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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

Questionnaire concerning judgments *in absentia* and the possibility of retrial

Summary and Compilation of Replies

Replies received from:

Albania, Armenia, Austria, Bosnia and Herzegovina, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Moldova, Norway, Portugal, Russian Federation, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom

Contents

Introduction

During the 61st meeting of the PC-OC (22-24 November 2011) a question was raised on the issue of "in absentia cases" in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition. This provision reads as follows:

"Judgments in absentia

1. *When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.*
2. *When the requested Party informs the person whose extradition has been requested of the judgment rendered against him in absentia, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State".*

The explanatory report to this provision states the following

*"**Chapter III – Judgments in absentia***
21. Chapter III complements the European Convention on Extradition with regard to judgments in absentia, i.e. judgments rendered after a hearing at which the sentenced person was not personally present.
(cf. the definition in Article 21.2 of the European Convention on the International Validity of Criminal Judgments). The expression "judgments in absentia" means judgments properly so-called and does not include for instance, ordonnances pénales.
22. The sub-committee had first considered whether the text of the Protocol might not be based on Articles 21 et seq. of the European Convention on the International Validity of Criminal Judgments, since it might be illogical to treat some judgments in absentia as contentious for the purpose of that Convention and not for the purpose of the Extradition Convention. It was, however, considered that it was not possible to transfer the machinery of that Convention to a different context: that Convention concerns in particular execution of a judgment in the requested and not in the requesting State and the special procedure of notification followed by opposition would not really be appropriate as the individual claimed would, ex hypothesi, have to make an opposition in a State from which he was absent.
23. For these reasons the sub-committee decided to provide for a procedure proper to the Extradition Convention. Paragraph 1 of Chapter III allows the requested Party to refuse extradition if the proceedings leading to the judgment did not satisfy the rights of defence recognised as due to everyone charged with a criminal offence. An exception to this principle is made if the requesting Party gives an assurance considered sufficient to guarantee to the person concerned the right to a retrial which safeguards his rights of defence: in that case extradition shall be granted.
24. At the origin of this amendment is the Netherlands reservation to the Extradition Convention to the effect that extradition would not be granted if the individual claimed had not been enabled to exercise the rights specified in Article 6.3.c of the Human Rights Convention. The sub-committee was, however, of the opinion that any exemption from the obligation to extradite should apply if there had been a violation of any of the generally acknowledged rights of defence, in particular those specified in the whole of Article 6.3 of the Human Rights Convention and not merely those mentioned in sub-paragraph c thereof. Moreover, the Netherlands reservation refers only to extradition to enforce a judgment in absentia; it is essential to specify that, if there is no longer an obligation to extradite for this purpose, it will, under certain conditions, remain obligatory to extradite to permit the requesting State to take proceedings.
25. As regards the reference to the "rights of defence recognised as due to everyone charged with a criminal offence", it should be noted that on 21 May 1975, the Committee of Ministers of the Council of Europe adopted Resolution (75) 11 on the criteria governing proceedings held in the absence of the

accused. This resolution recommends the governments of member States to apply a number of minimum rules when a trial is held in the absence of the accused. These minimum rules are aimed at guaranteeing the accused's rights as laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and may serve for the purpose of determining the scope of the phrase "rights of defence" used in Chapter III. The reference to the rights of defence due to "everyone charged with a criminal offence" is indeed drawn from the Human Rights Convention and is intended to cover in particular the rights specified therein.

26. Reference is made to the purpose of the extradition request because Article 1 of the Convention makes a distinction between requests for the purpose of enforcing a judgment and requests for the purpose of taking proceedings.

27. The phrase "in its opinion" is intended to underline that it is for the requested Party to assess whether the proceedings leading to the judgment (and not the judgment itself) satisfied the rights of defence. If the requested Party has doubts on that point, the requesting Party must try to dissipate them, but otherwise it is incumbent on the requested Party to say why it considers the proceedings unsatisfactory.

28. If the requested Party finds difficulties in extraditing, to enable the requesting Party to enforce the judgment, new contacts will be necessary between the States. The requested Party is obliged to extradite if it receives an assurance of the kind indicated; such an assurance must cover not merely the availability of a remedy by way of retrial but also the effectiveness of that remedy.

Once surrendered in pursuance of the requested Party's obligations to extradite upon receipt of sufficient assurances, the person concerned may, of course, accept the judgment rendered against him in his absence or demand a retrial. This is made clear in the last sentence of Chapter III.

If the domestic law of the requesting Party does not allow a retrial, there is no obligation for the requested Party to extradite.

29. Chapter III provides a further means of strengthening the legal interests of the person to be extradited by stating, in paragraph 2, that communication of the judgment rendered in absentia is not to be regarded by the requesting State as a formal notification. The chief object of this provision is to ensure that the person to be extradited will not find himself with only a very short time in which to make an opposition, whereas the formalities relating to his handing over may take several weeks or months.

Furthermore, in some States the opposition entered by the person sentenced nullifies the judgment rendered in absentia, with the result that those States will consider only the time limitation of the criminal proceedings. Others follow the principle that the time limitation of the sentence only should be taken into account. Since it is generally true that the time limitation is reached sooner in respect of the proceedings than in respect of the sentence, opposition by the person sentenced (in the case of formal notification in the requested State) might prevent extradition if the requesting and requested States do not follow the same principle in matters of time limitation.

It goes without saying that this provision applies only to a communication made subsequent to a request for extradition of a person referred to in a judgment rendered in absentia."

As a follow-up to the discussion, the PC-OC decided to develop a questionnaire concerning judgments in absentia and the possibility of retrial in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition.

The PC-OC finalised the questionnaire during its 63rd meeting (13-15 November 2012) and decided to:
- instruct the Secretariat to send it out to all PC-OC members and parties to the European Convention on Extradition and make a summary of the answers received;
- instruct the PC-OC Mod to consider the replies received and make proposals for follow-up.

The Second Additional Protocol to the European Convention on Extradition has been ratified by 42 States.Twenty-two Parties replied to the questionnaire. Four further replies came from states that are not a Party to this Protocol (France, Greece, Ireland and Liechtenstein). The total number of replies received amounts to 26.

Summary of replies to the questionnaire

1. Is it possible in your state to issue a judgment in absentia within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition or in similar cases?

Out of the 22 Parties to the Second additional Protocol to the European Convention on Extradition who answered the questionnaire, a majority of 14 answered this question positively. Some replies underline that *in absentia* judgments can only be issued in exceptional circumstances. Almost all these replies describe the legal conditions and types of *in absentia* proceedings according to their law and practice.

Eight Parties replied negatively. However, among those that replied negatively, three described some exceptional situations where judgments could be rendered *in absentia*.

Among the four replies received by states that have not ratified the Second Additional Protocol to the European Convention on Extradition, three indicate that they have the possibility to issue judgments in absentia.

2. Are the following decisions according to your domestic law considered as decisions in absentia? (multiple responses possible).

This question proposed the following five possible *in absentia* decisions to which multiple responses were possible.

1. All decisions rendered in the absence of the person concerned at trial: 16 responses

2. Decisions rendered in the absence of the person concerned but who was defended by a legal counsellor at the trial: 1 response
a only if the counsellor had been given a mandate by the person concerned: 2 responses
b regardless of whether the person was defended by a duty counsellor appointed by the court with no contact to the person concerned: 8 responses

Decisions rendered in the absence of the person concerned who afterwards:
3. has expressly stated that he or she does not contest the decision: 3 responses

4. did not request a retrial within the applicable time frame: 3 responses

Five states referred to their answer to question 1 and/or to its legislation. Reference is made to the table on page 29 reflecting the responses received to this question.

3. Does your domestic law provide for the notification of the person concerned regarding the scheduled date and place of the trial which resulted in the decision? If so, please describe the procedure (e.g. summons in person and/or by other means; official information; etc.).

All replies received to this question were positive, giving details of the procedure and/or legislation on this issue. Three states did not reply to this question.

4. Does your domestic law provide for the following safeguards with regard to the notification of the person concerned about the scheduled date and place of the trial? (multiple responses possible).

The question proposed the following safeguards to which multiple responses were possible:

1. The person concerned is informed in such a manner that it is unequivocally established that he or she is aware of the scheduled trial: 17 responses.

2. The person concerned is informed in a language that he or she understands: 17 responses

3. The person concerned receives information in due time meaning sufficiently in time to allow him or her to participate in the trial and to effectively prepare and exercise his or her right of defence. (If so, please provide information as to the time limit): 22 responses, including on the time limit varying from three days to several months according to the country and crime concerned.

4. The scheduled date of the trial may for practical reasons initially be expressed as several possible dates within a short period of time. If so, please describe the regulation: 3 responses

5. The summons contains information or the person is separately informed that a decision may be handed down even if he or she does not appear for the trial: 13 responses.

Six countries added comments under the heading “other safeguards”. Reference is made to the table on page 47 reflecting the responses received to this question.

5. What guarantees does the law of your state provide concerning the right to a legal counsel for the accused when he or she is not present during the trial?

The replies received can be summarised in three categories. In some countries (13) a legal counsel is compulsory for all criminal proceedings or for those concerning serious crimes. If the accused is absent and didn’t appoint a legal counsel, the state will nominate one.
In a second group of countries (7), the presence of a defence counsel for *in absentia* proceedings is not compulsory in all cases but the accused has always a right to a defence counsel.
In a third group of countries (3) no *in absentia* judgments will be rendered.

6. Does your domestic law provide for the possibility that the person concerned waives his or her right to appear and defend him/herself at trial, explicitly or implicitly, through his or her conduct? If so, does your domestic law provide for the possibility that the person concerned, who has waived his or her right to appear, is defended at the trial by a legal counsellor to whom he or she has given a mandate?

The above questions were answered positively 14 times. Two replies indicate that this will only be possible concerning minor offenses and/or under certain conditions. Representation of the accused in absentia by his/her legal counsel will take place in cases of compulsory representation.

7. Does the law of your state provide for a possibility of a retrial in case of a judgment in absentia? If so, what legal conditions (e.g. ex officio or only on request of the person concerned, deadlines etc.) need to be met for the retrial to be granted? If there are more types of such judgments or in absentia proceedings, please provide information on each of them.

18 states provide for a possibility of a retrial in case of a judgment *in absentia*. However in most cases this possibility is either restricted to an appeal procedure or subject to the legal conditions described in the replies received.

8. If a retrial needs to be requested by the convicted and sentenced person and/or granted by a court or other authority, please provide information on the procedure (including the deadline for filing such a motion and the start date of this deadline).

Only six states replied in some detail to this question. Others referred to their answer to question 7, answered briefly or did not give an answer.

9. What are the legal conditions for a valid service (notification) of the judgment *in absentia* in terms of appeal or retrial procedures?

14 states replied in some detail to this question. Others referred to their answer to previous questions or didn’t reply.

10. What are the consequences of service of the judgment *in absentia* in terms of appeal or retrial procedures?

Nine states replied in some detail to this question, mostly indicating deadlines. Others referred to their answer to previous questions or didn't reply.

11. Is the person concerned informed about his or her right to a retrial and, where applicable, about the specific conditions to be met?

