

District Court of Amsterdam



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Effective *in absentia* EAWs: necessities from a Dutch perspective

Vincent Glerum, Maastricht, 24 October 2019

Art. 4a(1) FD 2002/584/JHA: optional ground for refusal

- Executing JA may refrain from refusal, even though none of the exceptions of Art. 4a(1)(a)-(d) applies, if it finds that surrender would not entail a breach of the rights of defence
- Art. 4a(1)(a)-(d) does not fully codify ECtHR's case-law on *in absentia* proceedings
- Arguably: executing JA must not refrain from refusal, if it finds that surrender would entail a 'flagrant denial of justice' / 'breach of the essence of the right to a fair trial'

Art. 12 Dutch Law on surrender: mandatory ground for refusal

- No possibility to take into account other circumstances on which conclusion of non-breach of defence rights can be based
- High number of requests for supplementary information, non-compliance with time limits and refusals
- A-G Bobek: incorrect transposition of Art. 4a(1)
- CoJ: FD does not prevent the JA from ensuring that rights are upheld, by taking into account other circumstances than expressed in Art. 4a(1)(a)-(d) (*Zdziaszek*)

Art. 12 Dutch Law on surrender: solutions?

- Conforming interpretation would probably be *contra legem*
- No requirement, solely on the basis of EU law, to disapply Art. 12 (cf. *Poptawski II*)
- Probably no basis in national law for disapplying Art. 12
- Only possible solution: Dutch legislator should amend Art. 12
- *Caveat*: an optional ground for refusal will not solve every problem with the application of Art. 4a(1)