

**THE LAW AND PRACTICE OF COMMERCIAL
AND TREATY-BASED ARBITRATION IN POLAND:
RECENT DEVELOPMENTS AND CURRENT TRENDS**

Summary

This paper analyses the recent developments and current trends in the landscape of Polish arbitration. It commences with a brief overview of the legal framework governing arbitration in Poland, followed by a review of the practice of the Polish state courts in post-arbitral cases. It then describes the most relevant Polish arbitral institutions. Next, it proceeds to examine the position of treaty-based arbitration in the Polish context. Each of these sections discusses the challenges and perspectives faced by arbitration in Poland.

Keywords: Arbitration, dispute resolution, Poland, Court of Arbitration at the Polish Chamber of Commerce, Lewiatan Court of Arbitration.

* Lecturer in law at Brunel University of London (United Kingdom), associate professor at Adam Mickiewicz University in Poznań (Poland), FCI Arb, attorney-at-law (Poland, Spain), LL.M. (2011, Canada), Ph.D. (2016, Poland), Ph.D. (2024, Spain).

E-mail: filip.balcerzak@brunel.ac.uk • filip.balcerzak@amu.edu.pl

ORCID: <https://orcid.org/0000-0001-8579-9162>

ZAKON I PRAKSA TRGOVINSKE ARBITRAŽE I ARBITRAŽE NA OSNOVU SPORAZUMA U POLJSKOJ: NAJNOVIJI RAZVOJ DOGAĐAJA I AKTUELNI TRENDovi

Sažetak

U ovom članku analiziraćemo nedavna dešavanja i aktuelne trendove u oblasti arbitraže u Poljskoj. Prvo ćemo dati kratak pregled pravnog okvira za arbitražu u Poljskoj, a zatim i pregled prakse poljskih državnih sudova u “post-arbitražnim” predmetima. Nakon toga ćemo posvetiti pažnju najrelevantnijim poljskim arbitražnim institucijama. Na kraju ćemo razmotriti položaj arbitraže na osnovu sporazuma. U svakom od delova biće reči i o izazovima i perspektivama sa kojima se suočava arbitraža u Poljskoj.

Ključne reči: Arbitraža, rešavanje sporova, Poljska, Arbitražni sud pri Poljskoj privrednoj komori, Arbitražni sud „Levijatan“.

1. Introduction

Arbitration in Poland is deeply rooted in the legal framework, and Poland is perceived as an arbitration-friendly jurisdiction. Its legislation implements the UNCITRAL Model Law and, in approximately 90% of post-arbitral disputes, Polish courts uphold the effectiveness of arbitral awards, either by enforcing them or by refusing to set them aside.

This paper commences with a brief overview of the legal framework governing arbitration in Poland, followed by a review of the practice of the Polish state courts in post-arbitral cases. It then describes the most relevant Polish arbitral institutions. Next, it proceeds to examine the position of treaty-based arbitration in the Polish context. Each of these sections discusses the challenges and perspectives faced by arbitration in Poland.

2. Legal Framework

Arbitration plays an important role in the Polish legal system, and is deeply rooted in the Polish legal framework. It is regulated as part of Poland’s Code of Civil Procedure (Law of 17 November 1964 Code of Civil Procedure – unified text Polish Journal of Laws of 2023, item 1550, as amended). Since it was amended in 2005, arbitration is

regulated in Part V of the Code. It implements the UNCITRAL Model Law (Aslanowicz, 2017), albeit with some diversions. For example, these provisions are not limited to international arbitration, but apply to both domestic and international arbitrations.

Poland is a monist state, meaning that international conventions ratified by Acts of Parliament are directly applicable and take precedence over national legislation in the hierarchy of legal norms (Article 91, The Constitution of the Republic of Poland). Consequently, several international conventions relevant to arbitration are directly applicable in Poland, including the 1958 New York Convention,¹ and the 1961 European Convention on International Commercial Arbitration.² Poland remains a party to the 1923 Geneva Protocol on Arbitration Clauses,³ and is a party to several bilateral treaties on the recognition and enforcement of arbitral awards.⁴ Notably, Poland has never signed or ratified the ICSID Convention (Convention on the settlement of investment disputes between States and nationals of other States).

In recent years, three important legislative amendments have influenced the regulatory framework governing arbitration in Poland.