The question proposed the following situations to which multiple responses were possible:

No: 3 responses
Yes, in the summons to trial: 1 response
Yes, with the service of the judgment *in absentia*: 9 responses
Yes, including information on any deadline for requesting retrial: 9 responses
Yes, in a language that he or she understands: 10 responses
Yes, in another way (please describe): 9 responses.

Reference is made to the table on page 104 reflecting the responses received to this question.

12. Is the person concerned entitled to participate in the retrial?

19 countries gave a positive answer to this question.

13. Is the retrial considered according to your domestic law as a new trial meaning the trial starts anew with all possible appellate remedies (e.g. as if the decision rendered in the absence of the person concerned never existed) or is it rather considered as an extraordinary remedy?

16 states replied that retrial is understood as a new trial. For one state, this is however only the case where the public prosecutor appeals a judgment *in absentia*. For another state this will only apply to retrials in case of the reopening of a case. For a third state a retrial will only be a new trial in case of opposition as defined in their code of criminal procedure. Three states indicated that retrial is considered as an extraordinary remedy.

14. During the retrial, does your domestic law provide for a fresh determination of the merits of the charge, in respect of both law and facts, including possible new evidence?

19 states gave a positive answer to this question. Some underline, however, that this only occurs in a few cases determined by law.

15. Does your domestic law provide for the possibility that the original decision rendered in the absence of the person concerned is reversed or changed?

The question proposed the following situations:
No: 2 responses
Yes, but only in favour of the defendant: 4 responses
Yes, in favour but also to the detriment of the defendant: 9 responses
Other limitations: 11 responses

Reference is made to the table on page 120 reflecting the responses received to this question.

16. Does the retrial or the request of a retrial by the person concerned suspend the execution of the decision rendered in the absence of the person concerned?

12 states replied positively to this question and four replied negatively. Four more states replied that the suspension of execution of the decision rendered *in absentia* may be decided by a court.

17. Is there a time limit within which the retrial has to (re)start?

16 states indicated that there is no formal time limit in their legislation within which a retrial has to (re)start. One state indicated a legal time limit of 2 months to start the retrial of a person in detention.

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18. If the person concerned has not been personally served with the decision before his or her surrender, when will the person concerned receive a copy of the decision (if possible, please provide an approximate time frame)? Will the person concerned receive such a copy in a language that he or she understands?

Most responses (14) indicated that the decision will be served as soon as possible after surrender of the person to the requesting authority while 9 of these responses specified that the person will receive a copy of the decision translated in a language that he or she understands. Two responses specified that in case of prison sentences rendered *in absentia*, requests for extradition will normally not be made.

19. If the person concerned, after being surrendered, has exercised his or her right to a retrial, is the detention of the person considered as an enforcement of the decision rendered in absentia or as provisional detention?

Seven replies indicated that in such case the detention of the person concerned would be considered as provisional detention. Six replies indicated that detention would be considered as an enforcement of the sentence rendered *in absentia*. In two other replies, the decision on the nature and necessity of the detention is left to a court.

20. In both cases, is the detention of that person awaiting a retrial reviewed before the retrial proceedings are finalised? (Multiple responses possible).

The question proposed the following situations to which multiple responses were possible:

No: 5 responses
Yes, on a regular basis: 8 responses
Yes, upon request by the person concerned: 6 responses
Other: 5 responses

Reference is made to the table on page 136 reflecting the responses received to this question.

21. If so, does such a review include the possibility of suspension or interruption of the detention?

12 states gave a positive answer to this question.

22. Does your state extradite persons for the purpose of carrying out sentences or detention orders imposed by decisions rendered in the absence of the person concerned? If so, please describe the regulation (or identify the convention or legal instrument that you would apply). Does the legislation of your state provide for such a ground for refusal to extradite a person for the purposes of execution of a sentence rendered in absentia of this person? If so, is it an imperative (mandatory) or discretionary (facultative) ground for refusal?

21 responses indicate that according to national legislation or on the basis of the Second Addition Protocol to the European Convention on Extradition, persons can be extradited for the purpose of carrying out sentences or detention orders imposed by decisions rendered *in absentia*. A large majority of responses indicated that extradition would be refused if the requesting state gives insufficient guarantees that the person sentenced *in absentia* will be given the right for a retrial which safeguards the rights of the defence in compliance with the European Convention on Human Rights (and in particular Article 6.3) and/or national legislation on this issue.

23. Do you understand Article 3 of the Second Additional Protocol to the European Convention on Extradition as follows: if the requesting party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence, it means that:

1. the person claimed has an automatic (i.e. without the need to make any further request) or semiautomatic (i.e. the person has to make a request but the request cannot be denied by the authorities) right to a retrial

2. the person concerned only has the right to the possibility of a retrial being considered by the requesting state

3. or do you have a different interpretation of Article 3? (please, describe):

A large majority of responses (15) choose the first interpretation, five opted for the second and one formulated a different interpretation. Reference is made to the table on page 150 reflecting the responses received to this question.

24. What legal conditions need to be met according to the legislation and/or legal practice of your state with regard to the clause "minimal rights of defence" (within the meaning of Article 3 of the Second Additional Protocol to the European Convention on Extradition)?

Among the 22 responses received to this question, eight refer to the rights guaranteed by the European convention on Human Rights and in particular Article 6.3, while nine responses refer to their national legislation. Five responses describe their legal practice.

Compilation of replies to the questionnaire concerning judgments in absentia and the possibility of retrial

Note: For easy reference, the replies received are compiled by question.

***In absentia* judgments**	
1. Is it possible in your state to issue a judgment *in absentia* within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition or in similar cases? **If so, what are the legal conditions according to your law and/or in your legal practice?** **If there are more types of such judgments or *in absentia* proceedings, please provide information on each of them:**	
Albania	Yes, it is possible to issue a judgement in absentia and request the extradition of a criminal subject sentenced in absentia, within the scope of article 3 of Second Additional Protocol of European Convention on Extradition, providing the guaranties for the right of retrial. According to articles 116 and 122 of the Constitution, and article 10 of the Criminal Procedure Code of the Republic of Albania, the international ratified Agreements are integral part of the domestic legal system and prevail over domestic laws. The Albanian criminal procedural system recognizes the trial in absentia of the defendant but in each case with the compulsory participation of the defense counsel. The defense counsel may be chosen by the defendant or may be appointed by the prosecuting authority ex officio, in conformity with articles 6-48-49-50 of the Criminal Procedure Code. The present Code of Criminal Procedure does not provide yet any provision for the automatic right of retrial, but the amendment of this Code is in process also for this purpose. Meanwhile, Law No.10193, dated 03/12/2009 “On jurisdictional foreign relations in criminal matters”, the article 51/ 4 provides for the right of the extradited subject to request the review of sentence rendered by the guaranty of the Minister of Justice to the requested state. Article 51 par 4 (Reference) “A final decision rendered against an extradited person by the local judicial authorities in his absence may be reviewed at the request of the extradited person, if the Minister of Justice has given such a guaranty to the requested state. The request for review is submitted within 30 days from the arrival of the extradited person in Albanian territory and its examination follows the rules of the Code of Criminal Procedure”, The decision on the review is taken upon the request of the defendant tried in absentia to the Supreme Court, following the procedure foreseen by article 449 - 453 of the Code of Criminal Procedure. Following the submission of the request for review and its admission by the Supreme Court, it is the First Instance Court that will repeat the trial on basis of the request of the interested person who should certainly submit a request for taking of evidence and the questioning of his witnesses. This legal framework has already generated a consolidated jurisprudence in the judicial and legal-doctrinal tradition of the Republic of Albania. An alternative guarantee for the retrial is the leave to appeal out of time. According to article 147/ 2 of the Albanian Criminal Procedure Code, when the

	decision is rendered in absentia, the defendant may claim the leave to appeal out of time to file a complaint when he proves that he has not been informed of the decision. The receipt of knowledge of the act is certainty considered the recognition of the decision reflected and certified only with the signature of the defendant in the relevant minutes that is drafted at the moment of his entry in the territory of the Republic of Albania. It is precisely this moment when the defendant is effectively notified of the rendered judicial decision and at this moment the legal time-limit of 10-day period begins to run for the defendant to submit the request for leave to appeal out of time, according to article 147/3 of the Criminal Procedure Code. The competent court that has decided the leave to appeal out of time, upon the request of the party and to the extent possible, orders the repetition of actions in which the party was entitled to take part. Where reinstatement in time limit is ordered by the Supreme Court, the repetition of actions is decided by the court, which is competent to hear the case on its merits. Thus, the general conclusion is that the request for leave to appeal out of time by the defendant is decided by a judicial decision in which the court plays a minor interpreting role insofar as the conditions and circumstances provided for in the article 147 of the Criminal Procedure Code are met.
Armenia	The question of in absentia judgements is not regulated by the norms of the Armenian legislation as according to the Article 302: “Court trial is done in the presence of the defendant whose attendance of the court is mandatory.” Moreover, the Article 398 of the RA Criminal Procedure Code states that a trial in absence of the defendant is considered to be an essential breach of procedural law. According to the above mentioned Article: “The verdict is liable to be turned down in all cases, if... the case was considered in the absence of the defendant”. Art 303 (1) determines that in case of the defendant's failure to attend the examination of the case is postponed. Moreover, there has been no state practice when a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, however, such cases, if present, shall be regulated by the norms of the Second additional protocol to the European Convention on Extradition.
Austria	The Austrian legal provisions do not provide for the possibility to issue a judgment in absentia within the scope of Article 3 of the Second Additional Protocol to the European Convention on Extradition. The possibilities to issue a judgment in absentia according to Austrian law are very restricted. According to Austrian law a “judgment in absentia” can only be issued in the following circumstances: According to Section 427 of the Austrian Code of Criminal Procedure it is possible to render a “judgment in absentia”, provided that the range of punishment amounts to a fine only and/or to imprisonment of three years maximum, that the accused has been formally interrogated as the accused person after being instructed on his/her rights according to Section 164 of the Austrian Code of Criminal Procedure, that the summons has been submitted to the accused in person and that the presiding judge does not deem the accused person’s presence necessary in order to solve the case comprehensively. Under Austrian law it is not permitted to hold a main trial in the absence of the accused person only because the accused person flees from justice or is supposed to be fleeing. According to Section 412 of the Austrian Code of Criminal Procedure the trial has to be suspended in such a case until the future discovery of the

