QUESTIONNAIRE *Improving Mutual Recognition of European Arrest Warrants for the purpose of executing in absentia judgments* (draft)

Introduction

This questionnaire is meant as a tool to:

- identify any practical problems issuing judicial authorities and executing judicial authorities may experience when deciding on the issuing or on the execution of EAW's regarding *in absentia* judgments of conviction and
- identify the roots of these problems.

In this draft the questions are based solely on the experiences of the *District Court of Amsterdam*, because in drafting the questionnaire the *District Court of Amsterdam* is in the lead.

[The *District Court of Amsterdam* is the sole executing judicial authority for the Netherlands. From 2004 on the *District Court of Amsterdam* on average has dealt with about 500 to 600 EAW's each year. Out of a Union wide total of 33 preliminary references on or related to the subject of the EAW[1] (6 of which concern EAW's which have been issued for the purpose of executing *in absentia* judgments of conviction)[2] 12 preliminary references were made by the *District Court of Amsterdam* (4 of which concern EAW's which have been issued for the purpose of executing *in absentia* judgments of conviction).[3]]

Of course, you will have ample opportunity to amend and/or supplement this draft based on the experiences of the issuing and executing judicial authorities of your Member State.

The questionnaire consists of five parts.

Part 1 concerns preliminary matters.

Part 2 concerns the national legislation of the Member State of each partner.

Part 3 concerns the actual application of the legislation implementing Framework Decision (FD) 2002/584/JHA, as amended by FD 2009/299/JHA.

Part 4 concerns statistical data on the actual application of the national legislation transposing the FD's.

In Part 5 the partners are asked to draw conclusions and offer opinions based on their experiences (or on those of their Member State's authorities). Furthermore, the Partners are invited to make any comments, put forward any information, pose any questions and make any recommendation they feel are relevant to the project, but which are not directly related to Parts 1-4.

[1] As of 16 January 2018 (not counting withdrawn preliminary references).
[2] *B.*, *Melloni*, *Dworzecki*, *Tupikas*, *Zdziaszek* and *Ardic*.
[3] *Dworzecki*, *Tupikas*, *Zdziaszek* and *Ardic*.

In answering the questions please refer to relevant (European of national) case law and legal literature, where available and applicable, otherwise provide your own expert opinion.

In this questionnaire the expression '*in absentia* proceedings' is used in its autonomous EU meaning (except when otherwise indicated). The expression therefore denotes proceedings during which the defendant did not appear in person (see, e.g., recital (4) of FD 2009/299/JHA and *Melloni*, par. 40). The expression 'judgment of conviction' denotes a judicial decision which finally sentenced (convicted) the requested person, whilst the expression 'conviction' denotes a judicial decision which consists of either a finding of guilt and/or the imposition of a penalty, or the modification of the nature or the *quantum* of the penalty originally imposed.

If a question concerns the expression '*in absentia* proceedings' *as defined by the national law of your Member State*, this will be expressly stated.

Part 1: preliminary matters

1. Please indicate who completed the questionnaire in which capacity and how much years of experience you have had in dealing with EAW cases, in particular whether you have experience as issuing and/or executing judicial authority.

The questionnaire was completed by Mr. Szabolcs Hornyák. He is a judge and he is working at the National Office for the Judiciary. He has one and a half year of practical experience in EAW cases. His former place of service was the Central District Court of Buda, which is an issuing judicial authority.

Part 2: national legislation

2.1. National rules on service of summons, *in absentia* proceedings and possible recourses against *in absentia* judgments of conviction

Explanation

Part 2.1 concerns national rules on service of summons, *in absentia* proceedings and possible recourses against *in absentia* judgments of conviction.

These national rules are not covered by FD 2002/584/JHA and FD 2009/299/JHA, as these FD's do not seek to harmonize these rules.

National rules on service of summons, *in absentia* proceedings and recourses against *in absentia* judgments of conviction may have an impact on the application of the rules set out in Art. 4a FD 2002/584/JHA.

An example. In the experience of the *District Court of Amsterdam* national rules on service of summons seem to shape the way issuing judicial authorities interpret Art. 4a and section (d) of the EAW-form. Because in some Member States service of the summons on an adult member of the household of the defendant who undertakes to hand over the summons to the defendant constitutes a valid way of summoning a defendant, issuing judicial authorities of these Member States tick point 3.1.b of section (d) of the EAW-form (the requested person 'actually received official information of the scheduled date and place of that trial') even though there is no evidence to suggest that the defendant 'actually received official information relating to the date and place of his trial' (*Dworzecki*, par. 49).

In absentia proceedings are covered by Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Member States must have transposed this directive by 1 April 2018.

[Ireland is not bound by directives regarding the area of freedom, security and justice and has not 'opted in' into Directive 2016/343 (Protocol (No. 21) Treaty of Lisbon; recital 50 of the preamble of Directive 2016/343. The Irish partner will describe the situation as it is without any regard to the directive and will explain why Ireland did not opt in.]

[Belgium, The Netherlands and Poland will not transpose Directive 2016/343, as these Member States are of the opinion that their national legislation is already in line with the directive. If you are of the opinion that your Member State should nevertheless transpose the directive (as regards *in absentia* proceedings), please answer the relevant question in Part 5.]

Service of summons

2.
a) Describe the ways in which according to the national law of your Member State the summons for the trial may be served on the defendant.

Official documents (for example summons) may be served on the addressee in the following manner:

a) by mail,
b) by way of electronic means to a registered contact point,
c) personally,
d) in the form of an announcement,
e) by the delivery-man of the court, the prosecutor's office or the investigating authority,

The addressee may also receive the document at the sender's place.

In the case of a defendant who is residing at an unknown place, official documents shall be served in the form of an announcement. In such cases the announcement shall state the address of the court, the prosecutor's office or the investigating authority where the document may be taken over by the addressee. The announcement shall be posted both on the notice board and the web site of the competent court, prosecutor's office or investigating authority for 15 days. In case of a defendant who is residing at an unknown place, it shall be posted on the notice board of the local government of the last known domestic address of residence or place of stay of the addressee (if any).

b) Do any of the ways of serving a summons for the trial correspond to:

- 'personal service' – *i.e.* service as a result of which the defendant 'has himself received the summons' (*Dworzecki*, par. 45) – or

- service 'by other means' as a result of which the defendant has 'actually received official information of the scheduled date and place of that trial in such a manner that it is unequivocally established that he or she is aware of the scheduled trial' (see Art. 4a(1)(a) FD 2002/584/JHA)?

Yes.
In the case of postal delivery, if the consignment was personally received by the defendant according to the return receipt.
Summons can be issued orally to the defendant for the following hearing which must be recorded in the minutes.
Summons by way of electronic means is considered a personal service.

Such ‘services by other means’ do not exist.

c) Does the national law of your Member State provide for a ‘presumption’ of serving a summons on the defendant? *E.g.*, is service of a summons deemed effective if the summons was sent to the address indicated by the defendant during the pre-trial stage of the proceedings (*e.g.* during police investigations) even when there is no confirmation that the defendant actually received the summons?

Delivery shall be deemed to have been duly performed, if the official document is received by other person on behalf of the addressee, as specified by a separate legal regulation. The official document shall be considered to have been duly delivered, if its receipt has been refused, or if it was received without having signed the return receipt.
Official documents mailed with a delivery voucher (acknowledgement of receipt card) shall be deemed to have been duly served on the fifth working day following the second attempt of delivery, if delivery failed because the addressee did not take over the document.

In case of an announcement, the document shall be deemed to have been delivered on the fifteenth day following its posting. In the case of posting both on the notice board and on the web site, the time limit expiring later should be taken into account.

***In absentia* proceedings**

3. Does the national law of your Member State provide for *in absentia* proceedings and, if so,

- what does the expression ‘*in absentia* proceedings’ mean according to the national law of your Member State? Does this meaning vary from the autonomous EU meaning of this expression and, if so, in what way?

- under what conditions are ‘*in absentia* proceedings’ possible?

According to the Hungarian law ‘in absentia proceedings’ can be conducted in three cases:

a) the defendant waives his right to attend the hearing
b) the defendant is at an unknown location
c) the defendant’s place of residence is known but it is in abroad

ad a)

The defendant may waive the right to attend the hearing at any time after the prosecution, if
1) the defendant has a legal counsellor, and
2) entrusts his or her legal counsellor with the function of agent for service of project.

ad b)

The fact that the defendant’s place of stay is unknown shall not be an obstacle to the process. In such case all measures shall be taken to locate the place of stay of the defendant.

The conditions are:
- the defendant fled or hid during the process,

- the means taken in order to locate the residence of the absent defendant have had no success within a reasonable time,
- the severity of the crime justifies it.