In 2017, Poland introduced Art. 1164¹ to the Code of Civil Procedure. This implemented Art. 10 of the directive on alternative dispute resolution for consumer disputes (see, Art. 10, Directive 2013/11/EU).⁵ Until then, consumer arbitration was governed by the same rules as commercial arbitration. From the moment the aforementioned amendment entered into force, an arbitration agreement to which a consumer is a party is only valid if it was concluded after the relevant dispute arose (*compromis*). Moreover, such an arbitration agreement must be concluded in writing, and must include information that the parties are aware of the consequences of having concluded an arbitration agreement, and in particular that an arbitral award (or a settlement concluded before an arbitral tribunal) has the same legal effects as a court judgment (or a settlement concluded before a domestic judge).⁶

In 2019, an amendment was made to Art. 1163 of the Code of Civil Procedure, regulating arbitration of corporate disputes – understood as disputes based on arbitration

¹ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done in New York on 10 June 1958, published in Polish Journal of Laws from 1962, No 9, pos. 41.

² European Convention on International Commercial Arbitration done in Geneva on 21 April 1961, published in the Polish Journal of Laws from 1964, No 40, item 17.

³ Protocol on Arbitration Clauses done in Geneva on 24 September 1923, published in the Polish Journal of Laws from 1931, No 84, item 648.

⁴ With Algeria, Bosnia and Herzegovina, China, Croatia, Iraq, Montenegro, Morocco, North Macedonia, Serbia, Slovenia, Syria, and Turkey.

⁵ This amendment of the Polish Code of Civil Procedure entered into force on 10 January 2017.

⁶ Written form is interpreted in the light of the Polish Civil Code, Art. 78, which clarifies that a qualified electronic signature is equivalent to a wet-ink signature (see, Art 78, Polish Civil Code).

agreements included in companies' articles of associations, typically concerning claims for the annulment or invalidation of resolutions adopted by the general meeting of a limited liability company or a joint stock company. Whilst this type of disputes was capable of being resolved in arbitration prior to the aforementioned amendment, it was believed that the lack of more specific provisions dedicated to corporate disputes was the main reason why few, if any, corporate disputes had ever actually been resolved through arbitration. This legislative amendment was optimistically welcomed by the major Polish arbitral institutions, which adopted special rules of procedure to accommodate it. For example, the Court of Arbitration at the Polish Chamber of Commerce adopted separate rules regulating corporate disputes (Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2024c), whereas the Lewiatan Court of Arbitration adopted supplementary regulations in the form of an appendix to the general arbitration rules (Rules of the Lewiatan Court of Arbitration, 2023).

Despite all these efforts, corporate disputes remain non-existent in arbitration in Poland. It was publicly reported that, as of September 2024, there had not been a single arbitration based on these dedicated rules of procedure.

In 2023, Art. 1161¹ of the Code of Civil Procedure was introduced. This regulated the “*conversion*” of court litigation into arbitration. This new provision introduced an explicit legal basis allowing an arbitration agreement to be concluded during pending court proceedings. Whilst this was also possible prior to the introduction of the new provision, the consequences of such an arbitration agreement are now explicitly regulated. First, the state court should discontinue the pending court proceedings.⁷ Second, the statute of limitations starts to run anew after the discontinuance decision becomes final and binding (Art. 1161¹ § 2, Code of Civil Procedure). Third, three quarters of the amount of court fees already paid are reimbursed to the claimant once the court litigation is discontinued (Art. 79(2)(aa), Law on the Court Fees in Civil Matters).

This development was warmly welcomed by the Polish arbitral community, particularly in the context of the increasing length of average times before Polish state courts for resolving business disputes (corresponding to the overall trend of an increasing number of cases brought before domestic courts). Despite such initial enthusiasm, it is believed that, as of the moment of writing this paper, there has not yet been a single conversion in practice.⁸

⁷ Pursuant to Art. 1161¹ § 2 of the Code of Civil Procedure, following the newly concluded arbitration agreement, the parties shall file a joint motion for discontinuance of the court litigation.

⁸ Both the Court of Arbitration at the Polish Chamber of Commerce and the Lewiatan Court of Arbitration confirmed to the author that they have not yet handled a single “*conversion*” case. However, it cannot be excluded that a “*conversion*” existed in favour of *ad hoc* arbitration, or in favour of an international arbitral institution.

3. State Courts' Attitude towards Arbitration

Poland is perceived as an arbitration-friendly jurisdiction. A recent study has confirmed the existence of a “*pattern*” of decisions issued by Polish state courts, proving the existence of “*arbitration friendliness*” within the Polish courts. An analysis of the decisions issued by Polish courts in post-arbitral cases in the period 2020-2022 has revealed that, in approximately 90% of all relevant decisions, “*Polish courts either enforced or refused to set aside arbitral awards, and thus upheld the effectiveness of arbitral awards.*” (Durbas, Ziarko & Zbiegień, 2023).

