A preliminary study on the status of enforcing contracts in Poland

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The World Bank Group
Poland: Contract Enforcement

A preliminary study on the status of enforcing contracts in Poland

Contents
1. Executive Summary ................................................................. 2
   i) Overview ............................................................................. 2
   ii) Main Findings and Recommendations (to be completed after the October mission) ... 2
2. Introduction ........................................................................... 9
3. Objective & Methodology .......................................................... 10
4. Courts in Poland: Challenges and Opportunities ................................. 11
   i) Legislative Practice ............................................................. 11
   ii) Access to Information ......................................................... 12
   iii) Incentives to Litigate ......................................................... 14
       a.) When and Why Users Go to Courts ...................................... 14
       b.) Costs ............................................................................. 15
       c.) Tax incentives ................................................................. 17
   iv) Demand ............................................................................ 18
   v) Response by Courts .............................................................. 20
       a.) Clearance Rate and Backlog ............................................. 20
       b.) Disposition Time ............................................................. 22
   vi) Resource Allocation ............................................................ 28
       a.) Personnel ...................................................................... 28
       b.) Expenditures ................................................................. 35
   vii) Warsaw and Krakow Commercial Courts ................................... 39
   viii) E-Court .......................................................................... 42
1. Executive Summary

i) Overview

1. The intention of this report is to provide a rapid assessment of the situation of “contract enforcement” in Poland in mid to late 2012. The report is not intended to be a comprehensive assessment of all aspects of the justice sector nor should it be utilized as such.

2. The report focuses on analysis of the “Commercial Courts” as being the main venues for contract enforcement dispute resolution. Where it is relevant, the performance of the “Commercial Courts” is compared to the performance of the overall court system and the court systems of other European Union (EU) countries.

3. The report’s findings are based on data supplied by the Polish Government, desk research from Washington DC, and a visit to Poland in May-June 2012. No information with regard to bailiffs was supplied to the Bank; hence this aspect of contract enforcement is not explored in the report.

4. The report highlights key issues that are worthy of further attention. The main findings and recommendations are set out below.

ii) Main Findings and Recommendations

5. The myriad of issues which affects the environment for “contract enforcement” in a country are usually extremely broad. They include the legal environment directly related to contract law, the institutional environment covering dispute resolution, the general business environment and how businesses seek to establish, create and maintain relationships and the attendant services that exist to help business reduce risk (legal, regulatory and otherwise) and what alternative forms of dispute resolution businesses may or may not seek to utilize.

6. In each country the way these rules, institutions and persons (both legal and real) interact will be complex and, importantly, different. For example, banks involved in mass volume consumer lending will have different requirements and expectations in terms of contract
enforcement from a high end bespoke manufacturer operating in a boutique section of the market and with only a few other companies able to provide the required inputs to their products. As such, in most instances, when looking at the situation in a holistic sense, the policy recommendations are likely to differ in significant ways from one country or region to the next. Of course various efforts have been made to try to create cross border benchmarks as a means for country’s to compare their “performance” in this area to each other, however, as shown in this report, they have their limitations and can only form the basis of policy reforms for so long.

7. In Poland, demand for court services in general and commercial courts in particular has steadily increased during the last years. Some indicators suggest that this increase in the demand has started to affect court performance, increasing backlog and case disposition times.

8. In this regard, based on the information the team received in the preparation of this report, the main factor driving reforms to date appears to have been a predominant concern over increasing the speed by which contracts can be enforced through the formal court system. This has led to reforms dealing with, in the main, procedural code reform and introducing new technology. While the reforms appear to have been moderately successful, such reforms, however, can only take the development of a contract enforcement system so far.

9. At this stage, we are able to suggest the following areas that the Polish Government should focus on, which are likely to have overall benefits for the entire system of contract enforcement.

10. The Polish Government should focus its efforts in two main areas:

   a. (i) reduce the demand by tackling those incentives that promote an overuse of commercial courts; and
   b. (ii) introduce elements of quality management (contracts and evaluation) and strengthen the resource allocation to deal with the demand, increasing efficiency and effectiveness of the commercial court system.

11. In order to achieve this, it is critical that a clear vision and strategy for the justice system and commercial courts be articulated with clear benchmarks, goals and resources allocated to achieve the aims of the strategy. An optimal situation would be for strategies
and performance management frameworks to be developed at the court (operational) level, which would feed into the higher level strategy for the system. This will allow all interested parties – the Government, judges, lawyers, businesses and lay persons – to be able to get a clear sense of where the system is going and - if the strategy is developed in an inclusive manner – to provide effective input to the formulation of such a strategy.

12. As per the judiciary’s resources, the courts’ efficiency and effectiveness can be improved through various mechanisms. First, a sound and more flexible human resources management system should be established, with a focus on efficient allocation of resources (both material and human) and the development of performance frameworks and career structures linked to the judiciary’s strategic objectives. Second, investments in effective IT systems should be strengthened, built upon successful results and lessons learnt from recent initiatives as IT proved to be (through an E Court) one of the main drivers of productivity.

13. A sound Monitoring and Evaluation (M&E) mechanism is the essential complement to all these measures. It will help to track detailed changes over time in the demand (types of cases, frequent litigants, amounts, etc) as well as in the performance of courts (productivity and results, disposition times by case types and procedural steps, bottlenecks, etc).

14. The administration of justice should be used to establish a well structured dialogue between justice and the public (users and lawyers). Such dialogue would improve lead to greater transparency, legitimacy and trust, which will in return improve efficiency and effectiveness of the system.

15. Regarding incentives, further analysis needs to be conducted to confirm how procedural reforms, litigation costs, availability of Alternative Dispute Resolution (ADR) mechanisms, and tax structure, among other factors, may be affecting litigants’ incentives to go to court.

16. As the preliminary findings on the e-court suggest, any intervention on resources will affect users’ incentives to litigate and vice versa. It is in a way an excellent example of the need for a system approach to reform as the supply of a new service, either realizes or creates demand, which can have potentially inadvertent spillover effects. As noted in the Report, the establishment of the e-court seems to have tapped into latent demand for a simple court procedure to deal with writ of payments. This has boosted the demand for
this e-court’s services, but also seems to have increased case inflow in conventional courts by the redirection of rejected or opposed cases. Therefore, an evidence based policy making remains critical, and a solid M&E system is the first tool for this purpose.

17. As it is suggested throughout the document, there is a need for additional discussion, information and fact finding in order to arrive at more concrete recommendations. However, the table below summarizes the main weaknesses to date identified in the system together with core recommendations. The summary provided below is for ease of reference only and should be read in conjunction with the detailed analysis set out in this Report. Some of the recommendations are achievable only through legislative reform (LR), some may be more rapidly achieved through regulatory reform (RR), while some may be achieved through policy reform (PR).