	perpetrator if there is no evidence for further investigations. For gathering further evidence during the absence of the accused – irrespective of the fact that he/she flees or is absent because of other reasons – the general procedural requirements and guarantees apply. The trial can however held temporarily in absence of the accused under certain restrictive circumstances, e.g.: The proceedings against the accused can be conducted in his absence also according to Section 234 of the Austrian Code of Criminal Procedure, if the accused has been excluded from the proceedings by decision of the court due to his/her inappropriate behaviour which he/she continues to pursue even after appropriate warning by the presiding judge indicating the consequences of such behaviour. Proceedings in absentia can further be held according to Section 275 of the Austrian Code of Criminal Procedure if the accused falls ill during trial and gives his/her consent to the conduct of the trial in his/her absence. Proceedings against a mentally ill offender can be conducted in his/her absence under certain conditions, if an improvement of his/her mental situation can not be expected within a reasonable time or his/her participation is likely to endanger his/her mental situation further. According to Section 250 of the Austrian Code on Criminal Procedure the accused can also be excluded from the main trial during the interrogation of a witness or co-accused, if this is regarded necessary by the court in order to obtain a truthful statement. If the case concerns a criminal act allegedly committed by a juvenile, a trial and judgment in absentia is under no circumstances possible. However it is possible to exclude the juvenile temporarily from the main trial, if it is to be feared that the discussion of certain facts could have a negative influence on him/her.
Bosnia and Herzegovina	In Bosnia and Herzegovina it is not possible to issue a judgement in absentia. Namely, in accordance with Article 247 of the Criminal Procedure Code of Bosnia and Herzegovina there is a ban of trial in case of absentia. Article 247. regulates: „Article 247 Ban of Trial in Case of Absentia *An accused may never be tried in absentia*.“
Cyprus	It is not possible except in the case of specified very minor offences for which the accused requests to be permitted to be represented only by his counsel(section 45 of the Criminal Procedure Code) or if summons is proved to have been served on him and he fails to appear in which case the Court may hear the case in his absence(section 89 of the Criminal Procedure Code).
Czech Republic	A. In absentia trials in the proceedings against a fugitive Czech law allows for a criminal case to be tried in absentia (and a person convicted and sentenced in absentia) if the court is satisfied that the accused person (defendant) avoids criminal proceedings by staying abroad or by hiding. In such a case there needs to be a specific decision by the court that is to try the case to do so in the defendant's absence, i.e. in the proceedings against a fugitive. In the following trial, all rights of the defendant are exercised in full by his legal counsel – if he/she

	doesn't already have a legal counsel, he/she must choose one or an ex offo counsel is appointed by the court. Summons to such a trial shall also be published in an appropriate way. Afterwards, the case is tried even if the defendant had not in fact been personally informed about it. A conviction and sentence resulting from such in absentia trial must be retried if the defendant returns (or is returned) to the Czech Republic and requests it within 8 days after service of the judgment resulting from such in absentia trial on him/her after his/her return (the court must cancel its judgment if so requested – there is no discretion). In the retrial, evidence originally produced in the defendant's absence must be produced again (if it is possible; if it's not possible, records of producing the evidence in the original trial are read or played in the retrial and the defendant is allowed to comment on it). If the defendant is convicted and sentenced also in the retrial, such conviction and sentence cannot be worse for the defendant than the original conviction and sentence delivered in the in absentia trial (e. g. convicting the defendant of more serious offence or imposing a longer sentence of imprisonment) and the defendant can use all appeals against the new judgment provided by law with regard to any other judgment. B. Criminal orders In criminal proceedings concerning offences punishable by 5 years of imprisonment or less and if facts of the case are obvious and well documented by evidence produced already in pre-trial procedure, Czech law allows the case to be tried by a single judge in a summary written procedure, i.e. without a personal appearance and hearing of the defendant in court. In such a case the single judge would issue a criminal order convicting and sentencing the defendant in lieu of a judgment. Sentences imposed by a criminal order, however, may be only: up to 1 year of imprisonment, up to 1 year of house arrest, community service, up to 5 years of prohibition of certain activity, fine, confiscation of a piece of property or another property value, up to 5 years of expulsion or up to 5 years of prohibition of presence in a sports/cultural/other social event. A criminal order must be served on the defendant personally to enter into force and be enforceable. The defendant (among others) has the right to appeal (file a protest against) the criminal order and he/she does so, the criminal order is automatically cancelled and the case must be tried in full trial (however, the court is not limited by the conviction and sentence from the original criminal order if the defendant is found guilty in the full trial; conviction and sentence resulting from such trial can be appealed by the defendant like any other judgment). C. In absentia trials by default The defendant may implicitly waive his/her right to be tried in his/her presence by failing to appear at the trial without offering an excuse the court considers sufficient. In such a case, the court may decide (if it is satisfied that the indictment had been duly and sufficiently in advance served on the defendant and he/she had been summoned to the trial, the defendant had been interviewed by the Police of by the prosecutor already in pre-trial proceedings, the criminal proceedings had been duly initiated and at the conclusion of the investigation had been invited to study the file and propose evidence not yet gathered, and the court believes that the case may be tried and decided even without the defendant's presence) to try the case in the defendant's absence. If he/she is convicted and sentenced in such a trial, the defendant can appeal the judgment but cannot request retrial, as this is not considered the proceedings against a fugitive. Judgments resulting from such trials are not considered in absentia judgments. D. In absentia trials at the request of the defendant The defendant may also explicitly waive his/her right to be tried in his/her presence. If he/she is convicted and sentenced in such a trial, the defendant can still appeal the judgment but cannot request retrial, as this is not considered the proceedings against a fugitive. Judgments resulting from such trials are not considered in absentia

	judgments.
Denmark	Under Danish law the defendant's absence in the beginning of a court hearing or during a court hearing will most often lead to the case being postponed. It is, however, possible to issue a judgement *in absentia* – in full or in part - within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition. Thus, if a legally summoned defendant is absent without due cause, the court may decide to question witnesses and expert witnesses appearing before the court, provided that considerations in favour of the defendant do not speak against it and provided that postponement of the questioning will cause significant inconvenience to the witnesses or cause a significantly delay of the case. However, the questioning can only take place if the defendant's attorney is present. In the following 5 situations a court hearing may be set down for passing of sentence in the absence of the defendant if the court finds the presence of the defendant unnecessary: 1) when the defendant has absconded after the indictment has been served on the defendant, 2) when the defendant leaves the place where the court sits without permission after the case has been called, 3) when the case concerns a demand for imprisonment for a term of no more than six months or seizure, deprivation of rights, or payment of damages, and the defendant has consented to the case being processed, 4) when the defendant is not sentenced to imprisonment for more than three months or to other legal consequences than seizure, suspension of driving license or payment of damages, or 5) when it is assessed that the trial will undoubtedly lead to the acquittal of the defendant In situation no. 4 the court hearing may without the consent of the defendant only be set down for passing of a sentence, if the defendant has been duly summoned, and it appears from the summons that absence without due cause can lead to a conviction. It should generally be noted that the defendant's absence cannot be interpreted as an admission of guilt. Thus, a production of evidence is also carried out when the defendant is absent. Finally, it should be noted that summary proceedings on the basis of a guilty plea cannot take place in the absence of the defendant.
Estonia	<u>Extract from Estonian Criminal Procedure Code</u>: § 269. Participation of accused in court hearing (1) A criminal matter shall be heard in the presence of the accused. If the accused fails to appear, the court hearing shall be adjourned. Participation of the accused during the announcement of the judgment is not mandatory. (2) As an exception, a criminal matter may be heard in the absence of the accused if: 1) he or she has been removed from the courtroom on the basis and pursuant to the procedure provided for in subsection 267 (1) of this Code; 2) he or she is outside the territory of the Republic of Estonia and absconds court proceedings, and court hearing is possible without the him or her; 3) after his or her interrogation at a court session, the accused has caused himself or herself to be in a state which precludes his or her participation in the court

	hearing, and court hearing is possible without him or her; 4) it is complicated to take him or her to the court, and he or she has consented to participation in the court hearing in audio-visual form pursuant to clause 69 (2) 1) of this Code. (3) If the accused absconds court proceedings or if the hearing of the criminal matter is hindered by a serious illness of the accused due to which he or she is not able to appear in court, the court may make a ruling on the conduct of separate proceedings concerning his or her charges, adjourn the hearing of the severed charges until apprehension or recovery of the accused, and continue the court hearing of the criminal matters concerning the other accused. (4) Upon court hearing of a criminal matter involving several accused persons, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused may be conducted without the presence of such accused and his or her criminal defence counsel.
Finland	In short, no. Judgments in absentia are not issued in Finland. Actually the answer depends on how we define a judgment in absentia. If we follow, for instance, the Resolution (75) 11 of May 21, 1975 of the Committee of Ministers, then the answer is no. This Resolution requires that no one may be tried without having first been effectively served with a summons. It is an absolute minimum in Finland that a person has been served with a summons to appear before a court to answer the charges before he can be proceeded against. However, if a judgment in absentia is defined as in the European Convention on the International Validity of Criminal Judgments, then the answer is yes. In Finland a judgment may be rendered against a person even though he has never set foot in a courtroom if the charges relate to an offence which is punishable by a maximum sentence of six months at the most. However, he or she has to have been served with a summons where he or she is admonished to appear before a court either in person or through a representative at the risk of being convicted and sentenced despite his or her absence.
France	YES. Under French law a judicial decision imposing a sentence may be delivered in the absence of the convicted person. Based on the distinctions set out below, such decisions are described as having been given "by default", "by repeated default" or "by adversarial hearing subject to notification". In these cases the procedures satisfy the "minimum rights of defence" and, in accordance with Article 3 of the Second Additional Protocol to the European Convention on Extradition, guarantee "the right to a re-trial which safeguards the rights of defence" if the defendant so wishes. In French law, the qualification "by default" accordingly does not cover all judgments handed down in the absence of the convicted person. Each category of judgment involves its own legal distinctions and has specific effects: - **Judgment by default** (Articles 412, 487 and 488 of the Code of Criminal Procedure (CCP)): A judgment is deemed to have been given by default where a due summons was issued, but the accused did not have knowledge of it and did not appear at the hearing or was not duly represented. A person convicted in these circumstances can lodge an application for the decision to be set aside and the case reheard and/or can appeal against the decision. - **Judgment by repeated default** (Article 494, para. 1 of the CCP): A judgment is deemed to have been given by repeated default where the accused, who duly applied to have a previous judgment by default set aside, did not attend the proceedings to decide that application although he or she was informed of the date of the hearing. In this case the application is void and the operative provisions of the