Courts of Appeals, which are the highest instance in the Polish structure of state courts in civil matters, are competent to hear post-arbitral cases.⁹ This, in principle, guarantees that post-arbitral proceedings are decided in an efficient manner. However, in cases concerning motions to enforce or recognize domestic arbitral awards, the unsuccessful party can challenge the court's decision by filing an interlocutory appeal (*zażalenie*), which is ruled upon by other judges of the same court (Art. 1214 § 4, Polish Code of Civil Procedure). In cases concerning motions to enforce or recognize foreign arbitral awards (Art. 1215 § 3, Polish Code of Civil Procedure), or motions to set aside arbitral awards issued in Poland (Art. 1208 § 3, Polish Code of Civil Procedure), the unsuccessful party may file a cassation appeal (*skarga kasacyjna*) to the Supreme Court. If the Supreme Court consents to hear a case on its merits, the proceedings can last several years if that court quashes the lower court's judgment and remits the case for reconsideration at first instance. This explains why post-arbitral proceedings in Poland can be lengthy if the parties utilize of all the available legal possibilities.

4. Leading Arbitral Institutions

There are several arbitral institutions active in Poland. However, as regards their caseloads, two institutions play the most important role in the Polish arbitral landscape: the Court of Arbitration at the Polish Chamber of Commerce in Warsaw and the Lewiatan Court of Arbitration in Warsaw.¹⁰

⁹ Arts. 1208 and 1213¹ of the Polish Code of Civil Procedure, as amended by Art. 1 of the Law on amending certain acts in connection with supporting amicable dispute resolution methods, *Polish Journal of Laws* of 2015, item 1595.

¹⁰ Polish arbitral practitioners often comment that the existence of these two competing institutions leads to some degree of discomfort when drafting arbitration agreements in favour of these arbitral institutions. Whereas some practitioners prefer one institution or the other, the discussion can sometimes result in a choice of *ad hoc* domestic arbitrations or arbitration agreements concluded in favour of international arbitral institutions, rather than domestic ones.

The Court of Arbitration at the Polish Chamber of Commerce in Warsaw was established in 1950.¹¹ It is the arbitral institution with the highest caseload in Poland. During its 70 years of activity, it has handled over 15,000 disputes, 1,365 of which were handled between 2010 and 2020.¹² In 2020, there were 169 new cases, in 2021 – 184, in 2022 – 144, in 2023 – 146, and in 2024 (as of September 2024) – 101 new cases. A growing number of these cases have an international character – 11 in 2020, 25 in 2021, 31 in 2022, 43 in 2023, and 17 in 2024 (as of September 2024). As regards the most common sectors of the economy, a significant number of those disputes concern: the sales of goods (including agency, commission, commercial trade),¹³ services (including financial services),¹⁴ construction (including construction works),¹⁵ leases,¹⁶ and corporate disputes (resulting from share purchase agreements, investment agreements and dissolutions of companies, and not falling within the scope of Art. 1163 of the Polish Code of Civil Procedure commented above).¹⁷

The Lewiatan Court of Arbitration in Warsaw (formally the Court of Arbitration at the Polish Confederation Lewiatan) was established in 2005 (Court of Arbitration Lewiatan, 2024). Between 1 January 2017 and 10 September 2024, 252 new cases were filed with the Lewiatan Court of Arbitration. In the same period, arbitral tribunals issued 193 awards and decisions concluding arbitral proceedings.¹⁸ Six motions were issued for, and arbitral decisions issued by, emergency arbitrators. As regards the most common sectors of the economy, most disputes during this period

¹¹ It is the second oldest existing arbitral institution in Poland, the oldest being the Court of Arbitration at the Gdynia Cotton Association, which has been active since 1938 (Gdynia Cotton Association, 2024).

¹² Initially, during Soviet times, this operated as a separate, independent unit created to settle international trade disputes, under the name of the “Council of Arbitrators at the Polish Chamber of Foreign Trade” (Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2024b).

¹³ 25 cases in 2020, 45 in 2021, 26 in 2022, 36 in 2023, 19 in 2024 (as of September 2024).

¹⁴ 18 cases in 2020, 35 in 2021, 28 in 2022, 35 in 2023, 34 in 2024 (as of September 2024).

¹⁵ 56 cases in 2020, 33 in 2021, 21 in 2022, 19 in 2023, 21 in 2024 (as of September 2024).