**Way Forward: Summary of Recommendations**

<table>
<thead>
<tr>
<th>Weakness</th>
<th>Recommendation</th>
<th>Category</th>
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<tbody>
<tr>
<td>1</td>
<td>Lack of more comprehensive Strategic Direction for the Courts limits opportunities for improvements. It hinders planning, impact evaluation and performance measurements.</td>
<td>• Develop a strategy for the (commercial) courts, which sets out a clear vision and benchmarked goals at the macro (country) meso (regional) and micro (court/operational) level, which should take into account the recommendations below.</td>
</tr>
<tr>
<td>2</td>
<td>In sufficient information about and understanding of relationships between sector problems and allocations of resources. Low levels of expenditure in productivity enhancing areas.</td>
<td>• Carrying out a sector Public Expenditure review; this review should feed into the overall Strategy (See 1). The review would help the Ministry of Justice to understand its problems and allocate and use available resources in a way that promotes better performance of the courts. It will explain some of the challenges and inform decision makers about how to optimize the allocation of available resource in order to support strategic objectives.</td>
</tr>
<tr>
<td>3</td>
<td>Lack of communication with the public, including</td>
<td>• Introduce more structured dialogue with public though release of information about court system (at country, regional and court</td>
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<td>No.</td>
<td>Issue</td>
<td>Action</td>
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| 4   | Absence of a comprehensive and reliable Performance Assessment and Management Structures for the court system, for individual courts and for judges. | - Initiate the use of contracts between MOJ and courts and MOJ & Courts with lawyers/litigants (at policy and case levels).  
- Pilot an obligation to provide information on unforeseen timetable of court proceedings. | LR/RR/PR           |
|     |                                                                      | **RR** (short-term)  
**LR** (medium-term)  
**RR** (long-term) |                     |
| 5   | Legal uncertainty due to frequent procedural changes negatively impacts litigants and courts. | - Undertake systemic review of current performance and incentive structures and develop a revised set of the same in line with the overall strategy for the system. The system should define performance; performance, targets, criteria and indicators; revisit institutional arrangement and procedures through which assessments are carried out.  
- Create a simple assessment system of procedural rules (mainly civil procedural code). The system can combine both functions: legislative impact assessment and enforcement/compliance monitoring and evaluation.  
- Improve consultations with relevant stakeholders on key policies and legislations (See also point 3). | RR/LR              |
|     |                                                                      | **RR** (short-term)  
**RR** (long-term) |                     |
| 6   | Tax regulation and accounting rules may be fostering the misuse of courts by some users. | - Assess the exact impact on behavior of litigants and the state budget that these rules may be playing in overcrowding the system, and reform norms in line with the findings.  
- Undertake a more thorough assessment of incentives of users to litigate through e.g. case file reviews or opinion surveys. | RR/LR              |
|     |                                                                      | **RR** (medium-term) |                     |
| 7   | The low cost of litigation is likely to be one of the reasons for the relatively high volume of court filings as well as lengthier proceedings. | - Undertake analysis of fee structures related to litigation including – court fees, private attorney costs and cost shifting rules to determine whether and where cost rules need to be amended.  
- Undertake an assessment of incentive to | LR              |
<p>|     |                                                                      | <strong>LR</strong> (medium-term) |                     |</p>
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<th></th>
<th>Low levels of use of ADR (mediations and arbitrations) mechanisms.</th>
<th>In cooperation with relevant organizations identify disincentives and incentives to use ADR.</th>
<th>RR (short-term)</th>
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<tr>
<td>8</td>
<td></td>
<td>Whenever appropriate reduce disincentives and appropriate and collaborate with relevant organizations in promoting the use of ADR.</td>
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<td>9</td>
<td>Despite significant reduction of case disposition times in certain commercial cases¹, average disposition time in commercial courts has increased.</td>
<td>Introducing a time management program. The program could focus on: improving foresee ability of the time use; defining monitoring standards for an optimum timeframe for different categories of cases; improving statistical tools and developing communication strategies; measures to control the body of cases dealt with by the courts by ensuring appropriate use of appeals and effective compliance with the procedural rules; defining priorities in case management; measured to reduce waiting time by developing practices to organize time; and improve the training in time management.</td>
<td>RR (medium-term)</td>
</tr>
<tr>
<td>10</td>
<td>Comparably lower performance of commercial courts particularly the commercial courts in Warsaw and Krakow.</td>
<td>Conduct additional analysis to confirm this finding and realign resources (particular human resources) in commercial courts to match the growing demand for commercial dispute resolutions.</td>
<td>LR (medium-term)</td>
</tr>
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<td></td>
<td></td>
<td>Conduct an in depth efficiency review of Commercial courts in Warsaw and Krakow and design their individual reform program part of which will be a time management program (see point 9).</td>
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<tr>
<td></td>
<td></td>
<td>Summarize results and lessons learnt and translate them into a manual which can be used to reform other courts.</td>
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¹ Commercial cases measured by the Doing Business Report.
| 11 | E-court is an extraordinary example of an effective reform. | • Analyze results and summarize lessons learnt for future roll out projects.  
• Carefully monitor the system to identify potential impacts (both positive and negative, such as increase of cases in regular courts due to appeals or imbalance between fairness and efficiency). | (Short term) |

18. The Bank has experience with these areas and can assist in a number of ways including:

   a. Development of justice system and court strategies;
   b. Public Expenditure and Institutional Reviews of the Court System;
   c. User Surveys and Case File Reviews to determine the nature of demand;
   d. Time and motion studies of court systems;
   e. Quantitative Service Delivery Surveys to assess in detail the factors affecting internal allocation of resources of a system;
   f. Human Resource Reform for the judiciary, including training;
   g. IT and other technological improvements; and
   h. Enhancing alternative dispute resolution centers.

19. As a knowledge broker, the World Bank is also able to connect the Ministry of Justice (MOJ), the judiciary and the courts as a whole to countries exhibiting best practice and cutting edge reforms around the world. The team would be happy to discuss such options and possibilities during the next mission.
1. Introduction

20. Productive investment requires an environment with a reasonable level of economic and political stability, and one where property rights are reasonably secure. Evidence in some countries, including Poland, show that entrepreneurs who believe that their property rights are secure reinvest between 14 and 40% more of their profits in their businesses than those uncertain whether their rights are enforceable.\(^2\) Property rights are more secure and more valuable, when the costs and risks of transactions are low. Delays or uncertainties in the enforcement of contracts erode the value of property rights and diminish the opportunity and incentives to invest.

21. The 2004-2012 World Bank “Doing Business (DB)” reports and the 2004 and 2010 “Investment Climate Assessments” suggest that, in Poland, often unpredictable changes in the policy and legal framework and less than optimal performance of legal institutions, including the judiciary, continue to contribute to weakness in the business environment. This situation persists despite a number of reforms implemented by the government and judiciary itself.

22. The MOJ has requested the World Bank’s assistance in analyzing contract enforcement and developing policy recommendations on how it can be strengthened. It was agreed that such assistance would focus on commercial courts\(^3\).

23. After a brief description of its objective and methodology, the remainder of the report (Section 4) will examine recent trends and factors that have the strongest influence on the functioning of commercial courts. It will include a statistical review of various assessments to provide broader perspective. The purpose is to explain courts’ behavior \textit{vis a vis} contemporary challenges, to explore the enabling environment, and to explain why certain existing measures do not capture recent improvements in court performance in Poland. The main findings and recommendations outlined in the Executive Summary are fleshed out throughout that chapter.

\(^2\) Poland: Legal Barriers to Contract Enforcement (World Bank 2005).
\(^3\) Bailiffs could be a subject of additional study subject to the availability of sufficient data.
2. Objective & Methodology

24. The objective of this report is to provide a rapid assessment of the state of contract enforcement in Poland and to propose, short- and mid-term reforms.

25. Contrary to the report “Poland: Legal Barriers to Contract Enforcement” (2005 Report) which “examined the issue of contract enforcement from beginning to end”, this report focuses on critical deficiencies of performance of commercial courts and opportunities for measurable improvements. Performance is measured through responsiveness of the commercial courts to demand for their main service - resolution of disputes\(^4\). The study draws on a number of complementing sources of expertise and information, including assessments by Polish and international experts, analyses of available official statistics and existing survey data. Where possible, the study compares the Polish system and courts to parallel institutions in other (comparator) countries\(^5\) that have similar legal systems.

26. The report has been motivated in part by a concern of the Polish Government over Poland’s rankings in the World Bank’s “Doing Business (DB) Indicators” report. The MOJ’s statistics suggest that the commercial courts in Poland dispose of their cases faster than suggested by the 2012 DB reports. This report will try to explain the disparities between these measurements.

27. It is important to note that the report does not assess how data is classified beyond responses the team received from the Government of Poland. A “case” as reported in the data supplied to the team is utilized throughout to refer to a unit of measurement, without undertaking an analysis of whether all statistics collected as being a “case” are in fact full “cases” or may simply be ancillary procedures as part of a wider case. Similarly no analysis is made of the efficacy of data collection methods – for example, the “backlog” indicators. The data supplied by Polish authorities have therefore been taken “as is”. Further study would be needed to analyze the data in more detail.

\(^{4}\) In addition to dispute resolution the Polish courts operate land and mortgage registers, pledge registers, and the business register (the National Court Registers, NCR).