	judgment pronounced by default are confirmed, except that, where justified by special circumstances, the court may modify the impugned judgment, citing specific reasons, but without imposing a stiffer penalty. - **Judgment by adversarial hearing subject to notification** (Articles 410 and 412 of the CCP): These judgments concern accused persons who, although they were summonsed in person or had knowledge of a due summons in accordance with Articles 557 and 558 of the CCP (domiciliary service, service at a bailiff's office followed by sending of a registered letter with signed acknowledgment of receipt or return of a receipt, a summons to attend court delivered by a police officer, delivery of process by a police officer under Article 560 of the CCP), did not appear or were not duly represented before the court and failed to provide an excuse validated by the court. Observations: - Irrespective of the conditions of service of the summons, if counsel comes before the court to ensure the accused's defence but without having received a power of attorney from the accused, that counsel must be heard on request and the judgment is then qualified as "adversarial subject to notification" (Articles 410 and 412 of the CCP). - Summons delivered to the address given by the defendant at the investigation stage are deemed to have been served on him or her in person, even if the defendant has not been reached. All judgments by the first-instance criminal courts following referral of the case for trial by the investigating judge and all decisions of the criminal divisions of the courts of appeal (on appeals by convicted persons) are deemed to have been given by adversarial hearing subject to notification and can no longer be by default (Articles 179-1 and 503-1 of the CCP).
Germany	Under the German law of criminal procedure, judgments in absentia within the scope of Article 3 of the Second Additional Protocol to the European Convention on Extradition or in similar cases may only be pronounced in exceptional cases. According to German constitutional law, it is one of the elementary requirements of the state governed by the rule of law that have in particular been given expression in the entitlement to a hearing in accordance with the law (Article 103 para. 1 of the Basic Law (Grundgesetz)) that no-one may become the mere object of state procedures affecting them; such state action would also constitute a violation of human dignity (Article 1 para. 1 of the Basic Law). The consequence for criminal proceedings in particular is that all persons accused of a crime must have and must be able to actually exercise the possibility, within the bounds of those reasonable rules that have been established by the rules of procedure, of influencing the proceedings, to make a statement regarding the accusations raised against them, to submit exonerating circumstances, as well as to have these circumstances comprehensively and exhaustively examined and, if necessary, to also have them be given due consideration. 1. As a result of this principle, section 285(1) of the Code of Criminal Procedure (Strafprozessordnung, StPO) sets out in regard to German criminal proceedings the principle that no main hearing may be held in respect of a person who is absent. Pursuant to section 276(1) of the Code of Criminal Procedure, a person is deemed to be absent if his whereabouts are unknown or he is abroad and his presence before the court does not appear to be feasible or reasonable. A judgment in absentia is ruled out in such cases. 2. The Code of Criminal Procedure distinguishes between an accused person (Beschuldigter) who is absent as defined in the above and a defendant (Angeklagter) who fails to appear. The latter is defined as an accused person who has been properly summoned to the main hearing and does not appear at the main hearing. Pursuant to section 230(1) of the Code of Criminal Procedure, no main hearing is

	held against such persons either. However, in the interests of the proper functioning of the administration of justice, the law permits exceptions to this principle that have to be narrowly interpreted. The possibility of a conviction in absentia in the cases outlined in the following is based on the consideration that it would go against existing interests in the administration of justice for the decision on whether criminal proceedings should be brought to a conclusion to be made dependent on the willingness of the accused or defendant to cooperate. However, these exceptions are all based on the right or rather the obligation of the person concerned to be present at the main hearing and not on the question of whether they have been properly summoned and consequently on the fundamental possibility of exercising the right to be present. They are based on the legal concept that the right to be present can be forfeited: a) According to section 231(2) of the Code of Criminal Procedure, a main hearing may be concluded in the absence of the defendant, i.e. it may also be held in absentia, if that person absents himself from the main hearing on his own authority or fails to appear when an interrupted main hearing is continued if he has already been examined on the indictment and the court does not consider his further presence to be necessary. This provision has also been applied in cases in which the defendant had consciously placed himself in an abnormal state of excitement that meant he was no longer able to stand trial so as to prevent the proceedings being further conducted (BGHSt 2, 300, 304 et seq.). Section 231a of the Code of Criminal Procedure supplements section 231(2) of the Code of Criminal Procedure by setting out that a main hearing must also be conducted or continued in the absence of the defendant even if his hearing on the charges had not yet been concluded. The special conditions here are that the defendant wilfully and culpably placed himself in a condition that precluded his fitness to stand trial and thereby knowingly prevented the proper conduct or continuation of the main hearing in his presence. Further, the court may not deem the presence of the defendant to be indispensible and the defendant must have the opportunity after the main proceedings have been opened to make a statement on the charges before the court or a commissioned judge. If the defendant is not represented by defence counsel, one must be appointed. Further, a main hearing may be held in the defendant's absence if he is removed from the court or committed to prison on account of disorderly conduct if the court does not consider his further presence indispensible as long as it is to be feared that his presence would be seriously detrimental to the progress of the main hearing. In any event, the defendant must be given the opportunity to make a statement on the charges (section 231b of the Code of Criminal Procedure). As soon as the accused is again fit to stand trial (section 231a(2) of the Code of Criminal Procedure) or is allowed back (section 231b(2) of the Code of Criminal Procedure), he must be informed of the essential contents of the proceedings during his absence. b) A main hearing and a judgment in absentia are still possible pursuant to section 232 of the Code of Criminal Procedure in insignificant criminal cases. According to that provision, the main hearing may be held in the defendant's absence if he was properly summoned and the summons made reference to the fact that the hearing may be conducted in his absence. However, a further condition is that only a fine of up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. These are known as disobedience proceedings (Ungehorsamsverfahren). Unauthorised failure to appear is equal to unauthorised absenting from the main hearing. c) If in appeal proceedings the defendant does provide sufficient excuse for his failure to appear at the beginning of the main hearing, this leads to the court having to dismiss the defendant's appeal on fact and law without hearing the merits (section 329(1) of the Code of Criminal Procedure). This exception to the principle that no judgment may be pronounced against an absent defendant is based on the assumption being made that the defaulting defendant has no interest in the main hearing being conducted and waives the right to appeal and thus to the re-

	examination of the contested judgment. d) In cases where a defendant lodges an objection against a penal order (Strafbefehl) and does not appear in court and no sufficient excuse has been given for his non-appearance at the main hearing regarding the objection, the objection must be dismissed (section 412 of the Code of Criminal Procedure). e) An appeal on fact and law filed by the public prosecution office may be heard in the absence of the defendant (section 329(2) of the Code of Criminal Procedure) unless that conflicts with the court's duty to take evidence (section 244(2) of the Code of Criminal Procedure) and then prompts a renewed hearing or forces the appellate court to get a personal impression of the defendant. In such cases the defendant should also not be in a position to delay the proceedings and prevent their continuation for a longer or shorter period of time. Culpable mental absence on account of being unfit to stand trial is equal to non-appearance. The defendant's summons must contain a reference to the consequences of non-appearance (section 323(1), second sentence, of the Code of Criminal Procedure). 3. Finally, the German law of criminal procedure also provides, in certain exceptional cases, for the possibility of releasing the defendant from his obligation to appear in court in person. Once a defendant has been released from the duty to appear in person, a judgment in absentia is possible in the following cases: a) Section 233 of the Code of Criminal Procedure details those cases in which the defendant is released from the obligation to appear before the trial court. According to this provision, the defendant may, upon application, be released from the obligation to appear at the main hearing if only imprisonment for up to six months, a fine of up to 180 daily units, a warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is expected to be imposed. In such cases, the defendant must always be examined on the charges by a commissioned or requested judge. A defendant who has been released from the obligation to appear must still be summoned to the main hearing. As in other cases in which the main hearing is held in the defendant's absence, the defendant is then entitled to be represented by defence counsel with a written power of attorney (section 234 of the Code of Criminal Procedure). b) Further, the defendant may be released from the obligation to appear at the main hearing if he is being represented by defence counsel with a written power of attorney and an objection is being lodged against a penal order (section 411(2) of the Code of Criminal Procedure) or in private prosecution proceedings (section 387(1) of the Code of Criminal Procedure). 4. A main hearing against a juvenile defendant must always be held in his presence. Because the personal impression that the court gets of the juvenile is of key significance in juvenile criminal proceedings, a main hearing may only in exceptional cases be held in the defendant's absence and under stricter conditions than apply under general criminal law. Pursuant to section 50(1) of the Youth Courts Act (Jugendgerichtsgesetz, JGG), a main hearing against a juvenile defendant may only be held in his absence if – this would be permissible in general criminal proceedings (cf. sections 231(1), 231a, 231b, 231c, 232, 233 of the Criminal Code (Strafgesetzbuch, StGB)) and – there are special reasons to do so and – the public prosecutor consents thereto. The limiting conditions as regards the fines or terms of imprisonment to be expected as set out in sections 232 and 233 of the Criminal Code are applied in juvenile criminal proceedings to the extent that a hearing may only be held without the juvenile defendant if only "supervisory measures" (Erziehungsmaßregeln) and "disciplinary measures" (Zuchtmittel) (sections 9, 13 of the Youth Courts Act) are to

	be expected. Under the simplified procedure for criminal proceedings relating to youth offenders, the consent of the public prosecutor is not necessary if he does not attend the main hearing (section 78(2), second sentence, of the Youth Courts Act). The literature only very rarely confirms the existence of "special reasons", for instance if forcing the youth to attend would represent unfounded hardship. Special features of regulatory offence proceedings: Pursuant to section 73(1) of the Regulatory Offences Act (Ordnungswidrigkeitengesetz, OWiG), the person concerned is not bound to appear at the main hearing. This also applies when he is represented by defence counsel. However, pursuant to section 73(2) of the Regulatory Offences Act, the court relieves the person concerned of this obligation, upon his application, if he has made a statement on the matter, or if he has declared that he will not make a statement on the matter in the main hearing and if his presence is not required for clarifying important aspects of the facts. In such cases, the hearing on the matter may be held in absentia, regardless of whether he is represented by defence counsel or not. The person concerned who has been relieved of the obligation to appear at the main hearing may be represented by defence counsel authorised in writing (section 73(3) of the Regulatory Offences Act).
Greece	According to the Greek criminal procedural law, in some cases, a judgment could be rendered in absentia of the defendant: a) If the defendant is accused of having committed a misdemeanour, he/she could be judged in absentia, under the legal conditions. b) If the defendant is accused of having committed a felony, as a rule, he/she cannot be judged in absentia. As a result, if the defendant is neither present nor represented by a legal counsel, the court is obliged to suspend the trial against him/her until the defendant gets arrested, or, by other means, taken before the court. The only exception, where someone accused of having committed a felony could be judged in absentia, is being introduced when the defendant's absence is due to his having been released from prison due to lapse of the custody duration limit. Furthermore, in general, the main legal condition to issue a judgment in absentia is the previous and in due time defendant's notification for the forthcoming trial. If the court ascertains that the defendant has been legally and in due time notified about the forthcoming trial, then it must proceed and render a (possibly condemning) judgment in absentia of his/hers.
Ireland	It is not possible to issue a judgement in absentia within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition nor in similar cases in Ireland.
Italy	One of the first actions to be carried out in an Italian criminal trial is taken by the judge who shall be satisfied that the parties to the proceedings (the Prosecution, the Defence and the Defendant) have appeared in court as prescribed by law. To that purpose the judge shall order that notices, summons, notifications and service of documents be made again if they have been declared to be null and void. In the Italian system a defendant is not obliged to personally take part in the trial against him/her. A defendant may choose not to personally take part in the trial and to be represented by a defence lawyer appointed by him/her or ex officio by the court if he/she does not designate anyone. If the defendant decides not to appear this decision shall not bar the trial from being continued because his/her appearance is a free choice. If a defendant who has been duly summoned does not appear without a legitimate impediment, the judge, after hearing the parties to the proceedings (Prosecution and Defence), shall declare that he/she "failed to appear" and issue the relevant order.