¹⁶ 42 cases in 2020, 49 in 2021, 42 in 2022, 33 in 2023, 17 in 2024 (as of September 2024).

¹⁷ 3 cases in 2020, 10 in 2021, 18 in 2022, 15 in 2023, 5 in 2024 (as of September 2024). The data referred to in footnotes 26-30 are based on information received by the author from the Court of Arbitration at the Polish Chamber of Commerce in Warsaw on 4 September 2024, on file with the author. On 14 October 2024, the author received clarification as to how this arbitral institution defines “corporate disputes,” and confirmation that there has been no dispute concerning annulment or invalidation of a resolution adopted by a general meeting of a company.

¹⁸ 36 awards and 6 decisions in 2017, 25 awards and 5 decisions in 2018, 15 awards and 4 decisions in 2019, 22 awards and 7 decisions in 2020, 9 awards and 9 decisions in 2021, 12 awards and 15 decisions in 2022, 17 awards in 2023, 9 awards and 4 decisions in the period from 1 January to 10 September 2024. The author’s calculations result in a total number of 195, rather than 193 awards and decisions, i.e., 2 more than in the official data shared by the Lewiatan Court of Arbitration.

concerned: construction works (49 cases), commercial agreements (32 cases), and lease agreements (25 cases).¹⁹

The Lewiatan Court of Arbitration has announced that the average time from the moment when an arbitral tribunal is constituted until it issues an award is between 4.5 and 5 months, and even as short as 1.5 to 2 months in the expedited procedure. The average time between the filing of a statement of claim until the constitution of an arbitral tribunal is between 1.5 and 2 months, and between 1 and 1.5 months in the expedited procedure.²⁰

Even though the Lewiatan Court of Arbitration clearly has fewer cases than the Court of Arbitration at the Polish Chamber of Commerce, both the institutions form part of the Polish arbitral landscape, and provide high-quality services at competitive prices.

The prevailing view is that, in the Polish business reality, domestic arbitration must be competitive regarding its pricing in comparison with the state courts, or businesses would be less inclined to use arbitration. Indeed, arbitral fees in Poland are comparable to those of the Polish state courts, and within certain margins, they can be even lower than the court fees. A recent study shows that arbitral fees in Poland are lower than the court fees if the value of the dispute is between PLN 1,347,000 and PLN 19,133,000 (at the Court of Arbitration at the Polish Chamber of Commerce), and between PLN 1,120,000 and PLN 24,580,000 (at the Lewiatan Court of Arbitration) (Waszewski & Kocur, 2023, p. 16).²¹

Located between East and West, in the 21st largest economy worldwide by GDP (World Bank Group, 2024a), and the 20th by GDP PPP (World Bank Group, 2024b), Polish arbitral institutions have the potential to become an international dispute resolution hub in the Central and Eastern Europe region. To date, such potential has not converted into reality, as the above case numbers show.²² However, both the institutions have undertaken efforts to achieve this goal. For example, in 2024, each published drafts of new arbitration rules, which are expected to be adopted and enter into force in the near future, with the target date set for 1 January 2025 (Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2024; Polish

¹⁹ Information received by the author from the Lewiatan Court of Arbitration on 10 September 2024, on file with the author.

²⁰ Information received by the author from the Lewiatan Court of Arbitration on 10 September 2024, on file with the author.

²¹ However, with the entry into force of new rules in 2025, the arbitral fees are expected to increase.

²² However, these statistics demonstrate the strength of Polish arbitral institutions when compared to, for example, the Vienna International Arbitral Centre, which also seeks to be the arbitration hub for the region, despite having only 41 new cases filed throughout 2022. (see, Vienna International Arbitral Centre, hereinafter: VIAC, 2022).

Confederation Lewiatan, 2024). The new rules intend to reflect the most up-to-date current trends in international arbitration. Another example is the growing cooperation between arbitral institutions. For example, the Court of Arbitration at the Polish Chamber of Commerce cooperates with the Arbitration Institute of the Stockholm Chamber of Commerce (which has a similar profile of a neutral forum for disputes between East and West), with the aim being to expand the arbitration market, rather than to enter into direct competition with its Swedish counterpart (Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2023).