The court shall proceed against the defendant of unknown place of stay based on the motion of the prosecutor to this effect. If the prosecutor does not file a motion for holding the trial in the absence of the accused, the presiding judge shall suspend the procedure.

ad c)

The conditions of 'in absentia proceedings' if the defendant resides abroad:

- issuing an international or European Arrest Warrant is not possible, and
i) the duly summoned defendant failed to attend the trial, or
ii) the defendant is detained in abroad, or
- international or European Arrest Warrant has been issued , but after capturing the extradition or surrender based on European Arrest Warrant was not happened in the following 12 months neither the transferring of the criminal proceedings, or
- the extradition or surrender based on european arrest warrant was rejected and the criminal proceedings have not been transferred either, or
- the deferred extradition or surrender based on european arrest warrant was ordered

and

- the severity of the crime confirms and
- the present of the defendant via telecommunication is not possible.

4. If the defendant was not present at the trial itself but was present at the hearing at which the court pronounced judgment, are the proceedings considered to be *in absentia* proceedings (as this expression is defined by your national law)?

If the defendant is present at the hearing at which the court pronounces the judgment, we are not talking about 'in absentia proceeding'.

~~If the defendant appears at the hearing at which the court pronounces the judgement, the court repeats the previous procedure, presents the evidences and makes a judgment under the general rules.~~

If the defendant appears at the hearing at which the court pronounces the judgement, the court the court shall continue the trial by the presentation of the material of the earlier hearings, and if necessary, reopens the evidentiary procedure. The court makes a judgment under the general rules.

5. If in course of the trial several hearings are held and the defendant is present at some but not all of these hearings, which criteria determine whether the proceedings are deemed to be *in absentia* or not (as this expression is defined by your national law)? *E.g.*, does it matter what transpired at the hearings at which the defendant was present or is the mere presence of the defendant at one of the hearings enough to conclude that the proceedings are not *in absentia* proceedings (as this expression is defined by your national law)? Can the defendant be present via telecommunication?

According to the Hungarian law 'in absentia proceeding' means that the defendant is not present at all of the hearings.
Under Hungarian law a hearing via telecommunication is equivalent to the physical present, because the defendant can see and hear the judge, the witnesses, the experts, etc,, and he/she is able to ask or answer a question. These rules meet the criteria of the case law of the ECtHR.

Defence by a legal counsellor in the absence of the defendant

6. Does the national law of your Member State allow for a defence by a legal counsellor (either a legal counsellor appointed *ex officio* or a counsellor chosen by the defendant) in the absence of the defendant?

At the trial held in the absence of the accused, the presence of the defence counsel shall be statutory. There are no exceptions in such cases.
A legal counsellor may primarily be retained by the defendant. The court shall officially appoint a legal counsellor, if defence is statutory and the defendant has not retained a legal counsellor.

If so:

- does the defendant have to have any knowledge of the proceedings against him or the scheduled trial;

The defendant does not have to be informated about the proceeding or the scheduled trial.
If he waived his right to attend the hearing, there is no need to summon. The summons are served by way of public summons (announcement) on the defendant if his place of residence or address is unknown.

- what are the conditions under which a trial may take place without the defendant being there?

See point 3.

- does the defendant have to have instructed his legal counsellor to defend him in his absence, either expressly or implicitly?

No, the legal counsellor may act independently.

- can the situation in which counsel is present and the accused absent be considered as "the defendant is present"?

No, the legal counsellor is an independent participant in criminal proceedings.

- does a legal counsellor have the right to appeal or to ask for a retrial independently or does he need the consent of the defendant?

Yes, the legal counsellor has the right to appeal. With the exception of the rights attached exclusively to the person of the defendant, the rights of the defendant may also be exercised by his counsel independently.

7. If the national law of your Member State allows for a defence by a 'mandated' legal counsellor in the absence of the defendant, what does the concept 'mandate' mean and what powers does the legal counsellor have under such an 'mandate'?

According to the Hungarian law, there is no difference between legal counsellors (mandated or appointed).

The legal counsellor has the right to:
- attend the trial,
- inspect the documents in the course of the procedure,
- ask questions to the defendant, witnesses and experts,
- make a motion,
- make remarks,
- appeal or to ask for a remedy independently.

The rights of the defendant may also be exercised by his legal counsellor independently.

The situation after a judgment of conviction has been rendered

8.

a) Describe the ways in which according to your national law an *in absentia* judgment of conviction (as this expression is defined by your national law) may be served on the defendant and whether and how the defendant is notified of the possible recourses against that judgment (such as appeal or opposition).

If the defendant waived his right to attend the hearing, the judgement is served on him via his legal counsellor.
If the defendant is at an unknown location, the judgement is served on him by way of public summons (announcement).

The judgment always contains detailed information about the possible remedies.

b) Do the same rules of summoning apply as before the trial starts?

Yes.

c) Describe the possible recourses against an *in absentia* judgment of conviction (as this expression is defined by your national law).

If the measures to locate the defendant succeeded after the delivery of the conclusive decision of the court of first instance, the defendant may appeal within 8 days.

If the measures to locate the accused succeeded during the procedure of the court of appeal, the court of appeal shall set the date of the trial and hear the accused there, and – if required – takes further evidence as motioned for by the accused. Depending on the outcome of the procedure, the court of appeal may either uphold or change the judgement of the court of first instance, or repeal the same and order the court of first instance to conduct a new procedure.

If the defendant is located after the delivery of the final decision, a motion for retrial may be submitted in his favour.

d) What are the formalities for contesting the judgment rendered after proceedings *in absentia* (as this expression is defined by your national law)? How is it established that the person concerned 'expressly stated' that he does not contest the judgment (compare Art. 4a(1)(c)(i) FD 2002/584/JHA)?

There are no formalities for contesting the judgment. The defendant may appeal at the court personally, by mail or by way of electronic means from his registered contact point.

These are the ways to expressly state not to contest the judgment.

Possible recourses against an *in absentia* judgment of conviction

9.

a) Does your national law provide for a retrial or an appeal in case of an *in absentia* judgment of conviction (as this expression is defined by your national law)? If so, please describe:

- factually what a retrial or an appeal is under your system;

- whether the retrial or the appeal is a *full* retrial or a *full* appeal (*i.e.* a retrial or an appeal entailing a fresh determination of the merits of the charge, in respect of both law and fact);

- under what conditions and within what time frame the retrial or appeal is provided for.

~~According to the Hungarian law, appeal and retrial are full.~~
According to the Hungarian law, the retrial is a full remedy, the appeal can be full or limited.

ad a) The appeal is an ordinary remedy. An appeal may be lodged for legal or factual reasons.

The judgement of the court of first instance may be appealed at the court of the second instance. The appeal against the judgement of the court of first instance may involve any of the dispositions therein or exclusively the justification thereof. ~~An appeal may be lodged for legal or factual reasons.~~

It is possible to appeal only against ['limited appeal']:
- the punishment,
- the disposition on the auxiliary issues (for example on the dispositions concerning the civil claim and the cost of criminal proceedings) or
- the justification of the verdict of acquittal or the decision of termination.

In this case the scope of review is determined by the content of the appeal.

In case the defendant has beforehand reported that he does not wish to be present at the trial no appeal shall be granted based on the fact that the court has passed a final decision in the absence of him.

If the measures to locate the defendant succeeded after the passing of the judgment of the court of first instance, the defendant may appeal within eight days from the date of the delivery of the judgment.

ad b) The retrial is an extraordinary remedy.

An act adjudicated by a final judgement of a court (basic case) may be subject to retrial, if the judgement in the basic case was passed at a trial held in the absence of the defendant.
If the defendant is located after the delivery of the final decision, a motion for retrial may be submitted within one month from he has been aware of the date of the final judgment.

b) If your national law does provide for the right to a *full* retrial or a *full* appeal, does this right depend on any of the following factors:

- the way the summons for the trial was served on the defendant;

- the fact that the defendant was defended by his mandated legal counsellor in his absence and/or

- the way the *in absentia* judgment of conviction (as this expression is defined by your national law) was served on the person concerned?

This right does not depends on these factors.

c) If your national law does provide for the right to a *full* retrial or a *full* appeal, is the time frame within which this right may be exercised dependent on any of the following factors:

- the way the summons for the trial was served on the defendant;

- the fact that the defendant was defended by his mandated legal counsellor in his absence and/or

- the way the *in absentia* judgment of conviction (as this expression is defined by your national law) was served on the person concerned?

This right does not depends on these factors.

10. Does the national law of your Member State provide for a *final instance* appeal on points of law (*cassation*)? If so:

- does the defendant have a right to be present at the hearing of the *cassation* court?

- after having quashed the judgment of the court below on a point of law, does the *cassation* court have the power to make a fresh determination of the merits of the charge, in respect of both law and fact, and/or to impose a fresh sentence?

- if so, please answer questions 2, 4, 5, 6, 7, and 8 with regard to these proceedings.

The final conclusive judgment may be subject to judicial review at the Kúria, if the criminal liability of the defendant established by violation of the substantive law, or the court passed its decision by a serious procedural irregularity.
The facts of the case established by a final judgement shall prevail in the review procedure.
If the Kúria quashes the decision, it orders the court of authority and competence to conduct a new procedure.
The defendant has the right to attend the trial.