	Only in this case the proceedings shall be considered to be carried out "in absentia" under the Italian regime. A defendant who failed to appear in court – whose condition is not unlikely to change in the course of the proceedings – shall always be represented by a defence lawyer, either of choice or appointed ex officio. In brief a defendant may be said to have failed to appear in court if the following three conditions are met: 1) failure to appear; 2) valid summons 3); lack of evidence of a legitimate impediment. A declaration of failure to appear does not give rise to any criminal sanction, and yet under the Italian legislation on criminal law and criminal procedure there is a number of additional safeguards in place with respect to service of documents, and consequently to the expiry of the terms to lodge an appeal. Moreover a convict who blamelessly failed to appear shall be protected by restoring him/her in the previous deadline as per Article 175 of the Code of Criminal Procedure (see answers no. 7 et seq.). A defendant who explicitly or implicitly shows his/her will not to take part in the proceedings shall not be considered to have failed to appear. He/she shall be considered to be absent and entitled to benefit from the same safeguards connected to failure to appear. Absence «in the strict sense of the term» implies a legal status that is partially different from, and less favourable than, failure to appear with respect to the safeguards involving a recovery of defence rights.
Latvia	Criminal Procedure Law Section 464 provides: Trial of a Criminal Case without Participation of an Accused. A court may adjudicate a criminal case regarding a criminal violation and a less serious crime without participation of an accused if the accused fails to arrive at the court hearing or has submitted to the court a request regarding the adjudication of the criminal case without his or her participation. The court may adjudicate the criminal case if a defence counsel participates at the court hearing. Criminal Procedure Law Section 465 provides regulation Trial of a Criminal Case in the Absence of the Accused (in absentia), namely: (1) A court may examine a criminal case in the absence of the accused, if the accused is located in a foreign state and his or her whereabouts are unknown or the ensuring of his or her appearance before the court is not possible. (2) A court ruling that has been taken by examining a case in the absence (in absentia) of the accused shall enter into effect in accordance with general procedures. Nevertheless, the accused may appeal the ruling with higher instance court in accordance with appeal or cassation procedures within a time period of 30 days from the day when copy of a ruling was received. The convict is granted the status of accused and all rights of the accused as of a moment when a court has received the complaint. The judge of first instance court shall decide issue regarding suspension of ruling execution and applying of security measure.
Liechtenstein	Liechtenstein did not sign the Second Additional Protocol of the European Convention on Extradition so far. The different types of judgments in absentia and its legal conditions are: • The exclusion of the defendant for the reason of disturbing the proceedings. For that the chairman has to warn the defendant before he/she decides on the exclusion. The duration of the exclusion may contain some time or the whole proceeding. In this case a member of the court has to proclaim the judgment in the presence of the recording clerk to the defendant (Article 184 Criminal Procedure Code). • The exclusion of the defendant during the hearing of a witness or a co-defendant. For that the chairman has to inform the defendant about the things which

	happened in his absence after the defendant himself was heard (Article 197 para. 1 Criminal Procedure Code). • Judgments and in absentia proceedings when the defendant does not appear to the trial and the accusation are based on minor offences or when the defendant was heard in the stadium of investigation and the summons were personally served (Article 295 para. 1 Criminal Procedure Code).
Moldova	Yes, in Republic of Moldova is possible to issue a judgment *in absentia* within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition. According with Article 559/1 from Criminal Procedure Code of the Republic of Moldova: in case if requested the extradition of tried and convicted person in its absence, the case will be retried, at the request of the convicted person by a first instance trial court. The request for retrial may be filed within 6 months after surrender of the sentenced person to the Moldavian's authorities. Criminal proceedings may be reopened if the convicted person didn't ask to be judged in his absence. After admitting a review, the case shall be reheard in line with the procedural rules for a hearing in the first instance. The court if it finds it necessary, at the request of the parties shall examine *de novo* the evidence managed in the course of previous hearings or due to admitting the review request.
Norway	Yes, but only in cases where the prosecuting authority does not wish to propose the imposition of a sentence of imprisonment for a term not exceeding one year. The Criminal Procedure Act, section 281 set out the conditions under which a judgement can be issued in absentia: In a case where the prosecuting authority does not wish to propose the imposition of a sentence of imprisonment for a term exceeding one year, the main hearing may proceed even though the person indicted is not present, if his presence is not deemed necessary for the clarification of the case, and the person indicted either; 1. has consented to the case being dealt with in his absence, or 2. is absent without being made clear or shown to be probable that he has a lawful excuse, or 3. has absconded after the indictment was served on him. If a summons to attend the main hearing has not been served on the person indicted because he has absconded, the main hearing may nevertheless proceed in the case specified in number 3 of the first paragraph. A case concerning preventive detention may not proceed in the absence of the person indicted. In all cases the hearing may proceed when the court finds that it must lead to an acquittal or the dismissal of the case. The criminal procedure act article 281 sets out the sole possibility to issue a judgement in absentia.
Portugal	No. In Portugal, a judgment may only be issued after a trial hearing without the presence of the person concerned if the following conditions are met: the person has

	previously **appeared before the competent authority,** judicial authority or criminal police body, has been **heard as a defendant** and **formally informed** of his/her rights and duties, as well as of the possibility of being tried in his/her absence and **has been served**, under the terms of the law, as described below, with the charges brought against him/her and with the date set for trial. If a person has never been heard as a defendant and the attempts to serve that person with the charges brought and with the date for trial, including through edicts, have been ineffective, the law prevents the possibility of a trial *in absentia.* The presiding judge (trial court) must issue a **declaration of contumacy**, which implies the **suspension of the procedure** until the moment the defendant willingly appears before the legal authorities or is arrested, without prejudice of the taking of urgent steps in order to preserve the evidence. **If so, what are the legal conditions according to your law and/or in your legal practice?** As a rule, the trial audience may only take place in the presence of the defendant. The judgment may only be held without the defendant's presence if he/she was regularly notified under Portuguese law and, without any justification, did not appear to stand trial. The defendant who is not present during his/her trial is represented, for all purposes possible by the defence lawyer or the court-appointed counsel. Against that background, judging a person in his/her absence pressuposes that the person has acquired the status of defendant in the criminal proceeding, has produced the statement of identity and residence and has been served with the order setting the trial date, in accordance with the law. - **Acquisition of the status of defendant in the criminal proceedings**: this is made through a formal information by the judicial authority or the criminal police body, orally or in writing, that, as of that moment, the concerned person has the status of defendant in a criminal case. This information also indicates and, if necessary explains the person's procedural rights and duties as a defendant, as they are provided for by the Code of Criminal Procedure. It also implies the delivery, whenever possible simultaneously, of a document identifying the case and the defence counsel, if appointed, as well as stating the procedural rights and duties of the defendant, as established in the Code of Criminal Procedure. The Code of Criminal Procedure expressly states the different situations where the person must be granted this statute in a criminal case. The status of defendant is maintained during all the stages of the case (investigation, prosecution, trial, appeal stages, until the judgement becomes final. Only at that moment the person's statute changes and he/she becomes a convicted person). - **Production of the statement of identity and residence** (TIR - *termo de identidade e residência*), this is a procedural (coercive) measure imposed on whoever acquires the statute of defendant in a criminal case. The judicial authority, or the criminal police body, shall submit the person to drawing such statement. Through this procedural act **the person becomes aware of the proceedings against him/ her and of the obligation to keep him/herself available to the authorities, for purposes of being served upon, by indicating an address** – residence, place of work or another address at the person's choice – where

	subsequent notices will be sent by regular mail and by communicating any absence of the address indicated for a period of more than five days. The defendant may subsequently communicate another address to the court, by way of an application handed over or sent by registered mail to the Court Registrar where the proceedings are running at the time. The person concerned is, as well, **expressly advised** of the consequences deriving from non compliance with those requirements, which are the following: he/she will be represented by a defence lawyer in all procedural acts to which he/she has the right or the duty to attend; and the hearing shall be held in his/her absence pursuant to the applicable provisions of the law. **- Service of procedural acts and judicial decisions carried out in accordance with the law**: • In person or through registered mail • Through regular mail, to the address given by the defendant to the court for purposes of being served upon, as described in the statement of identity and residence (the defendant having been advised of the legal consequences of this procedural act) • Through edicts, in the cases expressly provided for by the law The court sets two dates for the beginning of the trial. If the defendant duly served to appear does not appear to stand trial on the first date, **the hearing may only be adjourned** if the court finds the defendant's presence absolutely necessary from the beginning of the hearing, in order to clarify material truth. If the lawyer or counsel is not present at the beginning of the trial the court must replace that defence counsel with another one or with a junior counsel (trainee) for purposes of assuming the defence and representing the defendant for all possible purposes. - The defendant may not leave the court during the trial audience. However, if the defendant absented after being heard and the court considers his/her presence not indispensable, as said before the defence counsel will represent him/her for all possible purposes. If he/she returns, the presiding judge must inform him/her, in short, of the steps taken during his/her absence, otherwise a nullity will occur. - the defendant keeps the right to make statements until the end of the hearing. If the latter occurs on the first set date, the defence counsel may request that the defendant be heard on the second date appointed by the court. **If there are more types of such judgments or *in absentia* proceedings, please provide information on each of them:** The trial may also be held without the defendant's presence in the following cases: - In simplified proceedings (a form of summary proceedings applicable to less serious offences, at the request of the defendant or with his/her consent, if the prosecutor considers that only a non custodial penalty or a safety measure is to be applied *in concreto*), but where the procedure has, under the law, acquired the ordinary form and it is impossible to serve the order setting the date for the trial session on the defendant, or he/she fails to appear without a reason, if the court so decides; - The defendant has requested or consented to be tried in his/her absence, whenever he/she is unable to appear in court for trial due, notably, to old age, serious illness or for living abroad.

	In both cases, whenever the court finds the presence of the defendant to be absolutely necessary it shall order it and suspend or adjourne the hearing, as need be. Again, the defendant who is not present during his/her trial is represented, for all purposes possible by the defence counsel.
Russian Federation	As a general rule, justice in criminal cases is administrated with the obligatory presence of the defendant. There are exceptions to this rule. The legislation enables to examine a criminal case by a court in the absence of the defendant (that is, in absentia) in three cases only. The first one concerns the criminal cases of minor or medium gravity provided that the accused, who personally participated in the preliminary investigation stage, has filed a written petition for examination of the given criminal case in his/her absence (Article 247 part 4 of the Criminal Procedure Code of the Russian Federation). The second case applies to criminal cases of grave or especially grave crimes when the defendant is outside the territory of the Russian Federation and (or) declines to appear in court, unless that person has been held accountable on the territory of a foreign state in this criminal case (Article 247 part 5 of the Criminal Procedure Code of the Russian Federation). Thus, it is possible to examine a criminal case in the absence of a person, charged with the commission of a grave or especially grave crime (crimes) provided that the reason of the absence of the defendant is that he/she is inaccessible for the bodies of criminal prosecution and justice as long as this person is outside the territory of Russia, declines to appear in court, and has not been held and is not been held accountable on the territory of a country of residence for the given criminal case (regardless to the reasons), and in cases when the accused, being on the territory of the Russian Federation, declines to appear in court and his/her whereabouts in unknown. As a rule, in practice courts take decision on examination of a criminal case in absentia in compliance with Article 247 part 5 of the Criminal Procedure Code of the Russian Federation, when the search for the accused did not yield any results or when the accused is outside the Russian Federation. At the same time, courts decide whether the complete set of measures, aimed at the search and delivery of the accused to court, has been taken, and if there are any reasons that interfere with the examination of a criminal case in absentia (for example, the disappearance of the accused by the conditions that threaten his life or health, as well as the impossibility to examine a case in his/her absence). Apart from this, the special social danger of a crime is taken into account, for example, crimes of terrorist nature, as well as the cases when the search of the accused did not yield any positive results or it is impossible to extradite the accused etc. The participation of a counsel for the defence is obligatory. A counsel for the defence is invited by the defendant. The defendant is entitled to invite several counsels for the defence. In the absence of the counsel for the defence, invited by the defendant, a court takes measures in order to appoint the counsel for the defence (Article 247 part 6 of the Criminal Procedure Code of the Russian Federation). Petition of the parties is the mandatory requirement, which should be complied with in order for a court to take a decision on examination of a criminal case in the absence of the accused. In compliance with Article 229 part 2 para 4^1 of the Criminal Procedure Code of the Russian Federation, if such petition is received, a judge sets a preliminary hearing. Upon the results of preliminary hearing, a judicial sitting is appointed, whereof a resolution is passed, which is sent to the parties. The judicial procedure on criminal cases under Article 247 part 5 of the Criminal Procedure Code of the Russian Federation, including all judicial stages (except the execution of a sentence), in the absence of the accused is conducted with the observance of all requirements of the Criminal Procedure Code of the Russian Federation, with the exception of those which require personal participation of the accused, the convict. At the same time, some additional guarantees are provided to a person, in whose