Polish arbitral institutions note that their caseload could be higher if not for the approach adopted several years ago by public authorities in practice, whereby they stopped concluding arbitral agreements and instead relied on jurisdictional clauses in favour of state courts. This has had a visible impact on the caseload of domestic arbitration tribunals, particularly in sectors such as construction, where public contracts (often concluded through public procurement) continue to be the flywheel of the economy. There are certainly many reasons that could explain this state of affairs, with one of the most relevant ones being the public authorities' better track record when litigating disputes before state courts than when engaging in arbitration. The General Counsel to the Republic of Poland, who represents the State Treasury and other state authorities in the most important cases,²³ has a success rate of 95.7% when the State Treasury or other public authority is named as the respondent in domestic litigation, and the success rate of 85.2% when the State Treasury or other public authority acts as the claimant in domestic litigation (General Prosecutor of the Republic of Poland, 2023, p. 15).

Other arbitral institutions also have a role in the landscape of Polish arbitration, including the Court of Arbitration of Greater Poland,²⁴ and the Court of Arbitration at the Chamber of Commerce and Industry in Katowice (Chamber of Commerce and Industry in Katowice, 2024). Additionally, there are several arbitral institutions focusing on particular industries, such as the Court of Arbitration for Internet Domain Names at the Polish Chamber of Information Technology and Telecommunication (The Polish Chamber of Information Technology and Telecommunications, 2024), the Court of Arbitration at the Gdynia Cotton Association

²³ The cases in which the General Counsel to the Republic of Poland represents the country are enumerated in the Act from 15 December 2016 on the General Council to the Republic of Poland (unified text Journal of Laws from 2024, item 1192, as amended). As a general rule, the General Counsel to the Republic of Poland Office represents the State Treasury in almost all court proceedings, and represents other public authorities if the value of the dispute exceeds PLN 5,000,000.

²⁴ Established in 2021, as a result of a consolidation of several arbitral institutions present in the region of Greater Poland (Wielkopolska) in Western Poland (Wielkopolska Court of Arbitration, 2021).

(Gdynia Cotton Association, 2024), the International Court of Arbitration at the Polish Chamber of Maritime Commerce (Polish Chamber of Maritime Commerce, 2019), the Court of Arbitration at the Polish Bank Association (Polish Bank Association, 2024), and the Court of Arbitration at the Polish Financial Supervision Authority (Polish Financial Supervision Authority, 2024). There is also an online arbitral institution named Ultima Ratio, which focuses on small-value claims that are resolved in a fully online procedure (Ultima Ratio, 2024; Rojek-Socha, 2019), and the Court of Arbitration at the General Counsel to the Republic of Poland (Service of the Republic of Poland, 2024), which focuses on disputes concerning public authorities.²⁵

5. Resistance towards Treaty-Based Arbitrations

Since the birth of arbitrations based on international investment treaties, Poland has been and continues to be in the top 10 most sued states under investment treaties (UNCTAD, 2022, p. 3). This often escapes the general reports and has remained unnoticed, since Poland is not a signatory to the ICSID Convention, and therefore is not included in the ICSID statistics. Typically, even the mere fact that a case is ongoing is considered by the Polish authorities as confidential, and details are not publicly revealed. When summarising all publicly known cases (below), Poland has been the respondent state in at least 35 treaty-based arbitrations – which makes it the second most sued and most frequent respondent EU member state, after Spain (UNCTAD, 2022, p. 3).²⁶

This emphasis on confidentiality has resulted in efforts to seek greater transparency through the Polish Freedom of Information Act (Act on access to public information, unified text Polish Journal of Laws of 2022, item 902, as amended). Initial attempts in this regard related to the *Servier v. Poland* case, where even *amicus curiae* were submitted in the course of judicial proceedings before the Polish administrative courts (Centre for International Environmental Law, 2013). A significant number of awards have been obtained under the Polish Freedom of Information Act since then, despite the fierce resistance of the Polish authorities

²⁵ However, as noted earlier, public authorities are hesitant to resolve disputes through arbitration even under the “umbrella” of state lawyers such as the General Counsel to the Republic of Poland. In 2023, there were only 4 arbitrations commenced at the Court of Arbitration at the General Counsel to the Republic of Poland (General Counsel to the Republic of Poland, 2023, p. 33).

²⁶ In the report, Poland is placed as the seventh most sued state in the ISDS worldwide during 2012-2021, with 20 reported cases. However, without limiting the analysis to any sub-period, Poland is not on the podium. Argentina (with 62 cases), Spain (55 cases), and Venezuela (55 cases) are the most frequent respondent States.