\(^{5}\) Austria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Netherlands, Slovak Republic and Slovenia.
3. Courts in Poland: Challenges and Opportunities

28. This section focuses on the capacity of Polish courts to deliver resolution of commercial disputes. It assesses demand and access to commercial justice and responsiveness of the courts to this demand. Access to justice means having the ability and opportunity to seek and exercise an impact on policy and law making, and it means having the ability to obtain legal service. Demand means a formal request for court service.

i) Legislative Practice

29. For practical reasons this section focuses on legislating civil procedural rules. This is because of the relevance and importance of procedures for fair and efficient litigations, and because of a shared sentiment among legal professionals that frequent changes of procedures create an environment of uncertainty in their operations. As one of the experienced litigators who was interviewed for this report stated: “From a practical point of view, the most important thing is that the decision makers stick to their legal doctrine and subsequent rules long enough to learn whether it works or not.” Since 2002 the Civil Procedural Code (the Code) has been amended 118 times (close to 1 change per month). During the same period the Constitutional Tribunal has ruled 65 times on issues regarding the constitutionality of the Code. In 25 cases, the Code has been changed as a result of these decisions.

30. While at times legislative changes can provide a boon for legal professionals, too frequent changes make their roles quite difficult. An unpredictable legal environment makes it problematic to formulate and pursue good litigation strategies. This also, of course, raises the overall costs of litigation and may contribute to case inflow and case backlog.

31. We discussed with legal professionals the latest amendment of the Code which became effective in May, 2012. We observed that while judges were well informed about the changes and their potential impact, lawyers, with some exceptions, were not. Some judges (e.g. in the Warsaw court) expressed high expectations that the amendment will improve the speed and quality of processes while others (e.g. in the Krakow court) were convinced that these changes are likely to have negative impacts on their work. Both assumptions could be correct because the changes may have different impacts on these
courts. Two observations about legislative process could be made based on these discussions. One is that the impacts of amendments are not sufficiently analyzed before enactment. The second is that the consultative process does not involve all important stakeholders.

32. The high numbers of amendments, some of which are meant to correct the perceived mistakes of the previous amendments, also indicate a lack of alignment of legislative work with certain critical goals and policies (e.g. those which aim to improve the business environment), as well as indicating an absence of impact assessment mechanisms.

33. Summary: In Poland there is tendency to produce a legislative draft without thorough consideration of: policies the law should implement; impacts and their distribution among stakeholders; and how enforcement of law can be monitored and evaluated. Although the above may not fall under the MOJ’s prerogative, the MOJ could consider some policies to overcome these pitfalls, for example creating a simple assessment system of court procedures. The system can combine both functions: legislative impact assessment and enforcement/compliance monitoring and evaluation.

ii) Access to Information

34. Information is a critical component to increasing access to court services. The Government, including MOJ has established a database where information about the system, its functions and organization, laws, legal documents and case law are available. Information on foreseeable timetables of proceedings (regarding specific cases), which would allow users to adjust their expectations, however, is not yet available. The Polish courts do not have an obligation to provide such information to litigants or other users. By 2010, the courts of 12 European countries did have this obligation including Latvia and Hungary (for criminal cases), and at least two other European countries provide this information without being legally required to do so. In addition, Romania, and Serbia have ongoing reforms which will include this obligation.

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6  Legal Texts: database: www.sejm.gov.pl; Case law of Higher Courts: www.sn.pl; Other documents ( e.g legal forms: www.ms.gov.pl.
35. To introduce the above obligation as a legal obligation or a *de facto* practice would be a critical expansion of litigant rights, and expectation of this reform would directly feed into confidence in the courts. Moreover, it is a very important motivator for effective and speedier proceedings. Figure 1 provides information on countries with and without a legal obligation to provide information on court proceedings.

36. **Summary:** We understand that taking this step would require establishment of a strong automated case management system which is still “a work in progress” in Poland. Introduction of this obligation in one or another form even on pilot basis e.g. in the e-court could help the MOJ to improve performance of courts and boost confidence of users.

*Figure 1: Obligation to Provide Information on Foreseen Timetable of Court Proceedings*
iii) Incentives to Litigate

a.) When and Why Users Go to Courts

37. The 2005 Report implied that buying more time and tax incentives are among the most important reasons why businesses go to courts. A summary of interviews with legal professionals, tax officers and businesses conducted for the purpose of this study demonstrates agreement with this proposition.
38. When a contract breaks down, many businesses, at least initially, prefer self-help rather than going through the court process. However, they also do not hesitate to go to lawyers who are almost invariably experienced in bringing and defending court proceedings. This is despite the fact that taking legal action does not motivate businesses to comply with contracts, that prospects to collect on debt are relatively slim, and that hiring lawyers increases the cost of litigation. Polish businesses are not keen on using alternative dispute resolution arbitration and mediation. Low costs of legal services may attribute to the fact that business are quick to go to courts.

b.) Costs

39. According to DB Annual Reports, the cost of contract enforcement in Poland has been one of the lowest among the comparator countries (in 2011 it was 12% of the claims). By 2012, however, the costs of enforcing contracts have increased by 58% to 19% of the claim. Still, the costs of enforcement of contracts in Poland are among the lowest among the comparator countries.

40. Poland stands out at two levels. First, it is the only country (among the comparator countries) where court and lawyers’ fees, as a percentage of the value of the claim, are the same. In most countries, lawyers’ fees significantly exceed the fees of courts. Second, lawyers’ fees are the lowest among the comparator countries. Court fees and fees of enforcement agents are also among the lowest. There are, however, strong indications that cost of litigating have started increasing.

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
<th>Croatia</th>
<th>Cze.Rep</th>
<th>Estonia</th>
<th>Hungary</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
<th>Slovenia</th>
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<tr>
<td>Costs to Enforce Contract (as percentage of the claim)</td>
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<td><strong>DB 2012</strong></td>
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</tr>
<tr>
<td>Attorney</td>
<td>13.6</td>
<td>8.6</td>
<td>13.1</td>
<td>9</td>
<td>5</td>
<td>14.3</td>
<td>8.6</td>
<td><strong>5</strong></td>
<td>14</td>
<td>7.64</td>
</tr>
</tbody>
</table>

9 The comparator group of countries includes, in addition to Poland: Austria (18%); Croatia (13.8%); Czech republic (33%); Estonia (22.3 %); Hungary (15%); Latvia (23.1%); Lithuania (23.65); Netherlands (23.9%); Slovakia (30%); and Slovenia (12.7%).
1. The low cost of litigation is likely to be one of the reasons for the relatively high volume of court filings and some appeals as well as lengthier proceedings. For instance, interviewed lawyers reported an increased number of appeals in cases which involve high value claims where court fees reach the maximum threshold (PLN 100,000). Judges reported that lawyers and litigants tended to file competing/counter claims of high value to avoid payment of court fees and the delaying court proceeding. Indeed, according to Polish judges, in commercial disputes a litigant without a lawyer is a rarity in their courts. However, some surveys suggest that businesses do not actually seek legal assistance as frequently as expected, many citing “unaffordable price” as the reason. The price of legal services scored close to three on a scale of five among the factors influencing businesses’ decisions not to file lawsuits—five being very significant and one being not significant in the World Bank’s 2005 Report.

2. Mediation is normally a cheaper and faster alternative to court decision making. In Poland, the number of commercial mediations is very low. According to the statistics of the Polish Mediation Center (Center), between 2006 and 2010 only 2012 commercial disputes have been resolved through mediations. The Center explains this lack of interest in mediations as resulting from cognitive barriers, the regulatory framework, and still rather fragile institutions. Lawyers and judges blame cultural barriers. The above, however, can only partially explain the aversion of business toward mediations. Low

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10 Additional data from the Government is needed.
12 In 2006 it was 256; in 2007 it was 258; in 2008 it was 210; in 2009 it was 540; and in 2010 it was 848 disputes. CEPEJ Report 2012 gives a higher number, 5,426 in civil cases in 2010, still a low number compared to the number of civil cases brought before courts.
13 Sylvester Pieckowski, Effective Use of Civil and Commercial Mediations in Poland, http://www.mediate.com/articles/PieckowskiS1.cfm
costs of court based litigation and the fact that often the purpose of litigations is to avoid double taxation could be another reason.

