

## POLOGNE ET SUISSE

Echange de notes ayant pour objet d'introduire, à titre d'addition à la Convention de La Haye du 17 juillet 1905, relative à la procédure civile, de nouvelles simplifications dans l'assistance judiciaire réciproque. Berne, les 7 février, 15 mars, 18 août et 22 septembre 1928.

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## POLAND AND SWITZERLAND

Exchange of Notes with the Object of introducing Further Simplifications, as an Addition to the Civil Procedure Convention concluded at The Hague, July, 17, 1905, in Reciprocal Judicial Assistance. Berne, February 7, March 15, August 18 and September 22, 1928.

<sup>1</sup> TRADUCTION. — TRANSLATION.

No. 3249. — EXCHANGE OF NOTES BETWEEN THE POLISH AND SWISS GOVERNMENTS WITH THE OBJECT OF INTRODUCING FURTHER SIMPLIFICATIONS, AS AN ADDITION TO THE CIVIL PROCEDURE CONVENTION CONCLUDED AT THE HAGUE, JULY 17, 1905, IN RECIPROCAL JUDICIAL ASSISTANCE. BERNE, FEBRUARY 7, MARCH 15, AUGUST 18, AND SEPTEMBER 22, 1928.

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*French official text communicated by the Polish Delegate accredited to the League of Nations. The registration of this Exchange of Notes took place August 31, 1933.*

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## I.

POSELSTWO  
RZECZYPOSPOLITEJ POLSKIEJ  
W BERNIE.

LEGATION  
OF THE POLISH REPUBLIC  
AT BERNE.

No. 308/28.

## NOTE VERBALE.

Whereas the Hague Convention<sup>2</sup> on Civil Procedure of July 17, 1905, provides that the signatory States must make certain declarations and allows them to settle sundry questions by agreement otherwise than in the manner provided in the Convention, the Polish Legation, acting on instructions from its Government, has the honour to make the following proposals to the Federal Department of Justice and Police :

*Ad Article 1, Paragraph 1.*

Applications for service of judicial documents on persons in Poland should be forwarded by the Swiss consulates to the Presidents of the District Courts of the place of residence of the addressee. At the same time the Polish Legation requests the Department to be so good as to indicate to it the Swiss authorities competent to receive applications for services of judicial documents from Polish Consuls in Switzerland.

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<sup>1</sup> Traduit par le Secrétariat de la Société des Nations, à titre d'information.

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

<sup>2</sup> *British and Foreign State Papers*, Vol. 99, page 990.

*Ad Article 9, Paragraph 1.*

Letters of request for execution on Polish territory should be forwarded to the Polish Ministry of Justice. The Polish Legation would be much obliged if the Federal Department of Justice and Police would indicate to it the Swiss authorities competent to receive, through the Polish Consuls, letters of request for execution on Swiss territory.

*Ad Article 6, Paragraph 1.*

The Polish Government, declares that subject to reciprocity it agrees that service of judicial documents should be made in the manner provided for in paragraphs 1 and 3 of Article 6, Section 1, on the other hand, it does not agree to the manner of making such service provided for in paragraph 2 of the same Section.

The Polish Legation requests the Federal Department of Justice and Police to be good enough to inform it whether the Swiss Government consents to adopt the same method of transmission of applications for service of judicial documents coming from Polish authorities for execution on Swiss territory. If the Polish Government and the Swiss Government can agree on this point, an exchange of declarations on the subject might take place.

*Ad Article 18, Paragraph 3.*

The Polish Government agrees that in Polish territory the requests for enforcement mentioned in this article may be addressed direct by the parties concerned to the competent authorities.

As regards the language to be used in drawing up the judicial documents for service, the letters of request and the decisions concerning costs and expenses under the conditions provided for in Articles 3, 10 and 19 of the said Convention, the Polish Government considers it desirable to maintain the practice at present established as between Poland and Switzerland in respect of letters of request and service of documents by the exchange of notes of 28.IX.1921, 22.X.1921 (No. 1697-21) and 31.I.1923 (No. 122-23) and the extension of this practice to judgments concerning costs and expenses under the conditions provided for in Article 19, Section 2, No. 3.