Transposition of Directive 2016/343

11. Has your Member State transposed Directive 2016/343? If not, why not?

Yes.

12. If your Member State has transposed Directive 2016/343, what changes, if any, has this transposition effected?

The directive was not transposed by a separate law. This is due to the fact, that the provisions of the previous Criminal Procedure Code (Act XIX of 1998) were in compliance with the directive and, secondly, the codification of the new Criminal Procedure Code was in progress. The new Criminal Procedure Code (Act XC of 2017), which entered into force on 1st July 2018, declares that it shall serve the compliance with the provisions of the Directive 2016/343.

National legislation

13. Please provide:

- the relevant national legislation concerning service of summons, *in absentia* proceedings and possible recourses against *in absentia* judgments of conviction in the official language of your Member State (in so far as this legislation is relevant to the project) and

- an English translation thereof.[4]

Act XC of 2017 on Criminal Proceedings [The Act was promulgated on 26 June 2017 and has come into force on 1st July 2018]

Decree No. 12/2018. (VI. 12.) of the Ministry of Justice on the rules in relation to procedural actions and persons participating in criminal proceedings

2.2. Transposition of the FD's

Explanation
Part 2.2 concerns the national transposition of FD 2002/584/JHA, as amended by FD 2009/299/JHA. The questions aim to establish:

[4] The second part of this request does not apply to our Irish partner, unless the national legislation is provided in Irish.

- the meaning of Art. 4a FD 2002/584/JHA in so far as this provision has not been elucidated by the Court of Justice of the European Union and

- whether the Member States have implemented Art. 2 FD 2009/299/JHA fully and in a timely fashion.

Whereas part 2.1 concerns *national criminal procedure law*, part 2.2 concerns *national law transposing Art. 4a FD 2009/299/JHA*. Although at first blush there may seem to be some overlap of questions in parts 2.1 and 2.2, the questions in parts 2.1 and 2.2. have quite distinct purposes. An example. The topic of absence at the trial, but presence at the pronouncement of the judgement is dealt with in both sections: question 4 and question 61. Question 4 tries to establish how absence at the trial but presence at the pronouncement of the judgment is considered from the perspective of your Member State's national criminal procedure law. Does absence at the trial but presence at the pronouncement of the judgment make the proceedings *in absentia* proceedings according to the national criminal procedure law of your Member State or not? Question 61 tries to establish how absence at the trial but presence at the pronouncement of the judgment should be viewed from the perspective of the national law of your Member State transposing Art. 4a. Does absence at the trial but presence at the pronouncement of the judgment mean that the person concerned did not appear in person at the trial resulting in the decision? The answer to question 4 is not necessarily the same as the answer to question 61. This because Art. 4a must be interpreted *autonomously* from national law and national law transposing Art. 4a must be in accordance with the *autonomous* meaning of that provision.

[When referring to (provisions of) FD 2009/299/JHA please use the official English language version:
http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:081:0024:0036:EN:PDF.]

A. General questions

14. Did your Member State transpose Art. 5 par. 1 FD 2002/584/JHA (the provision which was deleted by Art. 2 FD 2009/299/JHA)?

Yes, it was transposed by the Act CXXX of 2003 on the judicial cooperation in criminal matters with the Member States of the European Union.
The Act entered in force on 1st May 2004 (the day of the accession to the EU)

15. When did the national legislation transposing Art. 2 FD 2009/299/JHA enter into force?

Art. 2 FD 2009/299/JHA was transposed by the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union. This Act entered in force 1st January 2013.

16. Has your Member State implemented Art. 2 FD 2009/299/JHA fully, taking into account the case law of the Court of Justice (see footnote 2)? If not, please describe in which way the national legislation deviates from FD 2009/299 JHA.

Yes, the Art. 2 FD 2009/299/JHA has been fully transposed.

17. Was Article 4a FD 2002/584/JHA transposed as a mandatory or as an optional ground for refusal? Was there any debate on this when transposing Art. 2 FD 2009/299/JHA? If so, what were the motives for the final choice made?

Art 4a FD 2002/584/JHA was transposed as a mandatory ground for refusal. No information is available on debates about this issue.

18. Given that Article 4a FD 2002/584/JHA is an optional ground for refusal, do the Member States have to transpose this ground for refusal?

Yes, at least as an optional ground for refusal.

19. If your Member State has transposed Article 4a FD 2002/584/JHA as an *mandatory* ground for refusal, will the executing judicial authorities of your Member State apply this optional ground for refusal *proprio motu* or not?

The executing judicial authorities have to apply this optional ground for refusal proprio muto.

20. If your Member State has transposed Article 4a FD 2002/584/JHA as an *optional* ground for refusal, will the executing judicial authorities of your Member State apply this optional ground for refusal *proprio motu* or not?

See question 17.

21. Which authority is/which authorities are responsible in your Member State for issuing and executing EAW's?

The court is responsible for issuing and executing EAW's.
Prior to the filing of the indictment EAW is issued by the investigating judge. After the final judgement it is issued by the the judge responsible for penitentiary affairs.

The executing judicial authority is the ~~Metropolitan Court of Budapest~~ Budapest-Capital Regional Court.

B. Your Member State as issuing Member State

22.

a) Who exactly fills in EAW's within the issuing judicial authority?

b) What are the formalities for issuing an EAW? Does your Member State have form sheets for that?

c) How does the issuing judicial authority usually fill in part (d) of the EAW-form in case none of the options under 3. apply?

d) Which information does the issuing judicial authority usually provide under 4. in section (d) of the EAW-form?

The EAW-form is filled in by the judge.

EAW can be issued either after the issuance of the national arrest warrant or at the date of its issuance. EAW is sent to the Ministry of Justice and the International Law Enforcement Cooperation Centre by the court. The EAW shall be issued by using the form in the official language or one of the official languages of the Member State.

The court provides information on the way and time when the summons was taken over by the defendant and on the time of the official appointment of the legal counsellor.

23. How does the competent authority of your Member State inform the surrendered person about his/her rights according to Article 4a(1)(d)(i and ii) FD 2002/584/JHA?

The court may inform the defendant during the first hearing.
If the court has made its judgement in absentia, the written decision contains information about the possible remedies and the time limits.

24. How does the competent authority of your Member State ensure regular review of the custodial measures in accordance with the law of your Member State while the surrendered person is awaiting his/her retrial/appeal (Article 4a(3) FD 2002/584/JHA)?

The temporary arrest lasts until the defendant is handed over. Temporary arrest shall be terminated if the European Arrest Warrant does not arrive within 40 days.

C. Your Member State as executing Member State

25. How does your Member State ensure being able to "immediately" provide the accused with a copy of the judgment when s/he requests so, in cases where s/he had not been informed about the existence of criminal proceedings against him (Article 4a(2) FD 2002/584/JHA)?

The ~~Metropolitan~~ Budapest-Capital Regional Court shall hold a hearing, when the defendant is informed abaout EAW. Subsequently, the defendant may request to make the issuing Member State's decision available for him. It will be forwarded to the defendant by the court immediately for information only upon receipt.

D. EAW-form

Explanation
All Member States have now implemented FD 2009/299/JHA (Greece being the exception). Art. 2 FD 2009/299/JHA inserts Art. 4a in FD 2002/584/JHA and amends section (d) of the EAW-form. All issuing judicial authorities are obliged to use the EAW-form as amended by FD 2009/299/JHA (Art. 8(1) FD 2002/584/JHA). [One could argue that even Greek issuing judicial authorities are obliged to use the amended EAW-form, because the executing judicial authorities of all other Member States will apply the rules set out in Art. 4a FD 2002/584/JHA.]

The 'old' section (d) of the EAW-form is not tailored to the requirements of Art. 4a.

In the experience of the *District Court of Amsterdam*, some issuing judicial authorities persist in using the 'old' section (d) of the EAW-form, which is not tailored to the requirements of Art. 4a.

[The official EAW-forms in all official languages of the Member States (with the exception of Irish) are available at: https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=5.]

26. Does your national law oblige the issuing judicial authorities of your Member State to use the EAW-form as amended by Art. 2 FD 2009/299/JHA?

Yes, because EAW-form is part of the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union, annex contains this form.

27. If the issuing judicial authority of another Member State uses the 'old' EAW-form, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The usage of the previous form is not reason for refusal. Usage of the new form can be requested by the Hungarian authorities as well as further complimentary information.

E. Language regime

Explanation

According to Art. 8(2) FD 2002/584/JHA the EAW 'must be translated into the official language or one of the official languages of the executing Member State'. However, a Member State may 'state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities'.

The Netherlands have made the following declaration: 'In addition to [EAW's] drawn up in Dutch or English, [EAW's] in another official language of the European Union are accepted provided that an English translation is submitted at the same time'.