3. **Summary:** The reports with regards to the costs and incentives for users to litigate currently seem contradictory. On the one hand, surveys suggest that businessmen do not wish to litigate due to the high costs involved. Yet the DB reports indicate that Poland is one of the cheapest places in Europe (and the cheapest amongst comparator countries) to utilize legal advice during litigation. Similarly, if cost were a concern, then we might expect to see the use of alternative dispute resolution (e.g. mediation) to increase, yet this is not the case in Poland. Clearly, there must be additional factors other than costs driving litigation behavior in Poland. It is important that the Government makes an effort to understand what persuades litigants to go to court, or settle or, use another mean to resolve their justiciable problems. It is similarly important that the Government and the professional associations such as BARs take much stronger interest in better understanding of costs of contract enforcement, given their recent increases according to some indicators. Additional analysis, perhaps broken down by the nature of the litigation, the type of claim in dispute, the value of the claim and so forth in a combination with a survey of court users and legal service providers, would be crucial to understanding how cost factors may or may not be driving the usage of the courts.

c.) Tax incentives

4. It is evident that in many cases a creditor files a petition in court knowing that the debt will never be collected and that the cost of doing so\(^\text{14}\) would exceed the value of the debt. More than half of the Polish Small and Medium Enterprises (SMEs) in the 2005 NBP survey said that tax incentives were a key reason for filing cases in court.

5. Interviews with tax offices and businesses confirm the validity of the 2005 Report finding that a significant driver of cases in the system was that creditors were seeking to prove that debts had become unenforceable. The 2005 report noted: “Among the millions of cases handled by the Polish courts every year are some that do not even involve a dispute. In many cases it may be evident to the creditor that the debt will never be collected. The costs to the creditor in such a situation exceed the value of the debt since the creditor may have already paid profit taxes on revenue that was never received. The creditor can get a

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\(^\text{14}\) The creditor may have already paid profit taxes on revenue that was never received. The creditor can get a refund on the taxes, but not without proof that the debt is uncollectible. With a profit tax rate of 19 percent, the value to the creditor of being able to get a refund on the taxes paid can be considerable. Additional costs of litigation are at least 12%.
refund on the taxes, but not without proof that the debt is uncollectible. With a profit tax rate of 19 percent the value to the creditor of being able to get a refund on the taxes paid can be considerable. More than half of the Polish firms in the spring 2005 National Bank of Poland survey said that this tax incentive is a key reason for filing cases in court.”

6. **Summary:** Based on the information provided, the tax structure in Poland still appears to provide a strong incentive for creditors to file claims in court. As discussed with the MOJ the Slovak and Czech Republics, in the face of similar challenges, did succeed in amending their tax laws. In the Slovak Republic, receivables six to nine months overdue are 50 percent tax-deductible, and in the Czech Republic tax on that revenue is not paid until cash is received. The e-court may have had an effect on ensuring that straightforward claims of this nature can be dealt with and thus, should reduce the overall burden on the court system (although see the comments with regards to the e-courts further below should be taken into account). Yet, we recommend that the Government assess more thoroughly the impact of tax system on behavior of litigants and the state and court budgets.

iv) **Demand**

7. Litigiousness measures how often the Poles take an argument to the courts. The numbers for all cases (in all jurisdictions and instances) are from 25,103 cases per 100,000 inhabitants in 2005 to 35,590 in 2011. In comparison to other countries, Poland’s current litigiousness in civil and commercial matters is average. In 2010, the number of incoming civil and commercial litigious cases per 100,000 inhabitants in Poland was 2,146\(^{15}\). Table 2 compares these numbers to the numbers of comparator countries. Poland scores 5\(^{th}\) among 9 countries in terms of litigiousness and 7\(^{th}\) in terms of clearance rate.

<table>
<thead>
<tr>
<th>Country</th>
<th>Incoming case per 100 000 inhabitants</th>
<th>Rating</th>
<th>Resolved cases per 100 000 inhabitants</th>
<th>Clearance rate %</th>
<th>Rating</th>
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</tbody>
</table>

\(^{15}\) CEPEJ Report 2012.
<table>
<thead>
<tr>
<th>Country</th>
<th>Cases 2011</th>
<th>Rank</th>
<th>Cases 2012</th>
<th>Rank</th>
<th>Cases 2013</th>
<th>Rank</th>
</tr>
</thead>
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<tr>
<td>Austria</td>
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<td>102</td>
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<tr>
<td>Czech Republic</td>
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<td>Estonia</td>
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<td>1575</td>
<td>97</td>
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</tr>
<tr>
<td>Hungary</td>
<td>2012</td>
<td>4.</td>
<td>2046</td>
<td>100</td>
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<td>Latvia</td>
<td>2166</td>
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<td>1857</td>
<td>86</td>
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<td>Lithuania</td>
<td>6213</td>
<td>10.</td>
<td>6331</td>
<td>101</td>
<td>3.</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>2146</td>
<td>5.</td>
<td>2038</td>
<td>95</td>
<td>7.</td>
<td></td>
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<tr>
<td>Slovakia</td>
<td>2320</td>
<td>7.</td>
<td>2267</td>
<td>98</td>
<td>5.</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>1837</td>
<td>3.</td>
<td>1796</td>
<td>98</td>
<td>5.</td>
<td></td>
</tr>
</tbody>
</table>

Source: CEPEJ Report 2012

8. Civil cases account for the largest percentage, around 60 percent of cases, and commercial cases for the smallest percentage, around 10 percent in the Polish courts for 2011. This ratio has persisted since 1994. Civil cases per 100,000 inhabitants increased from 12,770 to 21,158 (increase of 65%) between 2007 and 2011. Over the last six years (up to 2011), the total number of commercial cases brought before the Polish commercial courts (total) has increased by about 42%, from 2,472 cases per 100,000 in 2005 to 3,372 cases in 2011. As Figure 1 shows, the increase can be attributed mainly to civil and to lesser extent, commercial matters.\(^{16}\)

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\(^{16}\) MoJ Statistics

Figure 2: Inflow of Criminal, Civil and Commercial Cases 2005-2011
9. **Summary**: We have not observed any significant barrier to access to justice in Poland. It is safe to conclude that Polish citizen trust but do not overuse their courts. Civil dispute resolutions have been by far the most demanded court service for last 20 years. These types of disputes are also the ones that have experienced a higher increase, followed by criminal and commercial cases. Demand for court services has been increasing. It is time for the Government, the MOJ and the Polish courts to start looking at efficiency and quality of administration in terms of public expectations. The administration of justice can and should be used in Poland to maintain good relationship with the public. The main tools are: contracts and evaluation. Contracts clarify and improve relations between the MOJ and courts and courts and litigants. France, for instance is using procedural contracts between judges and litigants. In the case of Poland the latter form of contracts could work. Evaluation is used to assess the overall quality of justice through many means, reports and evaluation systems including.\(^{17}\)

v) **Response by Courts**

a.) **Clearance Rate and Backlog**

10. In 2010 the ratio between incoming and resolved civil and commercial litigious cases per 100,000 inhabitants in the 1st instance courts was 2,146 and 2,038 respectively (See Table

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\(^{17}\) **CEPEJ: Administration and Management of Judicial Systems in Europe;** Authors: Laurent Berthier, Helene Pauliat.
2). The clearance rate was 95% for litigious cases and 97.4% for non litigious cases. Though still high, this rate represents a decrease of more than 3% compared to 2009, about 2% compared to 2008, and 2.5 % compared to 2006\textsuperscript{18}. Between 2005 and 2007, the Polish courts overall disposed of almost the same volume of cases they received. During this time yet court case backlogs grew from 855,000 to more than 1 million cases (total). In 2010, the case backlog again reached over 1 million cases. As for commercial cases, between 2005 and 2010 the backlog fluctuated between about 63,000 and 98,000 cases (7.3% and 10% of case inflow); commercial case backlogs were about the same in 2011. This is quite a remarkable performance given the case inflow increase by 42% (per 100,000 inhabitants).

11. \textbf{Summary:} Clearance rate indicate quality of service. Judging by this indicator the Polish civil and commercial courts perform today much better than between 1994 and 2004 when case backlog rate was between 33 % and 18 %. Slight but steady decrease of clearance rate during last four years, however, is of concern providing steeply growing demand for both civil and commercial dispute resolution.