	absentia a criminal case is examined. Particularly, during the examination of a criminal case in absentia, in the course of the preparatory stage of the judicial sitting, the chairman finds out whether a copy of the indictment or the resolution of a prosecutor on the change of accusations was submitted to the counsel of the defence and when exactly were they submitted. At the same time, the trial on a criminal case cannot be started earlier than 7 days since the service of the indictment or of the resolution of a prosecutor on the change of accusations to a counsel for the defence (Article 265 part 5 of the Criminal Procedure Code of the Russian Federation). The third case concerns the following. A trial in the absence of the defendant is allowed in case of his/her death, when the proceedings are needed in order to discharge the deceased, and when the competent parties, for example a counsel of the accused, requests thereof. The following data can be demonstrated as an example. In 2011 the courts examined 8243 criminal cases in relation to 8307 persons in absence of the defendant, and it makes 1% of all criminal cases, examined by the courts where judgment were passed. In majority of cases, the court examination in the absence of the defendant is conducted in relation to the cases of crimes of minor or medium gravity. In practice, the appropriate requests were made personally by the defendant in a written form. In some cases the defendant indicated that he/she was unable to participate in the court sitting due to the long-term business trip or medical treatment. *On 02.12.2010 the Tagansky District Court of Moscow found Ms. Z.F. Kasirova guilty of the commission of a crime, envisaged by Article 228 part 1 of the Criminal Code of the Russian Federation and inflicted punishment in the form of a fine in the amount of 10000 roubles to the state budget. The criminal case was examined in compliance with Article 247 part 4 of the Criminal Procedure Code of the Russian Federation due to the fact that the defendant had filed a petition for examination of a criminal case in her absence and provided a certificate from the tubercular clinic No. 3 of Moscow, which had indicated that since 16.11.2010 Ms. Kasirova had been on inpatient treatment due to the lungs disease and that the inpatient treatment would take up to four months.* The absence of the petition for examination of a criminal case in his/her absence, filed by the defendant, serves as the basis for the recall of judicial decisions and for the forwarding of a criminal case for the new judicial examination. The criminal procedure law does not precisely indicate, when the person, who have committed a crime, should file the petition for the examination of a criminal case in his/her absence. In practice, such petitions are sent to the courts after the appointment of a criminal case for examination. Usually, when a judge sends a copy of resolution on appointment of a judicial sitting, among other things, he/she explains to a defendant that the latter is entitled to file a petition for examination of a criminal case in his/her absence. The study of evidence in the course of examination of a criminal case in the absence of the defendant is carried out in compliance with the general rules. The defendant's testimony, given by him/her during the preliminary investigation, are announced during the judicial enquiry at the parties' petition in compliance with Article 276 part 1 para 3 of the Criminal Procedure Code of the Russian Federation and subject to the provisions, set forth in Article 47 part 4 para 3 of the Criminal Procedure Code of the Russian Federation.
Slovak Republic	Yes, there is one type of proceedings in the Slovak legal order, in which is possible to issue judgement in absentia. Such proceedings is called „proceedings against a fugitive“ and may be performed against those who evade criminal proceedings by staying abroad or hiding. These proceedings may not be applied against a juvenile if, at the time of the proceedings, such were not nineteen years of age.
Spain	No

Sweden	Swedish courts can issue a judgment in absentia in the following cases. ***The Swedish Code of Judicial Procedure (SFS 1942:740)*** *Chapter 21 (general provisions)* *Section 2* *The suspect is bound to attend in person the main hearing in the district court and the court of appeal. However, the suspect is not so bound if the case is one that can be disposed of even if he does not appear and his presence at the hearing may be presumed to be without importance to the inquiry.* *At the main hearing in the Supreme Court, the suspect shall appear in person if the Court consider his presence necessary to the inquiry.* *At a preparatory meeting or other hearing, the suspect shall appear in person if it may be assumed that his presence will promote the purpose of the session.* *When the suspect is bound to appear in person, the court shall so order.* *When the suspect is not required to appear in person, his defence may be presented by attorney. The provisions of Chapter 12 shall apply to attorneys. (SFS 2009:344)* *Chapter 46 (proceedings in the district courts)* *Section 15 a* *If the matter can be satisfactorily investigated, the case may be adjudicated notwithstanding the fact that the defendant has appeared only by counsel or has failed to appear if:* *1. there is no grounds to impose a criminal sanction other than fine, imprisonment for a maximum of three months, conditional sentence, or probation, or such sanctions jointly,* *2. after service of the summons upon the defendant, he has fled or remains in hiding in such a manner that he cannot be brought to the main hearing, or* *3. the defendant suffers from serious mental disturbance and his or her attendance as a result thereon is unnecessary.* *Orders under the Penal Code, Chapter 34, Section 1, paragraph 1, clause 1, shall have the same standing as the sanctions stated in the first paragraph, clause 1. However, this does not apply if, in connection with such an order, a conditional release from imprisonment shall be declared forfeited as to a term of imprisonment exceeding three months.* *In the situations stated in first paragraph, clause 2, the case may be adjudicated even if the defendant has not been served the notice of the hearing.* *Procedural issues may be decided even if the defendant has failed to appear in court. (SFS 2001:235)* *Chapter 51 (proceedings in the courts of appeal and the Supreme Court)* *Section 21* *If a private appellant fails to appear at a session for a main hearing, his appeal shall lapse. The same shall apply, if a private appellant who has been directed to appear in person appears only by representative and the court of appeal does not yet consider itself to be nevertheless able to adjudicate the appeal.* *If a private appellee directed to appear under penalty of default fine fails to appear, the court of appeal, in lieu of directing him to appear under penalty of a new default fine, may direct that he be brought before to the court to custody either immediately or on a later date. The same shall apply as to a private appellee directed to appear in person under penalty of a default fine appears only by a representative.* *In a public prosecution, if an aggrieved person who is to be examined in support of the prosecutor's action, fails to appear in person, the second paragraph shall apply.* *However, if the appellee has been directed to appear under penalty of a default fine, or if he is to be brought before the court into custody and it is found that the order for bringing him in court cannot be carried out, the appeal may be heard and decided on the merits notwithstanding the fact that the appellee has appeared by a representative only or has failed to appear. An appeal may also be adjudicated on*

	the merits if a private appellant who was directed to appear in person has appeared only by a representative. (SFS 1994:1034) It follows from the extract of law above that in a case in a Swedish district court referred to in Chapter 46, Section 15 a, first paragraph, *clause 1*, Swedish courts are limited to impose a sentence of imprisonment for a maximum of three months when the defendant is absent during the court proceedings. As the application of Article 2 of the European Convention on Extradition is limited to cases when a court has imposed a sentence of imprisonment for a period of at least four months, the Swedish authorities are not entitled to request for extradition in a case referred to in clause 1. Cases referred to in Chapter 46, Section 15 a, first paragraph, clauses 2 and 3 very seldom occur in Swedish courts. Extradition has not, to our knowledge, been requested with regard to a judgment in absentia of a district court. In very few cases Sweden has requested extradition with regard to a judgment in absentia of a higher court. A situation when Sweden requests for extradition based on a judgment in absentia within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition will therefore not likely occur. **In light of the above stated, questions number 2-21 are not responded.**
Switzerland	Judgment in absentia is provided for in Swiss law under Art. 366 et seq. of the Code of Criminal Procedure (CCP) and is governed solely by the latter (CPP; RS 312.0). It takes place if a duly summoned accused person fails to appear before the court of first instance. Proceedings in absentia may only be held if the accused has had adequate opportunity to comment on the offences of which he or she is accused and sufficient evidence is available to reach a judgment. It should be noted that when the accused fails to appear before the court of first instance, the court begins by arranging a new hearing as provided for in Art. 366, para. 1, of the CCP. Only if the person concerned fails to appear for the fresh hearing may proceedings in absentia be initiated, as provided for in Art. 366, para. 3, of the CCP.
Turkey	In our country, it is possible to issue a court decision in absentia in the scope of the 3rd Article of the 2nd Supplementary Protocol of the European Extradition Convention or in other similar criminal cases. Namely, according to the Article 98 of the Turkish Penal Code; during the investigation phase, an arrest warrant me be issued by the criminal judge on the demand of the Public Prosecutor, for a suspect who did not appear at the court following a service of summons or who could not receive such a summons and thus did not appear at the court. Furthermore, in case of an objection to a demand for arrests, an arrest warrant in absentia may be issued by the objecting authority. The Public Prosecutors or law enforcement officers may issue arrest warrants for the suspects or accused persons that escaped after being caught, or for a detainee or sentenced person that escaped from a detention house or a penal institution. An arrest warrant for an accused person that escaped during the prosecution phase, is to be issued by the judge or the court, ex officio or on a demand of the Public Prosecutor.
United Kingdom	Trial in Absence (including conviction in absence) is permitted under the laws of England and Wales.

		2. Are the following decisions according to your domestic law considered as decisions in absentia? (multiple responses possible):					
	All decisions rendered in the absence of the person concerned at trial	**Decisions rendered in the absence of the person concerned but who was defended by a legal counsellor at the trial:**			**Decisions rendered in the absence of the person concerned who afterwards:**		**Other decisions (please describe):**
			only if the counsellor had been given a mandate by the person concerned	**regardless of whether the person was defended by a duty counsellor appointed by the court with no contact to the person concerned**	**has expressly stated that he or she does not contest the decision**	**did not request a retrial[1] within the applicable time frame**	
Albania			X	X			
Armenia	X						
Austria					X	X	S.1.
Bosnia and Herzegovina	X						
Cyprus	X		X				
Czech Republic							Only the decisions described above under A in answer to Question No. 1 are considered true decisions in absentia (and

[1] "Retrial" is used as a generic term without prejudice to the proceeding chosen by the legal systems of the States. The wording follows the linguistic use of the European Court of Human Rights.

							only if the decision has not been officially served on the defendant after his/her return to the Czech Republic). Whether the legal counsel representing the defendant in the proceedings against a fugitive had been given mandate by the defendant or appointed by court with no contact to the defendant is not relevant.
Denmark	X						
Finland	X (who was not notified)						
France							This is covered by the reply to point 1.
Estonia	X			X			
Germany	X						In regulatory offence proceedings: The following are regarded as decisions rendered in the absence of the person concerned within the meaning of the Regulatory Offences Act: 1. Pursuant to section 73(2) of the Regulatory Offences Act, the court has, upon his application, released the person concerned from the obligation to appear at the

							main hearing because he has made a statement on the matter, or he has declared that he will not make a statement on the matter in the main hearing and his presence is not required for clarifying important aspects of the facts. In such cases the main hearing on the matter may also be held in the absence of the person concerned, regardless of whether he is represented by defence counsel or not. 2. If a person concerned who has been properly summoned does not appear at the main hearing although he has not been released from the obligation to appear, no sufficient excuse has been given for his absence and he has been instructed about the consequences of his non-appearance pursuant to section 74(3) of the Regulatory Offences Act, the court must, pursuant to section 74(2) of the Regulatory Offences Act, reject his objection to a regulatory fine order in a judgment without a hearing on the merits.