(Balcerzak & Hepburn, 2015, pp. 147-170). However, the Polish authorities remain unimpressed, and the same route through the Polish administrative courts is required to obtain copies of arbitral awards, unless an investor decides to make an award public or an undesired leak of such information occurs.²⁷

Initially, Poland was represented in treaty-based arbitrations by external law firms. However, with the lapse of years, Poland has built its own capacities. Currently, Poland is represented by state lawyers from the Office of the General Counsel to the Republic of Poland.²⁸

Poland's track record in arbitration proceedings is good. It has prevailed in the most of its reported treaty-based arbitrations: Saar Papier (II) (*Saar Papier Vertriebs GmbH v. Republic of Poland* (II)), Mercuria I (SCC Case No. 096/2008), East Cement (ICC Case No. 16509/JHN), Traco (*TRACO Deutsche Travertinwerke GmbH v. Republic of Poland*), Minnotte (ARB(AF)/10/1), Schooner (ARB(AF)/11/3), Enkev (PCA Case No. 2013-01), Seventhsun (SCC Case No. 138/2012), Almås (PCA Case No. 2013-15), Juvel (ICC Case No. 19459/MHM), Griffin (SCC Case No V 2014/168), Festorino (SCC Case No. 2018/098), and Ojeocan (SCC Arbitration V 2017/200). Even if Poland was formally found liable for having breached the relevant treaty, it still cannot be considered a 'lost' case if no compensation was awarded, which is what happened in the Crespo (*Crespo and others v. Republic of Poland*; see, Echeverri, 2020), and the Nordzucker (*Nordzucker AG v. Republic of Poland*) cases. This sums up to 15 investor-state arbitrations in which Poland has prevailed.

Poland has lost 11 cases: Cargill (*Cargill, Inc. v. Republic of Poland*), Servier (see, UNCTAD, 2009), Flemingo (PCA Case No. 2014-11), PL Holdings (SCC case No. V 2014/163),²⁹ Horthel (PCA Case No. 2014-31), Manchester Securities (PCA Case No. 2015-18),³⁰ Slot (PCA Case No. 2017-10),³¹ Syrena Immobilien (ICSID Case No. ADHOC/15/1),³² Lumina Copper (PCA Case No. 2015-27), Mercuria (II) (SCC

²⁷ For example, the author of this paper has a hearing scheduled at the Supreme Administrative Court on 5 December 2024, concerning access to the arbitral award issued in the Slot v. Poland case.

²⁸ Nevertheless, from time to time, the General Counsel to the Republic of Poland is assisted by an external law firm. The visible pattern indicates that this typically occurs in high-profile cases or when the value of the claim is considerably higher than usual.

²⁹ However, the award was set aside in Sweden – see, judgment of the Swedish Supreme Court of 14 December 2022, case no T 1569-19.

³⁰ However, the set aside proceedings remain pending (judgment of Brussels Court of First Instance of 18 February 2022, case no 19/3390/A, set aside the award, but the judgment was then quashed by the judgment of the Supreme Court of Belgium of 12 April 2024, case no C.22.0348.F).

³¹ However, Poland was successful in its motion to set aside the award based on the intra-EU arguments. (see, Judgment of the Paris Court of Appeal (Department 5 - Chamber 16) 20/14581 of 19 Apr 2022).

³² Whereas Poland lost on its objections to jurisdiction, it was successful in its motion to set

Case No. V 2019/126) and *Prairie Mining (Prairie Mining Limited v. Republic of Poland)*). However, sometimes the awarded compensation represents merely a small fraction of the compensation sought by the claimant. In the *Servier* case, Poland was ordered to pay less than 2% of the claimed amount (UNCTAD, 2009), whilst in the *Lumina Copper* case this was less than 0.18% of the claimed amount.³³ Similarly, in the *Slot* case, Poland was obliged to pay only 5% of the claimed amount (General Prosecutor of the Republic of Poland, 2021, p. 28).³⁴

Poland has settled at least 7 cases: *Ameritech (Ameritech v. Republic of Poland)*, *France Telecom (France Telecom v. Republic of Poland)*, *Schaper (Lutz Ingo Schaper v. Republic of Poland)*, *Eureko (Eureko B.V. v. Republic of Poland)*, *Vivendi (Vivendi v. Republic of Poland)*, *Darley (Darley Energy Plc v. Republic of Poland)*, *Airbus (Airbus Helicopters S.A.S. and Airbus S.E. v. Republic of Poland)*, At least two cases remain pending: *Invenergy (PCA Case No. 2018-40)* and *Honwood (ICC Case No. 22755/MHM)*.