In the experience of the *District Court of Amsterdam*:

- the issuing judicial authorities do not always use the official English EAW-form as a basis for the English translation of the original EAW, but rather provide for an *integral* English translation of the original EAW. In such cases the text of the English translation sometimes deviates from the official English EAW-form;
- the quality of some English translations is (very) poor.

[The official EAW-forms in all official languages of the Member States (with the exception of Irish) are available at: https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=5.]

28. Has your Member State made a declaration as provided for in Art. 8(3) FD 2002/584/JHA? If so,

- what does this declaration entail?

- where was it published? Please provide a copy in English.

Yes.
'The Republic of Hungary accepts the European arrest warrant in Hungarian or a translation of it into Hungarian. 8929/04 ary/PT/kr 3 DG H III EN In relation to Member States which do not exclusively accept the European arrest warrant in their own official language or in one of their official languages or accompanied by a translation in one of those languages, the Republic of Hungary accepts the European arrest warrant in English, French and German or accompanied by a translation in one of those languages.'

29. If the translation of the EAW deviates from the official EAW-form in the language of the executing Member State – or from the official EAW-form in the designated language –, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Using a different language is not a reason for refusal. In such a case, the court may either request the Hungarian version or make the document translated.

F. Multiple decisions

Explanation

According to Art. 8(1)(c) FD 2002/584/JHA the EAW shall contain 'evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect'.

Enforceability is decisive in determining the time from which an EAW may be issued (*Tupikas*, par. 71).

Art. 8(1)(c) corresponds with section (b) of the EAW-form ('Decision on which the warrant is based'). Only point 2 of section (b) is relevant ('Enforceable judgment').

Art. 4a(1) FD 2002/584/JHA refers to 'the decision'.

This decision is the judicial decision which finally sentenced the person whose surrender is sought in connection with the execution of an EAW (*Tupikas*, par. 74). [See also Part 2.2 (G.8) and Part 2.2 (G.9).]

The enforceable judgment/decision of Art. 8(1)(c) is not necessarily the decision which finally sentenced the requested person, although these decisions may in some cases coincide, depending on the national procedural rules of the issuing Member State (*Tupikas*, par. 71 and 76). [See also below, Part 2.2 (G.8) 'Proceedings at several instances'.]

An example: a decision to revoke the provisional suspension of the execution of a custodial sentence is not a decision as mentioned in Art. 4a, in so far as this decision does not modify the character and the quantum of the penalty which was originally imposed (*Ardic*). However, such a decision could be considered as an enforceable judgment/decision as mentioned in Art. 8(1)(c).

In the experience of the *District Court of Amsterdam* issuing judicial authorities regularly list multiple decisions with regard to the same proceedings in section (b)(2) of the EAW, but fail to mention which of these decisions section (d) of the EAW-form applies to. [See also Part 2.2 (G.8) and Part 2.2 (G.9).]

30. If section (b) of the EAW-form lists multiple decisions with regard to the same proceedings but section (d) of the EAW-form does not state which decision(s) it refers to, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. In such cases, the court may request additional information from the issuing authority in order to execute the arrest warrant.

G. The component parts of Article 4a FD 2002/584/JHA

G.1 Meaning of 'the trial resulting in the decision': confirmation of a deal between the defendant and the public prosecutor as to the penalty to be imposed (and other special proceedings)?

Explanation

Some Member States provide for special proceedings in cases in which the defendant confesses and makes a deal with the public prosecutor as to the penalty to be imposed. The public prosecutor then motions the court to impose the penalty agreed upon. The court holds a hearing in which the defendant and the public prosecutor may participate. If the court grants the motion, no evidentiary proceedings are conducted and the court convicts the defendant. If the court does not grant the motion, the case is remanded for a full trial.

In the opinion of the *District Court of Amsterdam* the decision to grant the motion and to convict the defendant falls within the ambit of Art. 4a FD 2002/584/JHA, but in the experience of the *District Court of Amsterdam* in such cases the situations referred to in Article 4a(1)(a) to (d) rarely apply.

Other special proceedings may include so-called 'written proceedings' in which a penalty is imposed without having held a trial or proceedings in which other authorities than judges or courts impose a penalty.

31. Does a judicial decision confirming a deal between the defendant and the public prosecutor as to the penalty to be imposed come within the ambit of Art. 4a?

Yes, if the deal is approved by the judgment of the court after a hearing, and it is possible to hold a trial instead.

32. Does a judicial decision which imposes a penalty without having held a trial or a decision by an authority other than a judge or a court imposing a penalty come within the ambit of Art. 4a?

No. Article 4a supposes that at least one hearing is held.

33. Does the national law of your Member State provide for:

- the imposition of a penalty without having held a trial;

- the imposition of a penalty by an authority other than a judge or a court? If so, how are the rights of the defence guaranteed in such proceedings?

According to Hungarian law punishment can only be imposed by the court.

It is possible to impose a penalty without a trial.
The court may adopt a conclusing decision against the accused, with the omission of a trial, upon a criminal offence punishable by not more than a maximum of 3 years' imprisonment by law, if
- the facts of the case are simple,
- the accused is at large,
- the objective of the punishment can be attained without a trial as well.
The court may adopt a conclusing decision in case of a criminal offence punishable by not more than a maximum of 5 years' imprisonment by law, if the accused has confessed the commission of the criminal offence.

The decision delivered with the omission of a trial shall not be subject to an appeal; the prosecutor, the accused, the legal counsel may request that a trial be held within 8 days of the service. Upon such a request, the court shall hold a trial.

G.2 Meaning of 'the trial resulting in the decision': the trial itself or the pronouncement of the judgment?

Explanation
In the experience of the *District Court of Amsterdam* issuing judicial authorities sometimes interpret the word 'the trial resulting in the decision' as the 'court date at which the judgment was pronounced'. Given that one of the objectives of FD 2009/299/JHA is to enhance the procedural rights of persons subject to criminal proceedings (art. 1(1)), this raises the question whether this interpretation is correct or not. One could argue that, unless the trial and the pronouncement of the judgment took place at the same date and the defendant was also present at the trial, the mere presence of the defendant at the pronouncement of the judgment does not support a conclusion that the rights of the defence have been fully respected.

34. What is the meaning of the words 'the trial resulting in the decision' in Art. 4a?

The trial resulting in the decision means not only the pronouncement of the judgment but the hearings when the court conducts the evidentiary procedure. Only this can ensure that the accused has the right to defend himself.

G.3 Trial consisting of several hearings

Explanation
In the experience of the *District Court of Amsterdam* particular problems present themselves when the court in the issuing Member State held several hearings before pronouncing a judgment and the defendant was present at one or more but not all of these hearings. In some of these cases the issuing judicial authority ticks point 1 of section (d) of the EAW-form ('Yes, the person appeared in person at the trial resulting in the decision'), in others point 2 ('No, the person did not appear in person at the trial resulting in the decision'), without explaining why point 1 or point 2 was ticked.

35.

a) If the trial resulting in the *in absentia* judgment of conviction consisted of several hearings and the defendant was present at one or more but not all of these hearings, has the condition that 'the person did not appear in person at the trial resulting in the decision' been met?

Yes. The defendant must be present at all hearings, otherwise the proceeding will be held in absentia.
According to Hungarian law the trial is considered to be unitary if it consists of several hearings. If the defendant is not present at certain hearings, the trial must be continued in his absence.

b) Does it matter what transpired at the hearing(s) at which the defendant was present or is the mere presence of the defendant at one of the hearings enough to preclude the applicability of Art. 4a?

It is important for the defendant to be present at all hearings in which the court conducts the evidentiary procedure or when he can speak in his own defence.

c) If it does matter what transpired at the hearing(s) at which the defendant was present, on the basis of which criteria do you establish whether the defendant was present 'at the trial resulting in the decision'?

G.4 Personal summons

Explanation
Art. 4a(1)a requires that the defendant in due time: (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial.

Art. 4a(1)a corresponds with points 3.1.a and 3.1.b of section (d) of the EAW-form.

In case of a summons in person as referred to in the first part of Art. 4a(1)(a)(i), the person concerned has himself received the summons (*Dworzecki*, par. 45).

It is not precluded that handing a summons over to a third party satisfies the requirements of the second part of Article 4a(1)(a)(i). However, in that case it must be unequivocally established that that third party actually passed the summons on to the person concerned and when the person concerned received this information. It is for the issuing judicial authority to indicate in the EAW – in section (d)(4) – the evidence on the basis of which it found that the person concerned actually received official information relating to the date and place of his trial. The executing judicial authority may also rely on other evidence, including circumstances of which it became aware when hearing the person concerned (*Dworzecki*, par. 48-49).

In the experience of the District Court of Amsterdam issuing judicial authorities regularly

- do not fill in the date on which the summons was served in person on the person concerned;

- do not indicate the evidence on the basis of which it found that the person concerned actually received the information about the date and place of the trial and when he received it or

- provide evidence which does not support the conclusion that the requested person actually received the information about the date and the place of the trial and when he received it (thus necessitating a request for supplementary information).