Greece	X						
Ireland							
Italy							None of the scenarios set out above describes a decision made "in absentia"; according to Italian legislation decisions shall be considered to be made "in absentia" only if they have been made after a formal declaration of failure to appear (see answer no.1).
Latvia	X			X	X	X	
Liechtenstein	X						
Moldova				X			
Norway	X						
Portugal				X			
Russian Federation	X	X					
Slovak Republic				X			
Spain	X			X	X	X	
Sweden							
Switzerland	X						
Turkey	X						
United Kingdom	X			X			

Summons	
3. Does your domestic law provide for the notification of the person concerned regarding the scheduled date and place of the trial which resulted in the decision? If so, please describe the procedure (e.g. summons in person and/or by other means; official information; etc.):	
Albania	The procedure for the notification of procedural acts (summons, decisions) is provided by Chapter II of the Code of Criminal Procedure, specifically in cases when the defendant is under detention, when the defendant (accused) is free, when the defendant is at large, when the defendant is abroad. • Notice to a free defendant (accused) is served by delivering him a copy of the document (article 140). -Where it may not be delivered to him in person, notice is served to his residence or working place, by delivering the document to a person who cohabitates with him or to a neighbour, or to a person who works with him. -Where the venues mentioned in paragraph 1 are not known, notice is served to his temporary residence or to a venue where he frequently resides, by delivering it to one of the persons mentioned in paragraph 1. -Where the persons mentioned in paragraph 1 are absent or are not suitable, or refuse to accept the document, then the defendant (accused) is searched for in other venues. In case when even in this way the notice cannot be served, the document is delivered to the administrative center of the neighborhood or village where the defendant lives or works. The notice of delivery is posted on the gate of defendant's house or working place. The court dispatcher notifies him on the delivery through registered mail with proof of receipt. Effects of the notice start to run from the time when receiving the registered mail. • Where notice cannot be served in conformity with rules prescribed for serving notice to a free defendant, the prosecuting authority orders a search for the defendant. If the search does not give any positive result, a decision of failure to be found (absconding) is issued, which, after assigning a defence counsel to the defendant, the notice is ordered to be served by delivering a copy to the defence counsel. The person at large is represented by the defence counsel. - The decision of absconding shall cease to have effects when the preliminary investigations are concluded or when the court delivers its decision. - Notice to a defendant who is evading service or a fugitive is served by delivering a copy of the document to his defence counsel and when he does not have a defence counsel, the prosecuting authority assigns ex-officio a defence counsel, who represents the defendant.(Article 141) • When defendant's residence or domicile abroad is known, prosecuting authority sends him a registered mail with proof of receipt, notifying him on the criminal offence he is charged with and asks him to state or choose a residence in Albanian territory. If, after three days from receiving the registered mail, the statement or selection of the residence is not made or when as such is not so notified, notice is served by delivering it to the defence counsel. -When it results that there is no sufficient information to act according to paragraph 1, the prosecuting authority, prior to issuing a decision of non-localization, orders for searches to be conducted outside of the state territory, according to rules defined in international agreements.
Armenia	According to the Article 291 of the RA Criminal Procedure Code, within three days after taking the case for proceedings, the court must inform about that the accused, his lawyer, the injured, the civil claimant, the civil defendant or their representatives, sending to them an established notice with the explanation of rights and duties of

	the addressee, including the procedure of appealing to the court and the deadlines. The court trial must be appointed within 10 days after the decree on the appointment of court trial.(Art. 293 RA CPC).
Austria	Where "judgments in absentia" are possible under Austrian law (s.1.), the notification of the summons has to be submitted to the accused in person according to Section 83 para 3 of the Austrian Code of Criminal Procedure.
Bosnia and Herzegovina	/
Cyprus	Summons to himself personally or by leaving it with an adult person living with him or being in charge of the place where he resides or of the place of business or occupation (section 46 of the Criminal Procedure Code (CPL).
Czech Republic	Every defendant must be served with the indictment and summons to trial at least 5 working days before the trial (see below answer to Question No. 4, third option). However, it the case is tried in the proceedings against a fugitive, the summons is served only on the defendant's counsel and it must be also published in an appropriate manner (e.g. by posting it on the official notice board of the court or of the local town/village hall in the place of the defendant's permanent residence in the Czech Republic).
Denmark	Yes, Danish law provides for the notification of the person concerned regarding the scheduled date and place of the trial. Thus, the prosecution service has a duty to make sure that a summons containing information on the scheduled date and place of the trial is served to the defendant with at least 4 days' notice. The court can, however, stipulate a shorter notice. The following procedures can be used when serving a summons: 1) Service by letter: the summons is sent or delivered to the person in question. The person in question is then requested to confirm the receipt of the summons, either on a copy of the document or on a special receipt. 2) Service by post: the summons is sent to the person in question in a letter containing a recorded delivery certificate. 3) Personal service: the summons is delivered to the person in question by a process server. A service by letter is only considered valid if the copy or the receipt has been signed personally by the person in question. When using service by post or personal service, the summons should preferably be served on the defendant personally in his or hers permanent residence, temporary residence or workplace. However, if the defendant is not available, the summons may also be served: a) in the defendant's permanent or temporary residence on persons belonging to the residence, or, if the defendant is a tenant, on the landlord or the landlord's spouse, if the landlord or the landlord's spouse are met at the permanent or temporary residence of the defendant, or b) in the defendant's workplace on the employer or the representative of the employer, or, insofar as the defendant is self-employed, in the defendant's office,

	workshop or business premises on employees of the defendant's business. It should be noted that a service is considered valid even though it is not actually brought to the defendant's knowledge. Hence, the defendant is not necessarily informed in such a manner that it is unequivocally established that he or she is aware of the scheduled trial, although this will generally be the case, cf. item 4 below. Finally, it should be noted that a reform of the rules on service will successively enter into force from 1 July 2013. The reform includes provisions on service by telephone or by digital communication.
Estonia	As a general rule the person concerned should be summoned but there are also provisions in Estonian Criminal procedure Code that the person could be informed by the notification published in newspaper and/or the information is provided on the website of the court.
Finland	Notification (summoning) is a central principle in Finnish Criminal Procedural law. A summons has to be served on the defendant in person. (Only if the charges relate to an offence which is punishable by six months at the most may the defendant authorize someone else to sign the summons.) It may happen by post (by registered post or sending back a signed certificate) or by a bailiff. The summons has to include information on the time and place of the trial, a copy of the charge sheet as well as information on whether he or she has to be present at the trial in person or through a representative or whether he or she may elect to not to attend the proceedings at all.
France	The accused person must be notified of the date and place of the trial. This notification can take different forms. Direct summons (Articles 550, 551 et seq. of the CCP): The summons ("*citation*") is the document, known as a "process" ("*exploit*"), whereby a bailiff, upon a request by the public prosecutor, informs the accused of the coming trial. It states the offence prosecuted and the legislation punishing it. It also indicates the court to which the case has been referred, the place, date and time of the hearing and the status – defendant, person liable under civil law or witness - of the person being summonsed. This person receives a copy of the process and signs the original. Notice delivered by a police officer or clerk of court, or for detained persons by the prison governor (Article 390-1 of the CCP): This is a notice given, at the request of the prosecutor's office, by a police officer, a clerk of court or a prison governor to the very person who is to appear in court. It states the offence prosecuted, the legislation punishing it, the court to which the case has been referred and the place, date and time of the hearing. It also indicates that the defendant may be assisted by counsel. It informs him or her that he/she must bring evidence of his/her income and his/her tax notices or tax exemption certificates to the hearing. The document also states that the fixed procedural fee due under point 3 of Article 1018 A of the General Tax Code can be increased if the defendant does not attend the hearing in person or is not tried under the conditions laid down in the first and second paragraphs of Article 411 of the CCP. An official record of the notice's delivery is prepared, which the defendant is asked to sign. He/she receives a copy of it. Notice to attend court with entry in the official record (Article 394 of the CCP): The prosecutor him/herself can ask the person concerned to attend court after committing him/her for trial at the end of the period of police custody. To this end, the prosecutor notifies the person of the offences with which he/she is charged and of the place, date and time of the hearing. The prosecutor also informs the

	defendant that he/she must bring evidence of his/her income and his/her tax notices or tax exemption certificates to the hearing. This notification, which is entered in the official record, a copy of which is given to the defendant immediately, has the effect of a summons in person. The defendant is informed that he/she is entitled to appoint counsel of his/her choice. Immediate hearing (Article 395 et seq. of the CCP): The prosecutor commits the defendant for trial and decides to bring him/her before the court immediately. The defendant is brought before the prosecutor, who draws up an official record indicating the nature of the proceedings, the offences with which the defendant is charged and the legislation punishing them, as well as the measures taken to safeguard the defence rights (appointment of counsel). The defendant is informed that he/she is to be brought before the court that very day. He/she must be assisted by counsel of his/her choice or appointed ex officio. If the court cannot be convened the same day, the defendant is brought before the judge dealing with detention decisions (juge des libertés et de la détention – JLD) at the request of the prosecutor's office, and the judge may decide to place the defendant in pre-trial detention. The date and time of the hearing is then notified to the defendant in the JLD's order, of which he/she receives a copy. The judge may also decide to place the defendant under judicial supervision, in which case the prosecutor notifies the defendant of the date and time of the hearing under the conditions laid down for a notice to attend court with entry in the official record (Article 396 of the CCP). Notification by a police officer: A specific remedy is available against a judgment by default, in that the convicted person can apply to have the decision set aside (Article 489 of the CCP). The purpose of such an application is to have the decision given by default annulled and have the case re-tried by the same court. Once the prosecutor's office has been informed of the application, it arranges for the applicant to be summonsed to attend a new hearing. The defendant must be notified of the date of the hearing either by entry in the official record (by a police officer, prison governor, clerk of court or prosecutor) or by a summons served by a bailiff. The document must comply with the above-mentioned rules concerning the date of the hearing, the offences with which the defendant is charged and the legislation punishing them and must indicate the date of the criminal court's decision convicting the defendant in absentia and the exact nature of the sentence handed down.
Germany	Under the German law of criminal procedure, a decision in absentia is only possible if the defendant can be properly summoned to the main hearing, i.e. in particular and pursuant to section 276(1) of the Code of Criminal Procedure his whereabouts are not unknown or he is abroad and his presence before the court does not appear to be feasible or reasonable. Where, for example, the defendant is to be released of his obligation to be present at the main hearing pursuant to section 233 of the Code of Criminal Procedure, he must still be validly summoned to the main hearing. When a decision is taken in absentia in the cases described in Question 1., the summons must contain the following information in addition to the time and place of the main hearing: 1. Proceedings in absentia in insignificant criminal cases pursuant to section 232 of the Code of Criminal Procedure may only be conducted if the defendant has been informed in the summons that the main hearing may be held in his absence. 2. An appeal may only be dismissed on account of unexcused non-appearance and a main hearing may only be held on the public prosecution office's appeal on fact and law in the defendant's absence (section 329(1) and (2) of the Code of Criminal Procedure) pursuant to section 323(1), second sentence, of the Code of Criminal