Despite its relatively good track record in defending claims based on international investment treaties, in 2016, Poland took steps leading to the termination of various international investment treaties.³⁵ Poland mutually terminated the Denmark – Poland BIT,³⁶ the Latvia – Poland BIT,³⁷ the Estonia – Poland BIT,³⁸

aside the award based on the intra-EU arguments: Judgment of the Paris Court of Appeal (Department 5 - Chamber 16) 20/13085 of 19 Apr 2022; One may note that the French court which issued the two judgments in the *Slot* and *Syrena* cases on the same day was composed of the same judges. It is not publicly known whether the arbitration was formally discontinued.

³³ See, for example, announcement that despite losing the case on its merits, the state considered the case as a win, since the awarded compensation amounted to 0.17% of the claimed amount (see, Website of the Republic of Poland, 2021; similarly: General Prosecutor of the Republic of Poland, 2022, p. 26).

³⁴ Whilst the report specifies neither the case number nor the name of the claimant, it refers to a Czech investor and an award issued in 2020. Therefore, it can be understood that it refers to the *Slot v. Poland* case.

³⁵ First declarations were made by state officials in early 2016, see for example, answers of Mikołaj Wild, undersecretary at the Polish Ministry of the State Treasury: “[...] it seems that it is necessary not only to terminate these agreements, but also to make them lose their legal force as soon as possible, i.e. to shorten the transitional period during which these agreements will remain in force after termination. Therefore, the management of the Ministry of State Treasury made a decision to – of course after conducting all analyses of the profits and losses related to this process – to make these agreements expire as soon as possible. [...]” [unofficial translation] – Stenographic Report of the 12th Session of the Sejm of the Republic of Poland on 25 February 2016 (Sejm of the Republic of Poland VIII, 2016, p. 97).

³⁶ The proposal of 18 April 2017 sent by Denmark was accepted by Poland on 16 October 2017.

³⁷ The proposal of 17 October 2017 sent by Poland was accepted by Latvia on 28 October 2017.

³⁸ The proposal of 20 October 2017 sent by Poland was accepted by Estonia on 19 March 2018.

the Czech Republic – Poland BIT,³⁹ the Romania – Poland BIT,⁴⁰ and the Sweden – Poland BIT. It unilaterally terminated: the Austria – Poland BIT,⁴¹ the Belgium and Luxembourg – Poland BIT,⁴² the United Kingdom – Poland BIT,⁴³ the France – Poland BIT,⁴⁴ the Sweden – Poland BIT,⁴⁵ the Germany – Poland BIT,⁴⁶ the Cyprus – Poland BIT,⁴⁷ the Spain – Poland BIT,⁴⁸ the Netherlands – Poland BIT,⁴⁹ the Hungary – Poland BIT,⁵⁰ the Lithuania – Poland BIT,⁵¹ the Greece – Poland BIT,⁵² the Portugal – Poland BIT,⁵³ the Bulgaria – Poland BIT,⁵⁴ the Croatia – Poland BIT,⁵⁵

³⁹ The proposal of 10 January 2018 sent by Poland was accepted by the Czech Republic on 11 April 2018.

⁴⁰ The proposal of 14 March 2018 sent by Romania was accepted by Poland on 18 June 2018.

⁴¹ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 17 October 2018.

⁴² Poland withdrew in a document of 29 June 2018, notified to the other Contracting Party on 19 July 2018.

⁴³ Poland withdrew in a document of 19 November 2018, notified to the other Contracting Party on 22 November 2018.

⁴⁴ Poland withdrew in a document of 29 June 2018, notified to the other Contracting Party on 19 June 2018.

⁴⁵ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018. However, on 18 June 2020, Sweden proposed to mutually terminate the BIT, which was accepted by Poland on 8 July 2021.

⁴⁶ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 18 October 2018.

⁴⁷ Poland withdrew in a document of 29 June 2018, notified to the other Contracting Party on 17 July 2018.

⁴⁸ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018.

⁴⁹ Poland withdrew in a document of 29 June 2018, notified to the other Contracting Party on 19 July 2018.

⁵⁰ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018.

⁵¹ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018.

⁵² Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 7 November 2018.

⁵³ Poland withdrew in a document of 6 November 2017, notified to the other Contracting Party on 16 November 2017.

⁵⁴ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018.