36. What is meant by the expression ‘in due time’?

‘In due time’ means that the defendant has to have a real chance to get to the hearing. According to Hungarian law, the summons shall be served on the defendant at least 8 days prior to the trial.

37.

a. What kind of evidence indicated by the issuing judicial authority would support the conclusion that the requested person has actually received the information about the date and the place of the trial? Would, *e.g.*, the fact that the third party who received the summons states that he passed the information on to the person concerned suffice? If so, what if the requested person denies having received the information?

A document such as a return receipt signed by the defendant is needed. If a third party claims to have passed the information, the relationship between them should be examined.

Despite the statement of an unbiased third party, the accused's statement must also be taken into consideration if he claims that he has not received the information.

b. What kind of 'other evidence, including circumstances of which it became aware when hearing the person concerned' would support the conclusion that the requested person has actually received the information about the date and the place of the trial? Would, *e.g.*, the fact that the requested person has declared that he actually received the information suffice?

If the defendant declares to have received the information (summons), it is a sufficient evidence. This can be the case, for instance, contacting with the court via e-mail.

G.5 Defence by a legal counsellor

Explanation

Art. 4a(1)(b) FD 2002/584/JHA requires that the requested person being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial.

Art. 4a(1)(b) corresponds with point 3.2 of section (d) of the EAW-form.

In some Member States a legal counsellor may be appointed *ex officio* and without the defendant having any actual knowledge of this appointment; the legal counsellor may conduct the defence without having had any contact with the defendant.

In the experience of the *District Court of Amsterdam* in such cases some issuing judicial authorities tick point 3.2 of section (d) of the EAW-form ('being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial').

Given that 'Article 4a(1)(a) and (b) of Framework Decision 2002/584 lays down the circumstances in which the person concerned must be deemed to have waived, *voluntarily* and *unambiguously*, his right to be present at his trial' (*Melloni*, par. 52, emphasis added), ticking point 3.2 under these circumstances does not seem to be in accordance with this provision.

Another problem with which the *District Court of Amsterdam* is regularly confronted is that issuing judicial authorities do not (completely) fill in point 4 of section (d) of the EAW-form ('If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met'). This makes it difficult to establish whether the condition set out in Art. 4a(1)(b) has been met.

38. What does the expression 'being aware of the scheduled trial' mean? Must the defendant have had actual knowledge of the date and the place of the trial (compare Art. 4a(1)(a)(i)) or is it enough that the defendant knew or must reasonably have expected that a trial would be held?

The defendant's awareness of the exact date and place of the scheduled trial is not needed. It is enough for him to be aware of the fact that a proceeding is in process against him and a trial is expected. In such a case the defendant can give a mandate to a legal counsellor even before the trial.

39. What does the expression 'the person had given a mandate to a legal counsellor' mean?

This is a legal act (execution of a document) in which a lawyer takes part in the proceeding providing defense to the defendant.

40. In cases in which a legal counsellor was not appointed by the defendant but was appointed *ex officio*, do the words 'the person had given a mandate to a legal counsellor' imply that the defendant must have had actual knowledge of the appointment of the legal counsellor and must have had actual contact with the legal counsellor?

If the court appoints a legal counsellor, it is sufficient for the defendant to be aware of the appointment and the contact of the legal counsellor. To this end, in the appointing order the court informs the defendant and the legal counsellor about each other's contact details. However, actual contact between the defendant and the legal counsellor is not necessary. It is fundamental that the appointed legal counsellor must do everything in the interest of the defendant.

41. If the issuing judicial authority has failed to fill in section (d)(4) of the EAW-form or has filled in section (d)(4) incompletely, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

G.6 The decision has been served

Explanation
Art. 4a(1)(c) FD 2002/584/JHA requires that the requested person has been served with the decision, but does not specify the way in which the decision must have been served ('after being served with the decision') (compare Art. 4a(1)(a)). Art. 4a(1)(c) corresponds with point 3.3 of section (d) of the EAW-form. The text of these provisions raises the question whether the decision must be served in such a way that the requested person has actually received the decision (and at such a time that he could still avail himself of the possibility of a retrial or an appeal). The condition that the requested person must also have been 'expressly informed' of his right to retrial or an appeal seems to suggest that the requested person must have actually received the information about his right to a retrial or an appeal and seems to confirm that the requested person must also actually have received the decision.

In any case, the requested person cannot expressly state that he or she does not contest the decision (Art. 4a(1)(c)(i)) without having had at least some knowledge of the decision and the available recourse against the decision.

In the experience of the *District Court of Amsterdam* some issuing judicial authorities:

- tick point 3.3. of section (d) of the EAW-form in cases in which on the basis of the information provided by the issuing judicial authority (in section (d)(4)) it cannot be established that the requested person actually received the decision and the information about his right to a retrial or an appeal;

- tick point 3.3 of section (d) of the EAW-form, but delete words which form an integral part of the standard text of point 3.3., *e.g.* the words 'and was expressly informed about the right to a retrial or appeal' or the words 'in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed'.

42. What do the expressions 'After being served with the decision' and 'being expressly informed about the right to a retrial, or an appeal' mean?

These terms mean that the defendant is aware of the existence and the content of the pronounced judgment, as well as the possibility of the retrial or an appeal.

43. If the issuing judicial authority has failed to fill in section (d)(4) of the EAW-form or has filled in section (d)(4) incompletely, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

44. If the issuing judicial authority has ticked point 3.3 of section (d) of the EAW-form, but has deleted words which form an integral part of the standard text of point 3.3, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

G.7 The decision will be served after surrender

Explanation

Art. 4a(1)(d) FD 2002/584/JHA requires that the requested person was not personally served with the decision but:
(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

Art. 4a(1)(d) corresponds with point 3.4 of section (d) of the EAW.

In the experience of the *District Court of Amsterdam* a number of problems may arise if the issuing judicial authority has ticked point 3.4 of section (d) of the EAW-form:

- the issuing judicial authority has not filled in the number of days within which the requested person may request a retrial or an appeal;

- the issuing judicial authority has deleted words which form an integral part of the standard text of point 3.4;

- the issuing judicial has provided information *proprio motu* (point 4 of section (d) of the EAW-form is not applicable if point 3.4 has been ticked) that seems to contradict that the requested person has a *right* to a retrial or an appeal.

45. What does the expression 'right to a retrial, or an appeal' mean? May Member States make an actual retrial or an actual appeal dependent on any other condition than that the requested person was not personally served with the decision and that the request for a retrial or an appeal is lodged within the applicable time frame and in the manner as prescribed by national law (*e.g.* the condition that the requested person did not have effective knowledge of the proceedings and/or the *in absentia* judgment of conviction or the condition that the requested person was not present at the proceedings due to circumstances beyond his control)?

The right to retrial or to appeal means that the defendant has a real opportunity for these remedies without any further proviso.

46. If the issuing judicial authority has failed to fill in the number of days within which the requested person may request a retrial or an appeal, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

47. If the issuing judicial authority has deleted words which form an integral part of the standard text of point 3.4, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

48. If the issuing judicial authority has provided information *proprio motu* which seems to contradict that the requested person has a right to a retrial, what, if any, consequences should

this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

G.8 Proceedings which have taken place at several instances

Explanation

In cases in which the proceedings have taken place at *several instances* – first instance, appeal *et cetera* – which have given rise to *successive decisions*, Art. 4a applies to 'the instance which led to the last of those decisions, provided that the court at issue made a final ruling on the guilt of the person concerned and imposed a penalty on him, such as a custodial sentence, following an assessment, in fact and in law, of the incriminating and exculpatory evidence, including, where appropriate, the taking account of the individual situation of the person concerned' (*Tupikas*, par. 81, emphasis added).

Such a decision does not necessarily coincide with the enforceable judgment/decision as mentioned in Art. 8(1)(c) and section (b) of the EAW-form (*Tupikas*, par. 71 and 76). [See also above, part 2A 'Multiple decisions'.]

In the experience of the *District Court of Amsterdam*, issuing judicial authorities:

- do not always mention that proceedings have taken place at several instances, restricting themselves to mentioning the first or second instance decision which was upheld (in section (b) of the EAW-form);

- when mentioning that proceedings have taken place at several instances, do not always explain the nature of second or third instance proceedings and/or in section (d) simply refer to the first instance decision.

49. If the issuing judicial authority has not mentioned that the proceedings have taken place at several instances and have given rise to successive decisions, although it is apparent that proceedings have indeed taken place at several instances (*e.g.* on the basis of statements of the requested person), what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

It is irrelevant what decisions have been made in the lower instances before the final judgment, if all the courts have proceeded in absentia. In this case, the procedural guarantees and fundamental rights (right to know the date of the hearings, right to defence, etc.) must be enforced at all levels.
If the defendant was present at the first instance but the second instance proceedings continued in absentia, the procedural guarantees should be ensured in the second instance. When completing the EAW-form, it is necessary to indicate whether the defendant was informed of the date of the hearing etc. in the proceedings in the second level.

