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Conclusions of the research on Poland conducted in the framework of the project InAbsentiEAW

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1) Poland implemented FD 2009/299/JHA in 2011 by introducing to the Code of Criminal Procedure the new **optional ground for refusal** of the execution of the EAWs concerning judgments issued *in absentia*. This fact, together with strong support for the principle of mutual trust, has a great influence on the attitude of Polish judges acting as executing authorities with reference to EAWs concerning judgments issued *in absentia*. It should be underlined that the risk of violation of human rights constitutes a separate, mandatory ground for refusal of execution of the EAWs in Poland.

2) Poland does not have a long tradition of conducting a criminal trial *in absentia*. As from 1 July 2015 the CCP provides for the principle that participation of a defendant in the hearing is his/her right but not an obligation. Only exceptionally the trial cannot be conducted without the presence of the accused duly summoned to the hearing.
   The notion „proceedings in absentia" is rather interpreted from the perspective of the national law and conceived as proceedings conducted despite the fact that a defendant is not aware of them. The Polish law provides for the opportunity of conducting such proceedings only in cases concerning fiscal offences (these are the special proceedings called „proceedings concerning absent suspects"). In case of presence of a defendant at some out of many dates of the hearing a defendant is always aware of the trial being conducted against him/her. Thus, the Polish issuing authorities seems to interpret the concepts used in section D of the EAW-form from the perspective of the national law.

3) As transpires from the examination of the case-files of the EAWs in three Polish Regional Courts, the issuing authorities, while filling in part D of the EAW's Form, had some problems with classifying the situation of presence of the accused at some dates of the hearing and his/her absence at other dates of the hearing conducted at several dates. In particular, somehow misleading for Polish judges seems to be the notion of „trial resulting in the decision" used in Part D of the EAW - form. Sometimes it is interpreted as "the hearing at which the judgment was pronounced", while under the Polish law there is no obligation to be present at the date of the hearing at which the judgment is pronounced. Moreover, sometimes, presence

at some of the hearings as to the merits (but not all) was classified by the Polish issuing authorities as personal presence of a defendant at the trial.

4) The Polish issuing authorities have some problems with filling in Part D of the EAW - form with reference to cumulative judgments. Three different practices are applied with regard to this issue. Usually part D is filled in only with reference to a cumulative judgment. This is a prevailing practice. Sometimes it is filled in with reference to all judgments ("single judgments" as well as a cumulative judgment). Finally in some EAWs the issuing authorities filled in part D of the EAW - form only with reference to a cumulative judgment but in section 4 of part D of the EAW - form additional explanations were provided with reference to the proceedings in which the "single" judgments were rendered.

5) The Polish issuing authorities have some problems with classifying ways of serving of a summons in Poland while filling in Part D of the EAW - form. In particular, this concerns the so called substitute service of a summons (a summons left twice, every time for 7 days, at the post office closest to a defendant's address indicated to the authorities). In some cases it is classified as "personal service", in other – as service by "other means" (3.1.b. of section D of the EAW - form). The latter classification prevails. The problem with a summons served in this way is similar to that identified in *Dworzecki* case. It is difficult to assess whether "it was unequivocally established" that a defendant was aware of the scheduled trial. On the other hand, it should be stressed that after *Dworzecki* case, serving of a summons to the hands of an adult member of a defendant's household is not applicable anymore to a summons concerning the first date of the hearing.

6) While implementing FD 2009/299/JHA, Poland introduced into the Code of Criminal Procedure a ground for re-opening of the criminal proceedings conducted *in absentia* (Article 540b of the CCP). However, as is stemming from the EAWs issued by the Polish courts, this ground for re-opening of criminal proceedings is not indicated in part D of the EAW - form as an effective remedy available for a person after surrender. Thus, with a few exceptions, the box 3.4. of the EAW - form is not ticked by the Polish issuing authorities. In my view this is because Article 540b offers only optional ground for re-opening of the proceedings. Moreover, under Article 540b § 2 of the CCP the substitute service of a summons, as described above, brings consequences equal to personal summoning (i.e. in principle, the motion for re-opening of the proceedings is ineffective).