\textbf{Figure 3: Disposition Time and Clearance rate of litigious civil and commercial cases in 1st Instance Court}

\textsuperscript{18} CEPEJ Report 2012.
b.) Disposition Time

12. The average duration of cases is an indicator of the quality of service. In 2010 the average disposition time\(^{19}\) for civil and commercial cases in Europe was 287 days and median time was 200 days. The disposition time of litigious civil and commercial cases in the 1\(^{st}\) instance Polish court was 180 days (about 6 months).\(^{20}\) (See Table 2).

---

\(^{19}\) Time it takes to turn over a case.

\(^{20}\) CEPEJ Report 2012.
Table 3: Comparison of average disposition time in 1st instance litigious civil and commercial proceedings EC Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
<th>Croatia</th>
<th>Cze,Rep</th>
<th>Estonia</th>
<th>Hungary</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
<th>Slovenia</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>129</td>
<td>498</td>
<td>154</td>
<td>232</td>
<td>170</td>
<td>304</td>
<td>55</td>
<td>166</td>
<td>346</td>
<td>460</td>
</tr>
<tr>
<td>Rating</td>
<td>2.</td>
<td>10.</td>
<td>3.</td>
<td>6.</td>
<td>5.</td>
<td>7.</td>
<td>1.</td>
<td>4.</td>
<td>8.</td>
<td>9.</td>
</tr>
<tr>
<td>2010</td>
<td>129</td>
<td>462</td>
<td>128</td>
<td>215</td>
<td>160</td>
<td>330</td>
<td>55</td>
<td>180</td>
<td>364</td>
<td>431</td>
</tr>
<tr>
<td>Rating</td>
<td>3.</td>
<td>10.</td>
<td>2.</td>
<td>6.</td>
<td>4.</td>
<td>7.</td>
<td>1.</td>
<td>5.</td>
<td>8.</td>
<td>9.</td>
</tr>
</tbody>
</table>

Source: CEPEJ Report 2012

13. According to current MOJ statistics, the Polish commercial district courts dispose of their cases faster than civil or criminal courts while having a significantly bigger caseload per judge. It takes around 1.5 months to resolve a dispute in district courts in general, while for commercial 1st instance courts the average processing time is around one month. The time of disposition has been increasing from 2008, in both first and second instance courts, as documented in Figures 4 and 5. This could be attributed to a disparity between case inflow and allocation of cases to judges (See Section vii a). Of course, other factors could be at play with quite opposite impacts, such as the establishment of an e-court and the increasing number of cases which have been run through simplified procedures. It should be noted that despite decreasing caseload, since 2009 the second instance commercial courts have increased their average processing time by almost 30%.

Figure 4: Average processing time – litigious cases (2005-2011)
14. In contrast to these relatively favorable results, according to the 2012 DB Report it takes 830 days for Polish courts and bailiffs to enforce a contract. At 830 days in 2011, Poland
was the second slowest place among the benchmarked countries\textsuperscript{21} to enforce a contract. (Comparison with 2013 will be added after the release of DB 2013).

Table 4: Comparison of EU Countries’ Time to Enforce Contract

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
<th>Croatia</th>
<th>Cze,Rep</th>
<th>Estonia</th>
<th>Hungary</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
<th>Slovenia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time to Enforce Contract</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2012</strong></td>
<td>397</td>
<td>561</td>
<td>611</td>
<td>425</td>
<td>395</td>
<td>369</td>
<td>275</td>
<td>830</td>
<td>565</td>
<td>1290</td>
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<td>8.</td>
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<td>3.</td>
<td>2.</td>
<td>1.</td>
<td>9.</td>
<td>7.</td>
<td>10.</td>
</tr>
<tr>
<td><strong>2013</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Rating</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Doing Business Reports 2012, 2013

15. The Contract Enforcement Indicator can be further broken down using the DB methodology to determine more precisely which stages of the proceeding may take longer than other countries as well as the elements of enforcing a contract that are most costly. The Table below provides these data:

Table 5: Comparison of EU Countries Time it Takes to Enforce Contracts by Stages of the Proceedings

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Austria</th>
<th>Croatia</th>
<th>Czech Republic</th>
<th>Estonia</th>
<th>Hungary</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Netherlands</th>
<th>Poland</th>
<th>Slovak Republic</th>
<th>Slovenia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DB 2012 Data</strong></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Time (days)</strong></td>
<td>397</td>
<td>561</td>
<td>611</td>
<td>425</td>
<td>395</td>
<td>369</td>
<td>275</td>
<td>514</td>
<td>830</td>
<td>565</td>
<td>1290</td>
</tr>
<tr>
<td><strong>Filing and Service</strong></td>
<td>30</td>
<td>32</td>
<td>88</td>
<td>30</td>
<td>60</td>
<td>49</td>
<td>15</td>
<td>10</td>
<td>90</td>
<td>90</td>
<td>30</td>
</tr>
<tr>
<td><strong>Trial and Judgment</strong></td>
<td>277</td>
<td>354</td>
<td>410</td>
<td>320</td>
<td>245</td>
<td>200</td>
<td>170</td>
<td>442</td>
<td>580</td>
<td>365</td>
<td>930</td>
</tr>
</tbody>
</table>

\textsuperscript{21} The Contract Enforcement Indicator itself is comprised of three subset indicators that are equally weighted to arrive at the final overall ranking. The subset indicators are: (1) overall time to enforce the claim; (2) cost as a \% of the total claim; and (3) the number of procedures necessary to enforce the claim.
16. As is perhaps to be expected, when the data are broken down to this level, Poland continues to lag against other countries. In the 2012 DB Report, it was measured as being joint last overall in terms of the time it takes for “filing and servicing a claim” at 90 days, alongside the Slovak Republic, (the Netherlands was fastest at 10 days), it was second last in terms of the time it takes for trial and judgment at 580 days (Lithuania was the fastest at 170 days while Slovenia was the slowest at 930 days), and finally Poland was third from last in terms of the time it takes to enforce the judgment at 160 days (Netherlands was the fastest at 62 days while Slovenia was the slowest at 330 days). (Data from DB Study will be added upon the release of the Report)

17. Differences between traditional measures of disposition time which rely normally on statistics provided by the courts and their managers -and the methodology used by the DB team to measure the time it takes courts and bailiffs to enforce contracts helps explain the disparity between the results. The DB methodology can be summed up as follows.

   a. DB Indicators purport to measure legal, regulatory and policy aspects that affect a business during all stages of its life cycle (from incorporation to insolvency). It is important to remember that at each stage DB Indicators only measure a snapshot of all the possible issues that may or may not confront a businessman.

   b. To be comparable, all the indicators are derived from a strict set of scenarios, which may or may not be most relevant for a country’s internal economic climate or a system’s actual performance.

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*22 Data will from 2013 DB report will be added upon the release of the DB Report.*
c. The current methodology for contract enforcement concerns the breach of a contract between two commercial entities. The contract is valued at 200% of the nation’s income per inhabitants. The breach is an allegation by the buyer that the goods do not meet required quality standards, and the buyer therefore does not have to pay. The case is contested in court, the seller is 100% successful, and recovers all his costs and damages. The indicator therefore measures the total time taken to enforce the contract and recover the debt (from filing to recovery of the money), the number of procedures this takes (the number of procedures and the time they take are not linked in the Doing Business methodology), and how much this costs (including all court costs and other legal costs).

d. The measurements are limited to Warsaw, rather than all courts of Poland. Data are collected through a relatively narrow group of users--practicing lawyers.

18. One of the most important factors that influence the performance of Polish commercial courts as measured by the DB methodology is the fact that in Poland only 21.4 % of incoming civil and commercial cases (in the 1st instance courts) are litigious cases. Among those, the percentage of cases which meet the requirements of the DB methodology may be no more than 10 %. Given this, the value of the DB methodology for Polish decision-makers is that it indicates an optimal design for a specific scenario, and it allows time comparison and comparison with other countries. However, policy makers need to place the information derived from the DB Indicators within the overall context and framework of the current most pressing problems of their system, the needs of the users of the system (be they individuals or companies), the resources at their disposal, and the overall general strategy that they are seeking to pursue with regards to the justice sector.