The Polish Legation has the honour to be, etc.

BERNE, *February 7, 1928.*

To the Federal Department of Justice and Police,  
Berne.

## II.

FEDERAL DEPARTMENT  
OF JUSTICE AND POLICE.

No. P.R.16 Sch.

BERNE, *March 15, 1928.*

In reply to the Note verbale of February 7, No. 308/28, concerning the application of the Hague Convention on civil procedure, the Federal Department of Justice and Police has the honour to inform the Polish Legation as follows :

*Ad Article 1, Paragraph 1.*

The Department has taken note of the fact that applications for service of judicial documents on persons in Poland can be forwarded by the Swiss consulates to the Presidents of the District Courts of the place of residence of the addressee, which means in practice that they will be forwarded through the Swiss Legation at Warsaw, which at present is the only Swiss consular establishment in Poland.

As regards notification in Switzerland, the Polish Legation and Consulates in Switzerland may, as hitherto, apply direct to the Police Division of this Department.

*Ad Article 9, Paragraph 1.*

The Department notes the fact that Swiss letters of request may be forwarded to the Polish Ministry of Justice. They understand this to mean that they will be forwarded through the Swiss Legation at Warsaw.

Polish letters of request for execution in Switzerland, like documents to be served, will be received by the Federal Police Division, to whom they will be forwarded by the Polish Legation or Consulates in Switzerland.

*Ad Article 6.*

The Department has the honour to inform the Polish Legation that it has always regarded the service of judicial documents on persons resident in Switzerland as an official act which is the prerogative of the Swiss authorities and has always held it to be inadmissible that any foreign State should serve judicial documents in the manner specified in Article 6, Section 1, paragraphs 1 and 3. It is obliged to maintain this attitude towards Poland also. Consequently direct service, within the meaning of the final clause of Section 2, can only be allowed in the case of Polish nationals resident in Switzerland in so far as such service is not coercive in character.

*Ad Article 18, Paragraph 3.*

The Department agrees that it will not be necessary for requests for enforcement to pass through the diplomatic channel.

Polish decisions concerning costs may be enforced in Switzerland as follows : The creditor can — without any previous action to secure enforcement — address an application for proceedings to the competent Debt Recovery Proceedings Office (*Office de Poursuites*) (Article 67 of the Federal Law on Debt and Bankruptcy). On receipt of the request to undertake proceedings, the Office prepares a summary to pay (Article 69). If the debtor does not file a plea to the action within ten days from the receipt of the summons (Articles 74 *et sequentes*) the creditor may at the end of twenty days without further formalities demand that the proceedings shall continue (see Articles 88 and 159). If, however, the debtor files a plea to the action within the specified time-limit, the creditor may apply to the judge to disallow the plea (Article 80, paragraph 1, and

Article 81, paragraph 3). The judge considers whether the conditions laid down in Article 19 of the Convention on Civil Procedure are fulfilled ; if he decides affirmatively, he disallows the debtor's plea ; the creditor may then ask that the proceeding shall continue.

A copy in French of the Federal Law on Proceedings in Debt and Bankruptcy is attached herewith.

As regards the question of language, the Department is also of opinion that the rules agreed on by the exchange of Notes verbales on September 28/October 24 (not October 22), 1921, concerning service of documents and letters of request should remain in force, particularly as this Convention is in harmony with the provisions of the Hague Convention. In this connection the Department would again refer to its note of May 10, 1925 (P.R. 16 Sch.), under which coercive summonses within the meaning of Article 3 of the Hague Convention should be treated as letters of request, i.e. documents to be served in special (coercive) form should be accompanied by a translation into the language of the authority to which application is made.

So far as concerns the question of language in relation to Article 19, Section 2, paragraph 3, it should be remembered that the request for enforcement (or, in Switzerland, the application for the disallowing of the plea to the action) is made direct by the parties concerned ; the application should be made out in the language of the authority to which application is made, so that substantiating documents should also be accompanied by a translation into that language. The reasons for the judgment under paragraph 3, Section 2, of Article 19 need not be translated. A translation of the text of the judgment itself (with its introductory clauses) is sufficient, together with a translation of the documents mentioned in Section 3.

