

Improving Mutual Recognition of European Arrest Warrants for the Purpose of Executing In Absentia Judgments

Proposal to Amend the EAW-Form



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1. **Amendment of section (d) of the EAW-form (proposed changes in red)**

(d) Personal presence at the trial resulting in the decision or the judgment

A. Final conviction

Part A concerns the last decision or judgment in which a court or a judge made a final ruling on the guilt of the person concerned and imposed a penalty on him, following an assessment, in fact and in law, of the inculpatory and exculpatory evidence, including, where appropriate, the taking account of the individual situation of the person concerned.

Indicate if the person appeared in person at the trial resulting in **that** decision **or that** judgment:

A.1. Yes, the person appeared in person at the trial resulting in **that** decision **or that** judgment.

A.2. No, the person did not appear in person at the trial resulting in **that** decision **or that** judgment.

A.3. If you have ticked the box under point A.1, please state the number of hearings, the date(s) of the hearing(s) and, in case of multiple hearings, the hearing(s) at which the person concerned was present and the extent to which the merits of the case were dealt with at that/those hearing(s):

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.....

A.4. If you have ticked the box under point A.2, please confirm the existence of one of the following (should a particular point be only partially applicable, please do not delete the non-applicable part of that point, but rather refrain from ticking the corresponding box; if none of the points A.4.1a, A.4.1b, A.4.2, A.4.3 or A.4.4 is fully applicable, please do not tick any of the corresponding boxes, but rather explain under point A.5 why in your opinion surrender would nonetheless not entail a breach of the rights of defence of the requested person):

A.4.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

A.4.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such

a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

A.4.2. 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;

OR

A.4.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be reexamined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame;

OR

A.4.4. the person was not personally served with the decision, but

— the person will be personally served with this decision without delay after the surrender, and

— when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, 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, and

— the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be ... days (please fill in the period within which the request must be made).

A.5. If you have ticked the box under points A.4.1b, A.4.2 or A.4.3 above, please provide information about how the relevant condition has been met. In particular, please state with regard to point A.4.1.b: how and when the person concerned actually received the information about the date and the place of the trial; with regard to point A.4.2: whether the legal counsellor was appointed by the person concerned or by the State and, in the latter case, how the person concerned was made aware of that appointment and whether he/she had any contact with the legal counsellor; with regard to point A.4.3: how and when the person concerned actually received the judgment and the information about the right to a retrial or an appeal:

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B. Final determination of the sentence

Part B concerns proceedings subsequent to the final conviction (part A) in which the level or the nature of the original penalty was modified by an authority which enjoyed a margin of discretion as to that level or that nature and which led to a decision or judgment finally determining the sentence. If such proceedings have taken place, not only must you fill in part A but also part B.

Indicate if the person appeared in person at the trial resulting in that decision or that judgment:

B.1. Yes, the person appeared in person at the trial resulting in that decision or that judgment.

B.2. No, the person did not appear in person at the trial resulting in that decision or that judgment.

B.3. If you have ticked the box under point B.1, please state the number of hearings, the date(s) of the hearing(s) and, in case of multiple hearings, the hearing(s) at which the person was present and the extent to which the merits of the case were dealt with at that/those hearing(s):

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B.4. If you have ticked the box under point B.2, please confirm the existence of one of the following (should a particular point be only partially applicable, please do not delete the non-applicable part of that point, but rather refrain from ticking the corresponding box; if none of the points B.4.1a, B.4.1b, B.4.2, B.4.3 or B.4.4 is fully applicable, please do not tick any of the corresponding boxes, but rather explain under point B.5 why in your opinion surrender would nonetheless not entail a breach of the rights of defence of the requested person):

B.4.1a. the person was summoned in person on ... (day/month/year) and thereby informed of

the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

B.4.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

B.4.2. 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;

OR

B.4.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be reexamined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame;

OR

B.4.4. the person was not personally served with the decision, but

— the person will be personally served with this decision without delay after the surrender, and

— when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, 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, and

— the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be ... days (please fill in the period within which the request must be made).

B.5. If you have ticked the box under points B.4.1b, B.4.2 or B.4.3 above, please provide information about how the relevant condition has been met. In particular, please state with regard to point B.4.1.b: how and when the person concerned actually received the information about the date and the place of the trial; with regard to point B.4.2: whether the legal counsellor was appointed by the person concerned or by the State and, in the latter case, how the person concerned was made aware of that appointment and whether he/she had any contact with the legal counsellor; with regard to point B.4.3: how and when the person concerned actually received the judgment and the information about the right to a retrial or an appeal:



2. Amendment of section (c) (proposed changes in red)

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

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2. Length of the custodial sentence or detention order imposed:

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If that sentence or that detention order results from a decision modifying the level or the nature of a sentence or sentences previously imposed (see section (d)(B)), please mention the authority which issued the decision and the date of the decision:

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Remaining sentence to be served:

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