19. **Summary:** The data obtained from the MOJ and from CEPEJ suggests that the overall situation with regards to the time taken to dispose a case in Polish courts is generally much faster than the DB reports present. This is perhaps not surprising given the “scenario” based methodology of the DB indicators and the difference in sources. The MOJ and CEPEJ data are based on actual information housed by relevant statistical agencies in country, while the DB indicators rely on responses from respondents’ personal experiences. The two datasets are therefore not directly comparable. It would be advisable to make the MoJ and CEPEJ data available to the public to increase transparency and enhance incentives for courts to perform better based on peer and public pressure.
20. As said, the Polish courts process cases faster than their colleagues in comparator countries. Excessive case duration yet is the primary source of dissatisfaction of the Polish litigants and businesses with the courts. This indicates that the Polish courts do not operate within an optimal time frame. The MOJ should consider launching a time management program. Such programs have been used in Nordic countries to tackle court delays and backlog and time of disposition. The program focuses on several issues: improving foresee ability of the time use; defining monitoring standards for an optimum timeframe for different categories of cases; improving statistical tools and developing communication strategies; measures to control the body of cases dealt with by the courts by ensuring appropriate use of appeals and effective compliance with the procedural rules; defining priorities in case management; measured to reduce waiting time by developing practices to organize time; and improve the training in time management.

vi) Resource Allocation

a.) Personnel

21. The number of judges and court employees are measures of input and are suggestive of quality. When compared with cases decided, they indicate operational efficiency. In 2005, the number of judges per 100,000 inhabitants in Poland was 20, the number of judges’ assistants was 2, and the number of support staff was 60. By 2011, the numbers went up to 27 judges, 8 judges’ assistants and 71 support staff. Figure 6 show the absolute number of judges in European countries.

22. The personnel ratio in the Polish courts has changed significantly, though unevenly. The number of judges per 100,000 inhabitants has risen by 35%, the number of judges’ assistants by 300%, and the number of support staff by 20%. These numbers clearly indicate a preference for an increase in the number of judges’ assistants.

Figure 6: Absolute number of judge assistants and judges in EU in 2010
23. Table 6 compares the number of judges and judges’ assistants in Poland with those of other EU Countries. The table also describes the distribution of judges among the levels of courts.

Table 6: Comparison of Number of Judges and their Distribution

<table>
<thead>
<tr>
<th>Country</th>
<th>Professional judges</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Absolute #</td>
<td>Per 100,000 inhabitants</td>
<td>1st Instance %</td>
<td>2nd Instance %</td>
<td>3rd instance %</td>
</tr>
<tr>
<td>Austria</td>
<td>1491</td>
<td>17.8</td>
<td>85</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Croatia</td>
<td>1887</td>
<td>42.8</td>
<td>72</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>3063</td>
<td>29.1</td>
<td>61</td>
<td>39</td>
<td>8</td>
</tr>
<tr>
<td>Estonia</td>
<td>224</td>
<td>16.7</td>
<td>73</td>
<td>26</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>Judges</th>
<th>Judges per 100,000</th>
<th>Civilian</th>
<th>Support Staff</th>
<th>Assistant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>2891</td>
<td>29.0</td>
<td>58</td>
<td>39</td>
<td>8</td>
</tr>
<tr>
<td>Latvia</td>
<td>472</td>
<td>21.0</td>
<td>63</td>
<td>26</td>
<td>8</td>
</tr>
<tr>
<td>Lithuania</td>
<td>767</td>
<td>23.6</td>
<td>83</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>Poland</td>
<td>10,625</td>
<td>27.8</td>
<td>68</td>
<td>30</td>
<td>4</td>
</tr>
<tr>
<td>Slovakia</td>
<td>1351</td>
<td>24.9</td>
<td>67</td>
<td>27</td>
<td>6</td>
</tr>
<tr>
<td>Slovenia</td>
<td>1024</td>
<td>49.9</td>
<td>77</td>
<td>22</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: CEPEJ Report 2012

24. Regarding commercial courts in Poland, except for the year 2005, the number of judges per 100,000 inhabitants has been much lower -- 2 judges throughout the period, 1 judge assistant and around 3 support staff.

![Figure 7: Number of Commercial Court Judges to All Judges in Poland 2005-2011](image)

Source: MOJ Statistics

25. Figure 8 shows the evolution of these numbers, evidencing the high difference in human resources between commercial courts and the whole judiciary. Comparing the number of personnel indicates that the division of labor in commercial courts is leaning toward judge assistants and support staff.

![Figure 8: Composition of Staff in Commercial Courts and All Courts in Poland 2005-2011](image)
In Figure 9, we see the noticeable disconnect between the number of commercial judges and the increased inflow of commercial cases over time, and how that could be affecting the performance of commercial courts. Indeed, according to Figure 9, while the number of commercial cases increased during 2008-2011, the number of commercial judges during that same period decreased. This seems to have had an impact on clearance rates, because since 2008 the backlog of cases has increased during these years.

Figure 9: Comparison of Number of Commercial judges with Case Inflow and Case Backlog and Number of Staff in Commercial Courts

Source: MOJ Statistics
27. Case inflow per judge varies across court situations. While case inflow per judge is higher for commercial courts than for other jurisdictions in the 1st instance courts, in the upper instances courts the number of cases per judge is lower in commercial courts than in the judiciary as a whole. Also, while the case inflow per judge has been increasing in lower courts, these rates are diminishing in upper courts. This may imply that, even though lower courts have a larger caseload, 1st instance commercial judges are delivering good quality rulings.

28. The difference in case inflow per judge may also be due to a smaller number of judges in higher courts. The quality argument can be analyzed looking at the appeal rate (Figure 11). In fact, numbers for appeal rates show that for 1st instance courts (appeals filed in 2nd instance), appeal rates are lower for commercial than for overall courts. Therefore, it seems feasible to conclude that the quality of the decisions of 1st instance courts is higher.
in commercial courts than in courts taken as a whole, even if commercial judges have a bigger caseload than courts in general.\textsuperscript{23}

29. The situation is different when we look at the data for third instance courts. In third instance courts, case inflow is lower per commercial judges than per judges in general. This could be an indication that commercial judges in second instance courts are delivering better quality decisions than overall second instance judges. However, appeal rates do not seem to confirm that (Figure 11). In fact, if we look at appeal rates of second instance decisions (those filed before third instance courts), we see that decisions by second instance commercial judges are more often appealed than rulings by second instance courts in general. That would imply that, even though second instance commercial judges have a lower case inflow than second instance judges overall, they are delivering decisions of less quality.

**Figure 10: Case Inflow per Judge**

![Graph of Case Inflow per Judge](image)

Source: MOJ Statistics

**Figure 11: Appeal Rates by instances Commercial and All Courts (2005-2011)**

\textsuperscript{23} These statements should be taken with caution, as appeal rates may be affected by the costs of litigation, and therefore can be a measure of barriers to court access faced by the parties.
30. The productivity of judges and court employees (measured by cases decided per year) has been very high compared to other countries, and productivity has increased since 2005. In 2005, judges concluded an average of 151 cases; by 2011 they concluded an average of 184 cases (increase of 22%). The situation in the commercial cases has been different. In these courts, although the inflow of cases has increased by 70%, the judges’ productivity has declined from 194 to 152 resolved cases per year.

31. **Summary**: the number of judges per 100,000 inhabitants is average relative to a number of comparator countries. Despite relatively sharp increase of cases this number has remained rather constant during last 5 years. Judges allocations across courts have not necessarily overlapped with the volume of cases in a given court. This could be because of lengthy process of selection and training of judges candidates as pointed out by commercial judges in Warsaw. In Poland judges’ productivity is very good comparing to their colleagues in comparator countries and what is very important, it has been improving. This, however, has not been the case in commercial courts where judges’ productivity has decreased despite an increase of cases.

32. Judges in Poland have been dealing with multiple legal changes and a high increase in the number of cases coming into court, yet the quality of decisions must have remained of the same consistency, given the low appeal rate, which is something to be recognized. The increased use of judges assistant and support staff, as well as increased personal judicial productivity is likely to have been core reasons why. Additional performance, time and motion studies with regards to the efficiency and effectiveness of the judges and
support staff would give additional insight into their working practices and perhaps
suggest further areas of productivity that could be utilized within the existing system.

