



Maastricht University

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InAbsentiEAW

Findings and Recommendations

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Summons (Art. 4a(1)(a))

- National laws of some MS operate with formal understanding of summons in person or with legal presumptions, not with factual descriptions
- Such formal understandings/legal presumptions raise the question whether the summons is served in such a way that it is unequivocally established that the defendant actually received it

Defence by a mandated legal counsellor (Art. 4(1)(b))

- Default position is to look at things from the executing MSs system
- Most MSs allow for defence/representation of an absent defendant by a legal counsellor
- Some MSs require that the legal counsellor is instructed by the defendant; some MSs do not; in some MSs the legal counsellor's mandate cannot be examined by the courts
- In some MSs there is a legal presumption that an absent defendant who is defended/represented by a legal counsellor is aware of the proceedings/scheduled trial; other MSs require more information for the defendant

Defence by a mandated legal counsellor (Art. 4(1)(b))

- 'being aware of the scheduled trial': one MS requires actual knowledge of date/place of the trial (RO), for other MSs awareness or reasonable expectation of impending trial suffices
- 'given a mandate': some MSs require awareness of appointment, contact with legal counsellor and/or consent with representation; one MS only requires awareness (HU), while other MSs have no requirement at all
- What is a mandate?

Key Recommendations

- Factual information
- Autonomous EU notions
- Refusals should be prevented
- Optional instead of mandatory refusal
- Summons in line with Dworzecki
- Summons accused abroad
- Explore virtual presence of accused
- Amend the EAW-form