50. If the issuing judicial authority has indicated that proceedings have taken place at several instances and have given rise to successive decisions, but has not given any information as to

the nature and/or outcome of all of these proceedings, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

51. If the issuing judicial authority has indicated that proceedings have taken place at several instances and have given rise to successive decisions, but has not made clear to which of these decisions section (d) of the EAW applies, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

This is not a reason for refusal. The court may contact the issuing authority for further information.

G.9 Later proceedings which result in modifying the nature or the quantum of the penalty originally imposed

Explanation

In some Member States, after final conviction the nature or the *quantum* of the penalty originally imposed may be modified in later proceedings, *e.g.* proceedings in which one or more sentences handed down previously in respect of the person concerned are commuted into a single sentence.

If these proceedings 'are not a purely formal and arithmetic exercise but entail a margin of discretion in the determination of the level of the sentence, in particular, by taking account of the situation or personality of the person concerned, or of mitigating or aggravating circumstances', they fall within the ambit of Art. 4a (*Zdziaszek*, par. 88).

If the *quantum* of the original penalty was amended in later proceedings in which the competent authority exercised its discretion with regard to the *quantum* of the penalty and finally determined the sentence, two decisions must be taken into account:

- the decision which finally determined the guilt of the person concerned and also imposed a penalty on him and
- the later decision modifying the *quantum* of the penalty originally imposed (hereafter: a *Zdziaszek*-decision) (*Zdziaszek*, par. 93).

The same applies *mutatis mutandis* to later decisions which modify the nature of the penalty originally imposed (*Ardic*).

A decision to revoke the provisional suspension of the execution of a custodial sentence is not a decision as mentioned in Art. 4a, in so far as this decision does not modify the nature and the quantum of the penalty which was originally imposed (*Ardic*) (hereafter: a *Ardic*-decision). Even though Art. 4a does not apply to such a decision, Member States are still obliged to respect fundamental rights. This obligation reinforces the high level of confidence

between Member States. Issuing and executing judicial authorities must make full use of Art. 8(1) and Art. 15(2) in order to promote mutual confidence (*Ardic*, par. 88-91).

The *Zdziaszek*-judgment is fairly recent. After the *Zdziaszek*-judgment the *District Court of Amsterdam* has had to deal with a small number of cases in which the question arose whether a later decision amending the *quantum* of the original penalty fell within the ambit of Art. 4a. In some of these cases the issuing judicial authority:

- had not specified whether the competent authority had exercised its discretion in reaching the decision which modifies the *quantum* of the original penalty and/or
- had not applied section (d) to that later decision.

The *Ardic*-judgment is even more recent than the *Zdziaszek*-judgment. The *Ardic*-judgment raises the question to what extent the issuing and executing judicial authorities should provide or request information about decisions which do not fall within the ambit of Art 4a in order to establish that fundamental rights were observed in the proceedings leading to such decisions. Another important question which the *Ardic*-judgment raises, is what the executing judicial authority should decide if it is of the opinion that the fundamental rights of the requested person were not observed.

52. If the issuing judicial authority has mentioned a later decision which modifies the nature or the *quantum* of the penalty originally imposed but has not provided information on the basis of which the executing judicial authority can verify whether the conditions set out in the *Zdziaszek*- and *Ardic*-judgments have been met (see the explanation above), what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

In this case it is not possible to make a sound decision on the execution of the EAW, so it is necessary to request the issuing authority to obtain the information required to support the decision.

53. If the issuing judicial authority has mentioned a later decision which does not meet the conditions set out in the *Zdziaszek*- and *Ardic*-judgments, but has not provided information on the basis of which the executing judicial authority can verify whether the fundamental rights of the requested person were observed, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The court may contact the issuing authority for further information.

54. If the issuing judicial authority has mentioned a later decision which does not meet the conditions set out in the *Zdziaszek*- and *Ardic*-judgments and has provided information about the proceedings leading to that decision, but the executing judicial authority concludes that the fundamental rights of the requested person were not observed, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

That is a reason for refusal, because the procedure underlying the EAW has seriously violated the fundamental rights of the defendant in the criminal proceedings laid down in international conventions or EU legal acts.

G.10 Margin of discretion of the executing judicial authority

Explanation
Even after the executing judicial authority has found that the cases referred to in Article 4a(1)(a) to (d) FD 2002/584/JHA do not cover the situation of the requested person, it may take account of 'other circumstances that enable it to ensure that the surrender of the person concerned does not entail a breach of his rights of defence'. This is so, because Art. 4a provides for an *optional* ground for refusal (*Dworzecki*, par. 50-51; *Tupikas*, par. 96; *Zdziaszek*, par. 107). The *District Court of Amsterdam* is prevented from taking account of such circumstances, because the Dutch legislator has transposed Art. 4a as a *mandatory* ground for refusal.

55. Does the national law of your Member State allow the executing judicial authorities of your Member State to take account of 'other circumstances that enable it to ensure that the surrender of the person concerned does not entail a breach of his rights of defence', after having found that the cases referred to in Article 4a(1)(a) to (d) FD 2002/584/JHA do not cover the situation of the requested person?

No. According to the Hungarian law, the Art. 4a as a mandatory ground for refusal, too.

56. Taking into account the relevant case law of the ECtHR, what circumstances could support the conclusion that the surrender of the requested person would or would not entail a breach of his rights of defence? Would it, *e.g.*, suffice that the defendant was told during the police investigations that:

- in the event of a prosecution he would be summoned at the address given by him and

- he was obliged to notify the proper authorities of any change in residence? Or would it, *e.g.*, suffice that the defendant made a deal with the public prosecutor as to the penalty to be imposed?

These are not enough to the execution of the EAW. The right to attend trial is part of a fair trial, without it the effective defence is not possible. The defendant has the right to be aware of a hearing and the authorities must do everything to find out his residence.

H. National legislation

57. Please provide:

- the national legislation implementing Art. 2 FD 2009/299/JHA in the official language of your Member State and

- an English translation thereof.[5]

2012. évi CLXXX. törvény 5. §
(5) Az európai elfogatóparancs végrehajtását a bíróság megtagadja, ha azt olyan határozat végrehajtása céljából bocsátották ki, amelyet a terhelt távollétében hoztak.
(6) Az (5) bekezdés nem alkalmazható, ha a kibocsátó tagállam jogával összhangban
a) a terheltet megfelelő időben, határnapot és helyet megjelölve, közvetlenül idézték a tárgyalásra, vagy arról más módon hivatalos tudomást szerzett, továbbá tájékoztatták arról, hogy a tárgyalás a távollétében is megtartható, vele szemben az eljárás határozattal befejezhető,
b) a kitűzött tárgyalás ismeretében a terhelt a tárgyaláson való képviseletére
ba) védőt hatalmazott meg vagy
bb) számára védőt rendeltek ki, és a kirendelés ismeretében annak személyét nem kifogásolta, és a meghatalmazott vagy a kirendelt védő a terhelt érdekében a tárgyaláson eljárt,
c) a határozat kézbesítése megtörtént, a terhelt tájékoztatást kapott a rendes, illetve a rendkívüli jogorvoslati lehetőségekről, de a rendelkezésre álló határidőn belül erre irányuló indítványt nem tett, vagy jelezte, hogy nem vitatja a távollétében hozott határozatot, vagy
d) a határozatot nem kézbesítették a terheltnek, de az átadását követően haladéktalanul kézbesítik számára, tájékoztatják a jogorvoslati lehetőségekről, és az erre rendelkezésre álló határidőről.

Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union
Art. 5. §
(5) The court shall have the right to refuse the execution of the European Arrest Warrant if it has been issued for the implementation of a decision made without the presence of the defendant.
(6) The ground for refusal laid down in paragraph (5) shall not be applicable if, in conformity with the law of the Member State,
a) the defendant was summoned to appear at the trial directly and in due time, specifying the date and place thereof, or he officially obtained knowledge of the trial from another source, and he was informed of the fact that the trial can also be conducted without his presence, and the proceeding against him can be concluded by means of a decision,
b) being aware of the scheduled trial, the defendant
ba) mandated a legal counsel to represent him at the trial, or
bb) a legal counsel was appointed to him, and being aware of such appointment he did not object to the person of the legal counsel, and the mandated legal counsel or the appointed legal counsel acted in favour of the defendant at the trial,
c) the decision has been served, the defendant has been informed about the ordinary or extraordinary remedies available to him, but failed to submit a motion on remedy by the prescribed time limit, or stated that he does not challenge the decision adopted without his presence,
d) the decision has not been served, but it will be served without delay after the surrender, the defendant will be informed about the possible remedies, and the deadlines to request the remedies.

[5] The second part of this request does not apply to our Irish partner, unless the national legislation is provided in Irish.

Part 3: actual application of the national legislation implementing the FD's

3.1 General problems

Using the correct EAW-form

Explanation
See Part 2.2 (D).