33. The low number of commercial judges per 100,000 inhabitants is perhaps not unexpected
and may, of itself, by a slightly misleading piece of information. The “inhabitants”
measures the level of real, rather than legal, persons, yet in the commercial court it may
be that the volume of litigants is dominated by “legal” persons. Additional case file
information would be useful to understand precisely who is litigating in the commercial
courts to get a better sense of whether the judicial resources being provided are suitable.

b.) Expenditures

34. The judicial budget should consider workload, the safeguards needed for judicial
independence, and accountability. In Poland, the judicial budget is developed in and
protected by the overall budgetary system (a budgetary law), while judicial remuneration
is safeguarded by the Constitution24. The table below compares the total annual budget
allocated to the whole judicial system (courts, prosecution, legal aid prisons) with the
budget allocated to courts in comparator EU countries in 2010.

Table 7: Comparison of budget across EU countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Budget for Judiciary (in Euro)</th>
<th>Budget for Courts per inhabitants (in Euro) and it proportion to total judicial budget in %</th>
<th>Proportion of total budget to total Public Expenditure In %</th>
<th>Allocation to Court as % of GDP</th>
<th>Variation of budget between 2008 and 2010 in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>1 174.8</td>
<td></td>
<td>0.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>352.6</td>
<td>47.9mil/59.9</td>
<td>1.9</td>
<td>0.46</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>557.2</td>
<td>32.9mil/62.2</td>
<td>0.7</td>
<td>0.23</td>
<td>+24.7</td>
</tr>
<tr>
<td>Estonia</td>
<td>98.5</td>
<td>20mil/27.2</td>
<td>1.9</td>
<td>0.19</td>
<td>-21.8</td>
</tr>
<tr>
<td>Hungary</td>
<td>1 604.4</td>
<td>26mil/16.2</td>
<td>3.3</td>
<td>0.27</td>
<td>-9.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>Expenditure</th>
<th>GDP</th>
<th>Public Finance</th>
<th>Judge</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>137.7</td>
<td>16.6mil/26.8</td>
<td>3.2</td>
<td>0.20</td>
<td>-22.3</td>
</tr>
<tr>
<td>Lithuania</td>
<td>155.4</td>
<td>15.6mil/32.5</td>
<td>1.7</td>
<td>0.19</td>
<td>-16.6</td>
</tr>
<tr>
<td>Poland</td>
<td>2821.6</td>
<td>35.7mil/48.4</td>
<td>2.9</td>
<td>0.38</td>
<td>+13.4</td>
</tr>
<tr>
<td>Slovakia</td>
<td>278.3</td>
<td>25.5mil/49.8</td>
<td>1.8</td>
<td>0.21</td>
<td>-4.3</td>
</tr>
<tr>
<td>Slovenia</td>
<td>263.0</td>
<td>86.9mil/67.7</td>
<td>2.7</td>
<td>0.50</td>
<td>+11.7</td>
</tr>
</tbody>
</table>

Source: CEPEJ Report 2012

35. Expenditure as a share of GDP shows the relevance of judiciary in society in general and the public finance percentage conveys its relevance to the public sector in particular. In 2010, Polish courts absorbed close to 50% of the budget allocation for the whole justice system. Compared to other countries, the proportion of justice expenditure to total public expenditure is among the highest (after Hungary and Latvia). It also compares favorably to the European average and median allocation, which amounts to 1.9% of the budget allocation. Similarly, the budget allocation to courts per GDP is comparatively high (it is third highest after Slovenia and Croatia). The allocation is also significantly higher than the European average of 0.24% and median 0.20%. It is important to say that the budget allocation (total and allocation to courts) has been steadily increasing since 2006. The figure below indicates the strong correlation between budget allocation and GDP per inhabitant.

36. Budget allocations are an important indicator of sector priorities. As can be seen, Poland spends on salaries in line with the other countries at 65.5% of the total budget allocated to courts. The lowest is Austria at just 52.1%, whilst the highest is Slovenia at 70.8%. Poland spends the least on IT at just 0.8% compared to 6.8% in Austria. It incurs the highest costs in relation to O&M (5.1%) and new court buildings (3.1%) while spending relatively little on training and education (just 0.2%).
Figure 12: Correlation between the GDP per capita and the total budget (courts, legal aid and public prosecution) in 2010 of EU countries

Source: CEPEJ Report 2012

Table 8: Comparative composition of budget allocations % across EU countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
<th>Croatia</th>
<th>Czech R.</th>
<th>Estonia</th>
<th>Hungary</th>
<th>Latvia(^{25})</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
<th>Slovenia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>52.1</td>
<td>68.7</td>
<td>58</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>68.9</td>
<td>65.5</td>
<td>65.1</td>
<td>70.8</td>
</tr>
<tr>
<td>IT</td>
<td>6.8</td>
<td>5.5</td>
<td>2.1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>1.5</td>
<td>0.8</td>
<td>1.6</td>
<td>2.3</td>
</tr>
<tr>
<td>Justice Expenses</td>
<td>14.6</td>
<td>14.7</td>
<td>3.5</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0.4</td>
<td>10.9</td>
<td>0.2</td>
<td>21.3</td>
</tr>
</tbody>
</table>

\(^{25}\) Percent allocations for Estonia, Hungary and Latvia cannot be calculated since specific information was not provided for one or all of the budget lines
37. Perhaps the biggest variation (40%) compared to 2008 shows that the allocation for salaries are connected with the reform of salaries for judges and prosecutors. Given the low salary base in 2006, this is clearly a step in a positive direction. The decrease by about 25% in investments in technology is a less constructive development given the status of case management and court administration reforms and the ambitious plans for automation. Poland was already lagging behind in its investment in technology in 2006–2008, when the budget for IT was 1.2%. By contrast, the Netherlands allocates 8% of its judicial budget to computerization, and Austria 4.25%. Perhaps the subsequent, even more significant decrease in the budget (by almost to 50%) can be explained by the fact that the National School for Judges and Prosecutors was being built (in 2009).

38. Comparison of the budget allocation with caseload provides an interesting picture. As has been shown (Table 2), the total case inflow in Poland increased quite substantially from 2008 to 2011, as did the budget allocation. However, during the same period, the clearance decreased and the case backlog increased. Figure 13 shows the correlation between inflow of cases, resolved cases, case backlog and public spending. The future challenge for the MOJ and the courts in particular seems to be translating increased investments in the judiciary into increased measureable performance.

<table>
<thead>
<tr>
<th>O&amp;M</th>
<th>11</th>
<th>2.8</th>
<th>1.3</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
<th>2.7</th>
<th>5.1</th>
<th>6.4</th>
<th>4.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Court buildings</td>
<td>0</td>
<td>2.1</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>3.1</td>
<td>0.0</td>
<td>0.6</td>
</tr>
<tr>
<td>Training &amp; Education</td>
<td>0</td>
<td>0.8</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0.5</td>
<td>0.2</td>
<td>10</td>
<td>0.7</td>
</tr>
<tr>
<td>Others</td>
<td>15.5</td>
<td>5.3</td>
<td>35.1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>25.9</td>
<td>14.5</td>
<td>26.7</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: CEPEJ Report 2012
39. **Summary:** Judging by expenditure as a share of GDP and the public finance the judiciary is very relevant institution in Poland. This assessment is not comprehensive enough to show whether the high degree of expenditures in Poland on the judiciary (65.5% of total court budget) has been the optimal allocation of resources. Although it was noted earlier that the judiciary seems to have performed reasonably well in the face of constantly changing procedural codes and a large increase in case inflow, whether the inflow and backlog could have been dealt with better had additional resources been spent on IT, training and so forth to enhance productivity cannot be reliably judged. As has been mentioned before, the introduction of strong case management systems could be a boon to the judiciary in enhancing their productivity levels. The MOJ should consider conducting a comprehensive sector expenditure review. This review would help the MOJ to understand its problems and allocate and use available resources in a way that promotes better performance of the courts.

vii) Warsaw and Krakow Commercial Courts
40. These sections analyze the performance of Warsaw and Krakow Commercial courts. The analysis follows the approach applied to other courts: the performance of the Warsaw commercial courts is compared to the performance of commercial courts as a whole and to the commercial court in Krakow. The analysis is structured in this way because the Warsaw Commercial courts are among the biggest and most relevant commercial courts in the country. Because of the DB methodology, these courts have come to be seen as representative of the whole Polish judiciary.