⁵⁵ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 18 October 2018.

the Slovenia – Poland BIT,⁵⁶ and the Finland – Poland BIT.⁵⁷ Bearing in mind that the Italy – Poland BIT had been terminated earlier,⁵⁸ this encompassed all intra-EU BITs to which Poland was a party, except the BIT concluded with Slovakia. This latter BIT was terminated once Poland signed and ratified the 2020 Agreement for the termination of BITs between the EU Member States.⁵⁹

Poland actively supported the European Commission's efforts to put an end to the intra-EU aspect of international investment arbitration. The General Counsel to the Republic of Poland reported its wide-range activities that contributed to such efforts and ultimately resulted in the famous *Achmea* (C-284/16, ECLI:EU:C:2018:158; General Prosecutor of the Republic of Poland, 2019, p. 22) and *Komstroy* judgments (C-741/19, ECLI:EU:C:2021:655; General Prosecutor of the Republic of Poland, 2022, p. 27), albeit these cases were not even remotely linked with Poland. Subsequently, the General Counsel to the Republic of Poland was the main actor whose actions led to the *PL Holdings* judgment (General Prosecutor of the Republic of Poland, 2022, p. 27). These activities represented a long-term strategy, and Poland successfully relied on the CJEU's judgments on intra-EU BITs to set aside several arbitral awards in lost cases. Poland was also one of the first EU member states to withdraw from the Energy Charter Treaty, having filed the official notification to the depositary on 28 December 2022 (see, Ministry of Foreign Affairs of Portugal, 2022).

Within this context, it may be surprising that Poland has not undertaken any steps to withdraw from the BITs in force between Poland and non-EU states, except those with the United Kingdom (Poland withdrew from the BIT with the United Kingdom once it became known that the United Kingdom was leaving the EU)⁶⁰ and Norway.⁶¹ Thus, Poland continues to be bound by the BITs with: Albania (1993), Argentina (1992), Australia (1991), Azerbaijan (1997), Bangladesh (1997), Belarus (1992), Canada (1990), Chile (1995), China (1998), Egypt (1995), Indonesia

⁵⁶ Poland withdrew in a document of 7 March 2019, notified to the other Contracting Party on 12 March 2019.

⁵⁷ Poland withdrew in a document of 4 October 2018, notified to the other Contracting Party on 16 October 2018.

⁵⁸ Poland received notification from Italy about the withdrawal on 22 August 2007.

⁵⁹ Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union (OJ L 169, 29 May 2020, pp. 1–41). Four EU member states are not parties to this Agreement: Austria, Ireland, Finland and Sweden. The Agreement entered into force on 29 August 2020 (European Council & Council of the European Union, 2020).

⁶⁰ Therefore, after the intra-EU terminations of investment arbitration and after Brexit, there is no BIT in place between Poland and the United Kingdom.

⁶¹ The proposal of 27 June 2023 sent by Poland was accepted by Norway on 18 July 2023.

(1992), Iran (1998), Israel (1991), Jordan (1997), Kazakhstan (1994), Kuwait (1990), Malaysia (1993), Moldova (1994), Mongolia (1995), Montenegro (1996), Morocco (1994), North Macedonia (1996), Serbia (1996), Singapore (1993), South Korea (1989), Switzerland (1989), Thailand (1992), Tunisia (1993), Turkey (1991), Ukraine (1993), United Arab Emirates (1993), the United States of America (1990), Uruguay (1991), Uzbekistan (1995), and Vietnam (1994). These are all “old generation” BITs, concluded in the late 1980s and throughout the 1990s.

In addition to the intra-EU BITs, the US-Poland BIT has played the most significant role in the historical record of arbitrations brought against Poland. Currently, the growing number and value of incoming investments from South Korea is expected to increase the relevance of the South Korea – Poland BIT, providing the basis of future investor-state arbitrations.

6. Conclusions

This paper describes Poland as an arbitration-friendly jurisdiction, which has implemented the UNCITRAL Model Law and whose domestic courts uphold the effectiveness of approximately 90% of arbitral awards, either by enforcing them or refusing to set them aside. The legislative amendments in recent years demonstrate that the legislative branch also upholds this pro-arbitration trend, striving to increase the relevance of arbitration in practice.

In 2024, the two major Polish arbitral institutions prepared new drafts of arbitration rules, reflecting modern trends in international arbitration. They provide high-quality services at competitive prices, comparable to the costs of domestic litigation, and cheaper than many international arbitral institutions. Located between East and West, in the 21st largest economy worldwide by GDP (World Bank Group, 2024a), and the 20th by GDP PPP (World Bank Group, 2024b), Polish arbitral institutions have the potential to become an international dispute resolution hub in the Central and Eastern Europe region.

Poland has acted as the respondent state in at least 35 treaty-based arbitrations, which may explain why it was one of the first EU member states to escape the intra-EU BITs and the Energy Charter Treaty. Nevertheless, as for now, Poland has not declared any intention to withdraw from its non-EU BITs, and they will continue to play an important role in Poland’s international legal landscape.

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