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Improving Mutual Recognition of European Arrest Warrants for the Purpose of Enforcing *in absentia* Judgments



District Court of Amsterdam



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InAbsentiEAW Origin, Goals, Methodology, Findings

Vincent Glerum, Maastricht, 24 October 2019

Origin of the project

Theory:

- Art. 4a(1) FD 2009/299/JHA: enhancing procedural rights, facilitating judicial cooperation and improving MR

Practice (Dutch executing JA):

- Section (d) is not filled in (completely/correctly)
- Consolidated language version is not used
- Old version of section (d) is used
- Information is incorrect, unclear, unintelligible, contradictory

Consequences and causes

- Repeated requests for supplementary information, delays, non-compliance with time limits; extra costs; refusals (sometimes even unjustified) and impunity; surrenders which in hindsight are incorrect
- Non-implementation; differences concerning implementation / application transposing legislation; incorrect implementation / application transposing legislation;

The project: goals and methodology

- Goals: identifying and solving problems in the application of Art. 4a(1)
- Mix: practitioners and academics; western and eastern MS; common law/civil law systems: BE, HU, IE, NL, PL, RO
- Questionnaire: *inter alia* national legislation: 1) service of summons, *in absentia* proceedings 2) transposing legislation; application transposing legislation
- Answers: www.inabsentieaw.eu

Findings: national interpretation of autonomous EU law concepts 1

- Example: equating duly served summons according to national law with ‘summons in person’ / ‘otherwise actually officially informed’ (even after *Dworzecki*)
- Unawareness EU case-law
- Filling in (and assessing) section (d) requires a two part operation:
 1. determining what happened factually
 2. determining whether findings correspond to the relevant autonomous concept

Findings: National interpretation of autonomous EU law concepts 2

- If so, tick the relevant box; if not, do not tick that box (section (d) is misleading)
- What if the CoJ has not elucidated a particular concept yet?
 - Issuing JA: avoid using national legal qualifications in section (d), but describe in a factual way what happened
 - factual description should enable executing JA to reach conclusion that surrender does not breach defence rights (even if the situation is not covered by Art. 4a(1)(a)-(d))