the Central Authority which is: The Ministry of Justice-National Prosecutor’s Office</p> <p>Address: Ministry of Justice National Prosecutor’s Office Bureau of International Legal Cooperation Al. Ujazdowskie 11 00-950 Warsaw tel. 0048 22 523 70 32 fax.0048 22 628 16 82 e-mail: mailto:adamiak@ms.gov.pl pr.bopz@ms.gov.pl</p> <p>In case the request deals with the <u>evidence or information which is requested in the court hearing</u>, the MLA requests should be directed to the competent court having territorial jurisdiction or to the Central Authority which is: The Ministry of Justice</p> <p>Address: Ministry of Justice Department of International Cooperation and European Law Al. Ujazdowskie 11 00-950 Warsaw tel. 0048 22 628 09 49 fax.0048 22 628 09 49 e-mail: dwm@ms.gov.pl adamiak@ms.gov.pl</p> <p>Pursuant to Poland’s declaration deposited to the Second Additional Protocol to the European Convention on mutual assistance in criminal matters, all requests concerning the hearing of witnesses or experts by video conference or telephone conference, should be transmitted via the Ministry of Justice.</p> <p>In this declaration, Poland also appointed the Chief of Staff of the Police (“Komendant Główny Policji”) as Central Authority competent to receive and execute requests for controlled delivery and covert investigation.</p>
<p>Language requirements:</p>	<p>Pursuant to Poland’s declaration of 19.03.1996 deposited to the European Convention on mutual assistance in criminal matters: <i>“The requests and other documents being transmitted shall be accompanied by a translation into the Polish language or into an official language of the Council of Europe; the translation of the documents which are to be transmitted is not necessary if the transmission has the form of a simple service. In other cases they shall be translated into the Polish language if</i></p>

	<i>the receiver is a Polish national or if his permanent residence is in Poland."</i>
Time limits:	<p>There are no statutory limits for receiving formal MLA requests nor for executing such requests. However all such request may be given priority over domestic cases especially if they are flagged as "urgent".</p> <p>The lapse of time for a certain criminal act under Polish law (prescription) is not, <i>per se</i>, a ground for refusal.</p>
Documentation required:	<p>Documentation required for the MLA request to be executed by Poland is basically the request itself (which, due to article 14 of the European Convention on mutual assistance in criminal matters should indicate: the authority making the request; the object of and the reason for the request; where possible, the identity and the nationality of the person concerned; where necessary, the name and address of the person to be served; the offence and a summary of the facts). Additionally, especially for those requests that relate to search and seizure, it would be practicable and advisable to attach the certified copies of the domestic decisions on search and seizure. In case the request is for interviewing witnesses or suspects, the list of questions to be asked should also be annexed to the letter of request.</p>
List of possible actions sought:	<p>Practically any type of action permissible under international and domestic law can be sought.</p> <p>There are indeed limited number of grounds for refusal, ant they include certain situations covered by art. 2 of the European Convention. Under Polish legal system, mandatory grounds for refusal include those cases where the execution of the request is likely to prejudice the sovereignty or basic principles of the national legal order.</p> <p><u>Most important cases where national legal order is invoked include:</u> requests for videoconferencing the suspect; interviewing certain categories of witnesses (a priest as to the facts covered by confession secrecy and a lawyer as to the facts strictly related to his case – "lawyer-client privilege") and examining the persons with the use of polygraph. The aforementioned actions are also prohibited under Poland's domestic legislation.</p> <p>Optional grounds include: lack of competence on the part of domestic judicial authority executing the request, lack of reciprocity on the part of the requesting state, lack of double criminality.</p> <p>Additionally, pursuant to Poland's declaration to the Second Additional Protocol, Poland will not execute the requests concerning cross-border observations and avails itself of the possibility not to proceed to the enforcement of a request of a temporary transfer of a person detained on the territory of the requesting Party, when this person does not consent to the transfer.</p>
Double criminality requirement, if applicable:	<p>Double criminality may in certain cases be invoked as optional ground for refusal. The application of this ground is the discretionary power of the executing judicial authority – prosecutor or court.</p>
Statutes of limitation for special	<p>The issue of the prescription (limitation) is envisaged in art. 101, 102 and 103 of the Polish Penal Code of 6th June 1997 in a general way.</p>

<p>offences, if applicable:</p>	<p>The aforementioned provisions state the following:</p> <p><i>“Article 101. § 1. The amenability to punishment for an offence ceases, if from the time of the commission thereof the following number of years have elapsed:</i></p> <ol style="list-style-type: none"> 1) 30 - when the act constitutes a crime of homicide, 2) 20 - when the act constitutes other crime, 2a) 15 – when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 5 years, 3) 10 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 3 years; 4) 5 – for other misdemeanours. <p>§ 2. The amenability to punishment for an offence prosecuted by way of a private charge ceases after the expiration of one year, from the date on which the injured person learnt of the identity of the perpetrator of the offence and not later, however, than after the expiration of 3 years from the time of its commission.</p> <p>§ 3. If in the cases provided for in § 1 or 2, the commission depends on the occurrence of a consequence specified in the law, the time of limitation shall run from the date when this consequence has ensued.</p> <p><i>Article 102. If in the period specified in Article 101 the proceedings against a person have been instituted, the amenability to punishment for the offence specified in § 1 subsections 1-3 and committed by this person, ceases after the expiration of 10 years, and in other cases after the expiration of 5 years from the end of that period.</i></p> <p><i>Article 103. § 1. A penalty may not be executed if, from the time when the judgement has become final and valid, the following number of years have elapsed:</i></p> <ol style="list-style-type: none"> 1) 30 - in case of a sentence to a penalty of deprivation of liberty for a period exceeding 5 years or to a more severe penalty; 2) 15 - in case of a sentence to a penalty of deprivation of liberty not exceeding 5 years; 3) 10 - in case of a sentence to another penalty.” <p>There is however a specific provision of art. 105 which regulates the issue of prescription differently in relation to some special offences:</p> <p><i>“Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to <u>crimes against peace, crimes against humanity or war crimes.</u></i></p> <p>§ 2. The provisions of Articles 101 through 103 shall not be applied either to the <u>intentional offence of: homicide, inflicting serious bodily harm, causing serious detriment to health or deprivation of liberty connected with particular torture, perpetrated by a public official in connection with the performance of official duties.</u>”</p> <p>It means that there is no limitation for offences enlisted in art. 105 of the Penal Code.</p>
<p>Limitation of use of evidence obtained:</p>	<p>Not applicable</p>
<p>Means of communication:</p>	<p>As a rule, Poland accepts requests (together with supporting documents and supplementary information) sent by post in paper form. However, it can accept also faxed or e-mailed versions of the aforementioned documents provided that originals will be sent later by post in due time or upon request.</p>

Other particularly relevant information (such as national legislation, national guides on procedure, links to national web sites...):