The Department would be grateful if the Polish Legation would communicate its views on the foregoing.

It has the honour to be, etc.

The Polish Legation,  
at Berne.

(L. S.)

*i annex.*

### III.

POSELSTWO  
RZECZYPOSPOLITEJ POLSKIEJ  
W BERNIE.

LEGATION  
OF THE POLISH REPUBLIC  
AT BERNE.

No. 1841/28.  
Ref. P.R. 16. Sch.

The Polish Legation has the honour to acknowledge receipt of the Note from the Federal Department of Justice and Police, dated March 15 last, dealing with the application to Poland and Switzerland of the Hague Convention on Civil Procedure.

In reply to this communication, which it has communicated to its Government, the Polish Legation is instructed to make the following statement :

*Re Articles 1, Paragraph 1, and 9, Paragraph 1.*

The Polish Government takes note of the fact that the coming into force of the Hague Convention on Civil Procedure in no way alters the hitherto established practice so far as concerns applications for service of judicial documents and Polish letters of request for execution in Switzerland, which is equivalent to saying that the Polish Legation and Consulates may continue to forward the documents direct to the Federal Department of Justice and Police.

*Re Article 6, Paragraph 1.*

The Polish Government has taken note of the fact that the Federal Government finds it necessary to object to the direct service of documents for execution in Switzerland in the manner indicated in paragraph 1 of the said Article.

*Re Article 18, Paragraph 3.*

The Polish Government takes note that the Federal Government agrees to allow the interested parties to forward requests for enforcement direct to the Swiss authorities, without passing through the diplomatic channel. On this point the Legation desires to thank the Federal Department of Justice and Police for the information which it has kindly supplied in its Note as to the manner in which Polish decisions concerning costs and expenses can be enforced in Switzerland, and for communicating the texts of the Federal laws on proceedings in debt and bankruptcy. This information will certainly be of great utility to the competent Polish authorities.

*Re Articles 3 and 10.*

As regards the question of language, the Polish Government notes that the Federal Government is also willing to maintain the rules hitherto agreed upon and applied by the two Parties, both as concerns letters of request and simple service of documents, and also service in special (coercive) form, it being understood that the latter should be accompanied by a full translation in accordance with Article 3 of the Convention.

*Re Article 19, Paragraph 2 (3).*

The Polish Government takes note of the point of view of the Swiss Government of the question of language, so far as it concerns this Article, and the additional explanations thereto, and the fact that, according to the interpretation given by the Federal Government, requests for enforcement (applications for the disallowing of the plea to the action) should be made in the language of the authority to which application is made, and that substantiating documents should also be accompanied by a translation into that language. On the other hand, in the case of the judgments, only a translation of the actual text of the judgment is necessary, the reasons for the judgment not requiring translation.

In bringing the above to the notice of the Federal Department of Justice and Police, the Polish Legation has the honour to add that the Polish Government will see that the competent authorities

receive the necessary instructions in pursuance of the declarations set forth above. The Legation would therefore be grateful if the Department would confirm receipt of the present Note, in order that the Polish Legation may inform the Ministry of Foreign Affairs.

The Polish Legation has the honour to be, etc.

BERNE, *August 18, 1928.*

To the Federal Department of Justice and Police,  
Berne.

IV.

SWISS CONFEDERATION.  
FEDERAL DEPARTMENT  
OF JUSTICE AND POLICE.  
No. P.R.16 Sch.

BERNE, *September 22, 1928.*

The Federal Department of Justice and Police has the honour to acknowledge receipt of the Polish Legation's Note Verbale of August 18, No. 1841/28, concerning the application of the Hague Convention on Civil Procedure on the relations between Switzerland and Poland. The Department has taken cognisance of the declarations of the Polish Legation and notes that there is perfect agreement between the points of view adopted on both sides.

The Department of Justice and Police has the honour, etc.

(L. S.)

To the Polish Legation  
at Berne.