58. Have the executing judicial authorities of your Member State had any cases in which the issuing judicial authority used the old EAW-form after your Member State had transposed Art. 2 FD 2009/299/JHA? If so, please state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

59. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding the version of the EAW-form? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

Language Problems	Explanation
See Part 2.2 (E)	

60. Have the executing judicial authorities of your Member State had any problems with translations of the EAW into the official language(s) of your Member State? If so, please describe the problems and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

61. If your Member State has made a declaration as provided for in Art. 8(3) FD 2002/584/JHA, have the executing judicial authorities of your Member State had any problems with translations of the EAW in the designated official language(s)? If so, please describe the problems and state the decision taken by the executing judicial authority.

In one of the cases examined, the Hungarian and English forms were different. The issuing judicial authority marked all the possibilities under section (d) and did not fill in point 4 on the Hungarian language form.
The court has made decision on the accurately completed English form. According to this, the defendant was present at the trial.

62. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding the translation of the EAW? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

Multiple decisions

Explanation
See Part 2.2 (F).

63. Have the executing judicial authorities of your Member State had any problems with EAW's which list multiple decisions with regard to the same proceedings in section (b)(2) of the EAW? If so, please state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

64. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's which list multiple decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

3.2. The component parts of Art. 4a(1) FD 2002/584/JHA

Meaning of 'the trial resulting in the decision': confirmation of a deal between the defendant and the public prosecutor as to the penalty to be imposed (and other special proceedings)?

Explanation
See Part 2.2 (G.1).

65. Have the executing judicial authorities of your Member State had any cases in which the penalty was imposed by a judicial decision confirming a deal between the defendant and the public prosecutor as to the penalty to be imposed? If so, please state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

66. Have the executing judicial authorities of your Member State had any cases in which the penalty was imposed without having held a trial and/or by other authorities than a judge or a court? If so, please state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

67. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to 'special proceedings' (e.g. confirmation of a deal with the public prosecutor, imposition of a penalty without having held trial and/or by another authority than a judge or a court)? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

Meaning of 'the trial <u>resulting</u> in the decision': the trial itself or the pronouncement of the judgment?

Explanation
See Part 2.2 (G.2).

68. Have the executing judicial authorities of your Member State had any cases in which the issuing judicial authority seemed to interpret the words 'the trial <u>resulting</u> in the decision' as 'the court date at which the judgment was pronounced'? If so, please state the decision taken by the executing judicial authority.

The issuing judicial authority stated on the form that the defendant was not present at the trial, but he mandated a legal counsellor. According to the form the legal counsellor was present at the trail.
The court requested additional information from which made it clear that the issuing authority interpreted the second instance procedure as the trial resulting in the decision.
It turned out that there were several hearings in the first instance proceedings where the defendant and his defender were always present.
The accused was aware of the trial held in the second instance, and his legal counsellor was present.
The court did not refuse the executing.

Trial consisting of several hearings

Explanation
See Part 2.2 (G.3)

69. Have the executing judicial authorities of your Member State had any problems with cases in which the trial consisted of several hearings and the defendant was present at one or more but not all of these hearings? If so, please describe the problems and state the decision taken by the executing judicial authority.

In one of the examined cases, the issuing authority marked points 3.1a, 3.1b and 3.2 of point of session d) but point 4 was not filled out.
According to the annexed judgment, the court executed the form because it turned out that the defendant was aware of the trial and he had a legal counsellor. The legal counsellor appealed against the judgment.
The defendant appealed the decision of the executing court. During the proceeding in second instance hearing it turned out that several hearings had been held, but there was no information if the defendant had been summoned or not.
The court of second instance contacted the issuing judicial authority and requested adequate pieces of information on the number of the hearings and the way how the defendant was summoned.
The issuing authority informed the court that the defendant had been summoned for all the hearings and the summons were received personally.
The court of second instance has completed the execution.

70. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding cases in which the trial consisted of several hearings and the defendant was present at one or more but not all of these hearings? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

Personal summons

Explanation
See Part 2.2 (G.4).

71. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.1.a or point 3.1.b of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

In one of the examined cases, the issuing judicial authority indicated on the form that the defendant was present at the trial. On the other hand, the defendant stated during his hearing that he was not aware of the hearings and the judgment.
The court requested additional information from the issuing authority on the number of hearings and how the summons were served.
The issuing judicial authority informed the court that the defendant had been summoned for each trial by mail and by public annoncement. According to the return receipt, the defendant did not take over the summons. Subsequently, the proceedings were conducted in absentia and the issuing authority appointed a legal counsellor.
It turned out that the accused had a valid address.

The court refused the execution because the defendant did not waive his right to attend the hearing and he had a valid address.

72. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.1.a or point 3.1.b of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

Defence by a legal counsellor

Explanation
See Part 2.2 (G.5).

73. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.2 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases, defendants always had legal counsellor.

74. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.2 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority

This has not occurred among the examined cases.

The decision has been served

Explanation
See Part. 2.2 (G.6).

75. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.3 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

76. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.3 of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

The decision will be served after surrender

Explanation
See Part 2.2 (G.7).

77. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.4 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

78. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.4 of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

3.3. Proceedings at several instances

Explanation

See Part 2.2 (G.8).

79. Have the executing judicial authorities of your Member State had any problems with EAW's relating to proceedings which had taken place at several instances and which had given rise to successive decisions? If so, please describe the problems and state the decision taken by the executing judicial authority.

See question 68.

80. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to proceedings which had taken place at several instances and which had given rise to successive decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

3.4. Later proceedings which result in modifying the nature or the *quantum* of the penalty originally imposed

Explanation

See Part 2.2. (G.9).

81. Have the executing judicial authorities of your Member State had any problems with EAW's relating to *Zdziaszek*- or *Ardic*-decisions (see Part 2.2 (G.9)? If so, please describe the problems and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

82. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to *Zdziaszek*- or *Ardic*-decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

3.5. Margin of discretion of the executing judicial authority

Explanation

See Part 2.2. (G.10).

83. Have the executing judicial authorities of your Member State actually taken account of 'other circumstances that enable [them] to ensure that the surrender of the person concerned does not entail a breach of his rights of defence'? If so, please state the decision and describe the circumstances on the basis of which the executing judicial authority reached the

conclusion that the surrender of the requested person would not entail a breach of his rights of defence.

This has not occurred among the examined cases.

3.6. Requesting supplementary information

Explanation

Part. 3.6 concerns requests for supplementary information pursuant to Article 15(2) FD 2002/584/JHA regarding section (d) of the EAW.

If the executing judicial authority is of the opinion that 'it does not have sufficient information to enable it to validly decide on the surrender of the requested', this authority *must* 'apply Article 15(2) of Framework Decision 2002/584, by requesting from the issuing judicial authority the urgent provision of such additional information as it deems necessary before a decision on surrender can be taken' (*Zdziaszek*, par. 103).

However, if this request does not result in 'the necessary assurances as regards the rights of defence of the person concerned during the relevant proceedings', the executing judicial authority is not obliged to resort to Art. 15(2) *again* and may refuse to execute the EAW. This is so, because the executing judicial authority not only cannot tolerate a breach of fundamental rights, but also must ensure that the time limits laid down in Art. 17 FD 2002/584/JHA are observed (*Zdziaszek*, par. 104-105).

In the experience of the *District Court of Amsterdam* in the pre-*Zdziaszek* era applying Art. 15 (2) in some cases came close to flogging a dead horse: repeated requests did not result in any forward motion of the case. That is why the *District Court of Amsterdam* elicited the aforementioned ruling of the Court of Justice.

84. What kind of supplementary information (under Art. 15(2) FD 2002/584) do the executing judicial authorities of your Member State usually ask for in order to be able to validly decide on the surrender of the requested person and within what time frame?

The executing authority usually requests further information in case the form is not filled in correctly. Frequently asked information is as follows:
- how many hearings were held
- how was the defendant summoned?
- had the defendant a legal counsellor?

85. Have the executing judicial authorities of your Member State had any cases in which, after having requested supplementary information (under Art. 15(2) FD 2002/584) *once*, they still could not verify whether the rights of the defence were observed? If so, please state the decision taken by the executing judicial authority.

This has not occurred among the examined cases.

86. When the issuing judicial authorities of your Member State are asked to provide supplementary information (under Art. 15(2) FD 2002/584) in order for the executing judicial

authority to decide on the surrender of the requested person, what kind of information are they usually asked for?

This has not occurred among the examined cases.

3.7. Time Limits

Explanation

Part. 3.7 concerns non-observance of the time limits of Art. 17(3) and (4) FD 2002/584/JHA in cases in which the information in section (d) of the EAW is insufficient to decide on the execution of the EAW.

The final decision on the execution of the EAW must, in principle, be taken with the time limits of Art. 17(3) and (4) FD 2002/584/JHA (*Lanigan*, par. 32), *i.e.* within 60 or 90 days.