41. Between 2005 and 2011, the inflow of cases in Poland has increased from 2,200 to close to 3,500 cases per 100,000 inhabitants. By contrast, we have not documented a similar surge of cases in Warsaw or Krakow. Despite the concentration of businesses in Warsaw, the total number of inflow cases per 100,000 inhabitants in its commercial courts is significantly lower (around one seventh the number of cases in 2011). The same applies to Krakow. (See Figure 14). Yet, clearance rates are not higher in these courts than in overall commercial courts. In fact, case backlog in all commercial courts increased by 2% from 2008 to 2010, while in Warsaw this increase was 13% and in Krakow 5%, to a level of 48% and 27% of backlog over total incoming cases in 2011, respectively. The performance of Warsaw and Krakow suggests the need for further analysis of the performance of those particular courts.

Figure 14: Case Inflow per 100,000 inhabitants / Clearance rates / Backlog of Commercial Cases in Poland, Warsaw and Krakow (2005-2011)

Source: MOJ Statistics
42. When these numbers are analyzed vis a vis the number of judges, the picture is more nuanced. It appears that there is lesser number of judges in these courts to respond to to the demand than in the national average commercial court. For example, judges in commercial courts in Warsaw and Krakow, in particular, have a larger caseload than other commercial judges in the country (See Figure 15). This caseload may affect the quality of judgments of these two commercial courts, as shown by appeal rates in these two courts, which are higher than the national average. This obviously can be caused due to other reasons such as the concentration of businesses and legal professionals.

Figure 15: Cases per Commercial Judge per 100,000 inhabitants / Appeal rates in Poland, Warsaw and Krakow (2005-2011)

43. The above suggests that Warsaw and Krakow are under resourced; therefore their performance does not reflect the average situation of commercial courts across the country. In fact, given that clearance rates for all commercial courts include the rates of Warsaw and Krakow, other courts in the country must be performing significantly better than these two courts in order push down the numbers of the overall commercial courts to the current levels.

44. Summary: The differences between the productivity (in terms of backlog) between Warsaw and Krakow and the rest of the system are quite striking. There may be statistical reasons for this, which further lengthier and detailed analysis would reveal, however, on the face of it, there does not appear to be a good reason as to why these courts appear to
be less productive. We have suggested that they must be under resourced in some fashion, but what resources are lacking is not entirely clear at present because of the limited scope of this report. Given that Warsaw and Krakow are understood to be the main commercial centers in Poland, the overall poorer levels of productivity there may go a long way to explaining the perception amongst businesses that the situation for commercial courts in Poland as a whole is poor, where the opposite may in fact be the case (with the overall situation being good and Warsaw and Krakow being the outliers). The MOJ should further analyzed the performance of both courts and based on the results of the analysis it should design and implement a specific reform program which would help the courts to address their challenges.

viii) E-Court

45. The e-court has been a remarkable innovation into the Polish case management system in the last two years. It is a natural extension of the work related to the Praetor case management software (although on a dramatically different scale – from the tens of thousands of cases a year, to the millions of cases) and in particular it has enabled “mass plaintiffs” and those designated as bailiffs to more readily process cases. The software for the e-court cost only EUR 360 thousand to develop and the “housing costs” for the system were EUR4.8 million.

46. In January 2010 the XVIth Civil Division of the Lublin Regional Court (now the VIth Civil Division of the Lublin-West Regional Court) was inaugurated. The Court, known as the electronic court (the e-court), has jurisdiction over the whole country to process electronic writ of payment proceedings introduced to the Civil Procedure Code in the Act of 9th January 2009 on the Amendment to the Civil Procedure Code and other Acts.26 The court is competent to examine civil pecuniary claims (including commercial and labor

Figure 16: Clearance rate of e-court

Source: MOJ Statistics

26 Published in the Official Journal in 2009, number 26, item 156.
claims), irrespective of the total amount of the dispute. As Figure [1] shows, after its introduction in 2010, the inflow of cases in the e-court peaked in 2011, making it difficult to cope with the inflow of cases and creating some backlog, which appears to have been reduced as of June 2012. In those two years and a half of operation, the e-court has resolved 3,167,032 cases. Currently the processing time per case is just 18 days, although there are hopes to reduce to this to just 3 once it becomes permissible to serve lawsuits on defendants by electronic means.

47. The e-court currently employs 90 full time staff, 41 of whom work remotely. The annual staff costs are EUR 1 million. Other annual recurrent costs include “housing” – EUR480 thousand – software maintenance and development – EUR 120 thousand – technical services EUR 50 thousand. Thus the total cost for the first 5 years of establishing and operating the e-court will be EUR13.4 million.27

48. One of the advantages of the e-court is its simplified and expeditious process. Basically, the claimant files a lawsuit electronically presenting his claim and providing a list of proofs, without attaching any documents to the lawsuit. A court official (referendarz), after conducting an examination of the claim, can either issue an electronic writ of payment or refer the case to the competent court for detailed consideration. If the writ of payment is issued, the defendant can submit a statement of opposition that will annul the payment order and the case will be transferred for consideration to the competent court. If the defendant does not submit the statement of opposition, the writ of payment becomes final and the electronic system will issue an enforcement clause.

Figure 17: Flowchart E-Court Writ of Payment Proceedings

Source: World Bank Analysis

27 Information from MOJ.
49. Figure 17 shows that lawsuits filed before the e-court can be re-directed to the traditional court system in two instances: (i) when the judge assistant finds that the lawsuit filed by the claimant lacks sufficient ground to issue the electronic writ of payment, and (ii) when the defendant submits a statement of opposition to the electronic writ of payment order within two weeks from the date of the effective service of the order. This is important, because as Figure 18 shows, writ of payments filed before traditional courts surged since 2009, increasing the backlog of cases substantially in 2011. The increases after 2010 (when the e-court was introduced) could be motivated in part from a large number of cases referred by the e-court (due to rejection by the referendarz or opposition by the defendant). Payment defaults due to the economic crisis may be playing an important role also in this increase of pecuniary claims through this procedure. In addition to this, the system has greatly empowered the “mass plaintiffs” to integrate their systems directly with the e-court, thus further reducing their costs. It is understood that the “web service interface” of the system allows users to build their own applications to “push” their lawsuits to the court system and track their progress. The only limitation on the speed by which cases can be entered into the system is an anti-virus/hacker limitation, which sets the rate of application at one case per second – although perhaps one second for a case to be filed and registered would be setting a new global speed record for such registration.

50. The mass filings from the e-court will, however, have to be carefully monitored to assess their impact on the “main” court system. The ability of a defendant to have the case sent to the “main” courts is relatively simple – they just have to object. Under such circumstances, one might expect to see a spike in the influx of cases from the e-court to the “main court” system in the early years as defendants – who previously were not pursued for small claims such as credit card debt, phone bills, utilities etc… - unfamiliar with the new system attempt to buy time or
challenge the new state of affairs. Similarly, challenging the decision from the e-court may become a legitimate litigation tactic of defendants if the costs of pursuing the cases through the main courts become too burdensome on the plaintiffs who would choose to either drop or settle the case rather than incur all the associated litigation expenses. The inflow of cases from the e-court to the “main court” ought therefore to be closely monitored, with cases carefully monitored to ascertain the basis for defendants appealing to the main court. Similarly, due to the potentially high rate of automation of the system (noted above, where “mass plaintiffs” can automate the entire process”) instances where the cases have been found groundless by the referendarz and referred to the main court should also be closely monitored, to ensure that the automation process is not being abused and defendants who may be in particularly weak positions are not being subject to abuse.

51. **Summary**: The establishment and introduction of the “e-court” since 2010 represents an innovative piece of technology for Poland. It appears to have tapped into latent demand that was otherwise going unfilled and should allow a multitude of businesses (ranging from telecoms, to utilities to banks) as well as individuals to quickly and cheaply enforce a monetary claim. The overall costs for the introduction of the system have been low and appear to represent extremely high value for money. The performance of the system should continue to be closely monitored, as has been mentioned above, and in line with the recommendations though this report, drilling down into the data to get a better sense of who is litigating, how often and for how much, would prove invaluable for policy makers and would also allow technical improvements to be made to the system over time to better cater to demand.