In the experience of the *District Court of Amsterdam* in a not insignificant number of cases these time limits cannot be respected, because the information contained in the EAW is insufficient to decide on the execution of the EAW. This necessitates requesting supplementary information. In some cases the supplementary information does not answer all questions and/or raises new ones.

87. Have the executing judicial authorities of your Member State had any cases in which the time limits of 60 and/or 90 days could not be observed, because the information contained in the EAW was insufficient to decide on the execution of the EAW? If so, please state the decision taken by the executing judicial authority.

Court experience is similar to that of District Court of Amsterdam. Unfortunately, due largely to incorretly completed forms more pieces of information is required, that is why the procedure may be delayed in certain cases. Another problem is that the issuing authorities fail to respond promptly to the request in due time. There have been a need for repeated urgency in certain cases.

3.8. Additional observations on the application of the national legislation implementing the FD's

88. Do you have any additional observations on the application of the national legislation implementing the FD's (*e.g.* have the issuing and/or executing judicial authorities of your Member State experienced other problems)? If so, please describe them here.

Sometimes, the issuing authority has also indicated points 1 and 2. This contradiction makes necessary to contact the issuing authority.

3.9. Methodology

89. On which type of research did you base your answers to the questions in Part 3?

To provide adequate pieces of information in part 3 of the questionnaire it was inevitable to examine certain cases at the Municipal Court of Budapest.

One hundred cases were examined during the research. The files included the decisions of the possible second instance procedure.

The cases were randomly selected by the ~~Metropolitan~~ Budapest-Capital Regional Court ~~of Budapest~~. All completed cases have been examined in 2018. In addition to this, 20 cases per year beween 2014 and 2017 were studied. Because of the fact that the number of completed cases was under twenty in 2018, randomly selected cases were examined from the previous years.

It is important to mention that in the majority of the cases the defendant always atttended the trial.

Part 4: statistical data on the actual application of the national legislation transposing the FD's.

Explanation

Statistical data on EAW's for the purpose of executing an *in absentia* judgment of conviction may put the answers to the questions set out in Parts 1 and 3 in their proper context, may illustrate the frequency of the problems and the severity of their consequences and may demonstrate the need for common solutions.

Comparing data relating to the era before transposition of Art. 2 FD 2009/299/JHA with data relating to the era after transposition of Art. 2 FD 2009/299/JHA may provide us with an answer to the question whether FD 2009/299/JHA is well-suited to achieving its objectives (enhancing the procedural rights of persons subject to criminal proceedings, facilitating judicial cooperation in criminal matters and, in particular, improving mutual recognition of judicial decisions between Member States).

A limited review based on cases dealt with by the *District Court of Amsterdam* has shown that in a significant number of cases:

- application of the rules set out in Art. 4a EAW's is fraught with problems and
- these problems may lead to (multiple) requests for supplementary information, inability to observe the time limits and refusal to execute the EAW.

Some of the data may already be available at Union level [see: http://data.consilium.europa.eu/doc/document/ST-8414-2014-REV-4/en/pdf]. We shall ask Eurojust whether they can be of any assistance in collecting the data.

If you limit the temporal scope of your statistical research and/or select issuing/executing judicial authorities because you are unable to comply fully with the request for statistical data, please state the reasons why and the criteria on which you base the limitation of the temporal scope of your research and/or the selection of the judicial authorities.

It is an unfortunate that there are objective obstacles to answer questions in part 4.

It is due to the fact that the National Office for Judicary does not collect data on the practice of the European Arrest Warrant and such data are not collected in the courts either.
Examining and studing all cases would have made it possible to give more punctual answers in this part of the questionnaire, but this was not possible during this research.

90. Please provide the following data for each year in the period of 2008-2017 (preferably for your Member State as a whole, but if that is not possible, for your own court):

- a. the total number of EAW's decided by the executing judicial authorities of your Member State in which the requested person did not consent to surrender

- b. out of this total number of EAW cases referred to under a.:
    - the total number of EAW's for the purpose of prosecution

    - the total number of EAW's for the purpose of execution of a custodial sentence or detention order

- c. out of the total number of EAW cases referred to under a.: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed, broken down into prosecution-EAW's and execution-EAW's

- d. out of the total number of EAW cases referred to under a.: the total number of cases in which the execution of the EAW was refused, broken down into prosecution-EAW's and execution-EAW's

- e. of the EAW's for the purpose of execution (b.):

  Before transposition of Art. 2 FD 2009/299/JHA by your Member State
  - the total number of cases in which the EAW was issued 'for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia' (Art. 5 par. 1 FD 2002/584/JHA)

  - of those cases: the total number of cases in which the executing judicial authority demanded a guarantee that the requested person 'will have an opportunity to apply for a retrial of the case in the issuing Member State' (Art. 5 par. 1 FD 2002/584/JHA)

  - of those cases: the total number of cases in which the executing judicial authority either held that the guarantee was 'adequate' or held that the guarantee was insufficient and refused to execute the EAW on the basis of Art. 5 par. 1 FD 2002/584/JHA

  - the total number of cases in which the information in the EAW was insufficient to verify whether the conditions of Art. 5 par. 1 FD 2002/584/JHA had been met and Art. 15(2) FD 2002/584/JHA was applied

- in case of application of Art. 15(2) FD 2002/584/JHA: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed

After transposition of Art. 2 FD 2009/299/JHA by your Member State

- the total number of cases in which the requested person was present in person at the trial resulting in the decision

- the total number of cases to which Art. 4a was applicable

- the total number of cases in which the information in the EAW was insufficient to verify whether the conditions of Art. 4a FD 2002/584/JHA had been met and out of these: the total number of cases in which Art. 15(2) FD 2002/584/JHA was applied because the information in the EAW was insufficient to verify whether the conditions of Art. 4a had been met

- in case of application of Art. 15(2) FD 2002/584/JHA because the information in the EAW was insufficient to verify whether the conditions of Art. 4a had been met: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed

- the total number of cases in which the execution of the EAW was refused on the basis of Art. 4a FD 2002/584/JHA.

Part 5: conclusions, opinions, et cetera

91. What is your overall assessment, did FD 2009/299/JHA achieve its objectives of facilitating judicial cooperation and enhancing the rights of the defence? If yes, please explain. If not, please explain why and add what should have been done.

Yes, because it requires more guarantees for the execution of the Europen Arrest Warrant. Member States has to implement these guarantees into the national criminal procedure law in order to corporate with other Member States.

92. Did you notice a difference in the practice of *in absentia* EAW's before and after the implementation of the FD?

Personally not, but I think the stricter conditions may cause the increase the number of refusals.

93. Did you see (partial) refusals of *in absentia* EAW's of which you think they were not justified?[6]

No.

[6] This question relates to your own views and, if applicable, to national judgments rendered before particular guidance was given by the CoJ EU which would now be decided differently.

94. Did you see surrenders granted in *in absentia* cases that should have led to a refusal?[7]
No.

95. Do requests for supplementary information by the executing judicial authority have an impact on the trust which should exist between the cooperating judicial authorities?

Yes, if the executing judicial authority requests unnecessary information, or it is even aware of the requested information.

96. What kind of questions should an executing judicial authority ask when requesting supplementary information on *in absentia* proceedings?

Information that is absolutely necessary to make a decision. For example if the EAW is not filled out correctly, or the information of the form is contradictory.

97. Do executing judicial authorities occasionally ask too much supplementary information on *in absentia* proceedings? If so, on what issues?

I have not seen such a case.

98. Are there Member States whose *in absentia* EAW's and/or whose decisions on the execution of *in absentia* EAW's are particularly problematic in your experience? if so, what are the problems that emerge?

I don't think so.

99. What is your opinion on the usability of the *HANDBOOK ON HOW TO ISSUE AND EXECUTE A EUROPEAN ARREST WARRANT* (COM(2017) 6389 final) for judicial practitioners as regards *in absentia* EAW's?

The handbook provides detailed information on the application of the EPP. It is useful for practitioners, that it presents the case law as well.

100. What relevance, if any, do your answers have for other framework decisions which contain a ground for refusal comparable to Art. 4a FD 2002/584/JHA (i.e. FD 2005/214/JHA, FD 2006/783/JHA, FD 2008/909/JHA and FD 2008/947/JHA, as amended by FD 2009/299/JHA)?

101. If your Member State will not transpose Directive 2016/343 and you are of the opinion that your Member State should transpose this directive (as regards *in absentia* proceedings), please state your reasons here.

Hungary transposed the Directive.

[7] (This question relates to your own views and, if applicable, to national judgments rendered before particular guidance was given by the CoJ EU which would now be decided differently.) If your Member State has transposed Art. 4a FD 2002/584 as an *optional* ground for refusal and if this optional character of the ground for refusal makes it difficult to answer this question (*e.g.* because the decisions of the executing judicial authority do not give any reasons for *not* applying this optional ground for refusal), please make this clear in your answer.