	Procedure if the defendant's summons contained a reference to the consequences of his non-appearance. Special features of regulatory offence proceedings: Where the court gives its decision in a judgment after conducting a main hearing, the person concerned must be summoned to the main hearing. Pursuant to section 216(1), first sentence, of the Code of Criminal Procedure read in conjunction with section 71(1) of the Regulatory Offences Act, the summons must be issued in writing and must be properly served. At least one week must elapse between the service of the summons and the date of the main hearing (section 217(1) of the Code of Criminal Procedure read in conjunction with section 71(1) of the Regulatory Offences Act). Further, pursuant to section 222(1), first sentence, of the Code of Criminal Procedure read in conjunction with section 71(1) of the Regulatory Offences Act, the court must inform the person concerned in good time of the names of the witnesses and experts summoned so that they have sufficient time to make inquiries and name counter witnesses.
Greece	There are not any specific provisions in the Greek criminal procedural law. In appliance are the general provisions about the defendants' notification of all kinds of condemning judgments rendered against him/her. It is worth adding that, according to the Greek criminal procedural law, a condemning judgment rendered in the defendant's physical absence, even if he/she has been represented by a legal counsel, it is considered as a judgment rendered in absentia, meaning that it has to be notified to the person concerned, as if he/she was neither present nor represented.
Ireland	/
Italy	Under the Italian regime the act by which commencement of a trial is notified (committal to trial in proceedings involving a preliminary hearing, Article 429 of the Code of Criminal Procedure, committal to trial in proceedings before a monocratic judge without a preliminary hearing, Article 552 of the Code of Criminal Procedure, Decree of immediate trial, Article 456 of the Code of Criminal Procedure, etc.) shall include an "**express indication of the place, day and time of appearance, and a warning to the defendant that if he/she fails to appear he/she will be tried in absentia**". Here below are the main law provisions governing service of process to defendants in criminal trials: **Article 156 of the Code of Criminal Procedure. Service of process on a defendant held in custody.** Service of process on a defendant held in custody shall be effected by delivery of a copy of the documents to the person concerned in the place where he/she is detained. If the person refuses to receive the documents, mention thereof shall be made in the execution of service and the refused copy shall be delivered to the head of the prison or his/her substitute. **Article 157 of the Code of Criminal Procedure. First service on a defendant who is not held in custody.** Except that a suspect has already declared or chosen a domicile (Article 161 of the Code of Criminal Procedure), the first service on a defendant who is not held in custody shall be effected by delivery of a copy of the documents to the person concerned. If it is not possible to deliver such a copy personally, service of process shall be effected at the defendant's house or place where he/she usually performs his/her working activity by delivery to a person who lives with him/her, even on a temporary basis, or in lack thereof to the doorkeeper or a substitute; in the latter case the bailiff shall notify the addressee of the effected service by registered letter with certified return receipt and the effects of service shall run from the day on

	which the registered letter is received. If the places mentioned in paragraph 1 are not known, service of process shall be effected at the defendant's place of temporary residence or to his/her address by delivery of the documents to one of the persons specified above. If these persons are not available or refuse to receive a copy of the documents a new search for the defendant shall be carried out in the aforementioned places. In case of negative results the document shall be filed with the city hall of the defendant's place of residence or in lack thereof with the city hall of the place where he/she usually performs his/her working activity, by a notice posted up on the door and notification of the effected filing by registered letter with certified return receipt. Article 159 of the Code of Criminal Procedure. Service of process on a defendant in case he/she is nowhere to be found. If it is not possible to effect service of process in the terms laid down in Article 157 of the Code of Criminal Procedure, the judicial authority shall order that the defendant be searched again, particularly in his/her place of birth, his/her last place of residence resulting from the Register's Office, his/her last place of temporary residence, the place where he/she usually performs his/her working activity and at the Central Penitentiary Administration. If the searches are unsuccessful, the judicial authority shall issue a declaration that the person is nowhere to be found and by that declaration, after appointing a defence lawyer for defendants who are not represented by anyone, it shall order that service of process be effected by delivery of a copy thereof to the defence lawyer. Any service of process that is effected in this way is considered to be valid to all intents and purposes. A person who is nowhere to be found shall be represented by a defence lawyer. The effects of the declaration that the person is nowhere to be found shall cease when there is a change in the stage of proceedings. At every new stage the judge in charge of the proceedings shall carry out any necessary enquiry to effect service of process on the defendant. To simplify procedures, if a defence lawyer of choice has been appointed, any subsequent service of process (after the first one) on the defendant who is not held in custody shall be effected by delivery to his/her defence lawyer also by a computer system except that the defence lawyer immediately informs the authority in charge of the proceedings that he/she does not accept the service (**Article 157, paragraph 8 bis of the Code of Criminal Procedure**). If a suspect has not notified any changes in the declared or elected domicile, or if the declaration or choice of domicile is insufficient or inadequate, or if service at such domicile has become impossible, or if a suspect has refused to elect or declare domicile, service of process shall be effected by delivery to a defence lawyer (**Article 161 of the Code of Criminal Procedure**).
Latvia	Criminal Procedure Law Section 60.1, provide, that a person who has the right to defence has a duty to notify in writing a postal or electronic address of receipt of his or her consignments upon request of a person directing the criminal proceedings. By a notification referred to in Paragraph one of this Section a person shall undertake to receive consignments sent by an official performing criminal proceedings within 24 hours and arrive without delay upon invitation of a person directing the criminal proceedings or to fulfil other referred to criminal procedural duties. If a consignment is sent in an adequate manner to the notified address, it shall be considered that after expiration of the term referred to in Paragraph two of this Section has been received by an addressee. A person has a duty immediately, but not later than within one working day, to notify the person directing the criminal proceedings regarding the change of an address for receiving consignments indicating a new address. Criminal Procedure law chaper 22, provides regulation of summonses, namely: Section 328. Summons A summons is a document with which a person directing the proceedings summons

	a person to an investigating institution, the Public Prosecutor's Office, or the court, in order for such person to participate in criminal proceedings (hereinafter – person being summoned). In case of necessity, other means of communication may be used for a summons. Section 329.Content of a summons. A summons shall indicate: 1) the given name, surname, and place of residence of the natural person being summoned, or another address indicated by such person; 2) the name and legal address of a legal person being summoned, or the address of the authorised representative of such legal person indicated by such legal person; 3) the name and address of the investigating institution, the Public Prosecutor's Office, or court; 4) the time and place of attendance; 5) the reason for the summoning of the person; 6) the duty of the person receiving the summons to transfer such summons to the person being summoned in the case of the absence thereof; 7) the consequences of a failure to attend. Section 330. Delivery of a Summons (1) A summons shall be issued not later than two days before the time of arrival indicated therein. If a procedural action is unplanned or cannot be suspended, a summons may be issued directly before arrival. (2) A summons shall ordinarily be delivered by mail or by a messenger (courier) to the address indicated by the person being summoned, but for a person who is summoned for the first time – to the place of residence or legal address. A summons may be sent also to an electronic mail address indicated by the person. (3) If a person being summoned has indicated another mode of communication, or if a case is urgent, a person may also be summoned by using other modes of communication. (4) [19 January 2006] (5) A summons shall be sent to a person being summoned who lives in a foreign state, or whose legal address is in a foreign state, through the intermediation of the Ministry of Foreign Affairs of the Republic of Latvia or in accordance with the procedures specified in an international agreement. Section 331. Issuance of a Summons (1) A summons shall be issued to a person being summoned personally and in exchange for the signature thereof. The time of the receipt of the summons shall also be indicated in the signature part of the summons. (2) If the deliverer of a summons does not encounter the person being summoned at the address indicated by such person, he or she shall issue the summons to another family member of legal age who lives together with the person being summoned. In such case, the recipient of the summons shall enter his or her given name and surname in the signature part of the summons, and shall indicate his or her relationship to the person being summoned. The recipient of the summons has a duty to give the summons to the person being summoned. (3) In the case of the absence of a person being summoned, the deliverer of a summons shall make a note regarding such absence in the signature part of the summons, and shall indicate the place to which the person being summoned has departed, and the term when the return of such person is expected. (4) A summons addressed to a legal person shall be issued to the relevant employee thereof. (5) The signature part of a summons shall be returned to a person directing the proceedings. Section 332. Duty of a Person being Summoned to Accept a Summons (1) A person being summoned has a duty to accept a summons. (2) If a person being summoned refuses to accept a summons, the deliverer shall make a note regarding such refusal in the signature part of the summons, and shall return such summons to a person directing the proceedings.

	Section 333. Duty of Persons being Summoned to be Accessible (1) A person who has indicated the address thereof to a performer of a procedural action in concrete criminal proceedings has a duty to be accessible at such address. (2) If a summons has been delivered in accordance with the procedures specified in this Chapter, it shall be recognised that the person being summons has been notified regarding the time and place of the occurrence of criminal proceedings. (3) If a summons has been delivered to a person being summoned in accordance with the procedures specified in Section 330 of this Law by mail, it shall be recognised that the person being summoned has been notified regarding the time and place of the occurrence of proceedings on the seventh day after the handing over of the summons to the post office. (4) If a summons has been delivered to a person being summoned in accordance with the procedures specified in Section 330 of this Law by electronic mail, it shall be recognised that the person being summoned has been notified regarding the time and place of the occurrence of proceedings on the second working day after the sending of the summons.
Liechtenstein	At the beginning of a trial the defendant is precharged to take part of an interrogation. The summons are in person by letter addressed to the defendant which is signed by the investigating judge. This letter has to mention the name of the court and the defendant, the item of the investigation and the scheduled place, day and time of the trial. There also has to be the annotation that the concerned person is considered as defendant and that in case of absence the court will summon the defendant (Art. 125 Criminal Procedure Code).
Moldova	**Article 235. Purpose for Summoning and Consequences of a Failure to Summon (**Criminal Procedure Code of the Republic of Moldova) (1) Summoning in a criminal proceeding is the procedural action by which the criminal investigative body, the investigative judge, or the court ensures the presence of a person before it in order to secure the normal unfolding of a criminal proceeding. (2) A person summoned shall be obliged to appear based on the summons. Should it be impossible to appear on the date and at the time and in the place indicated in the summons, the person shall be obliged to notify the respective body and specify the reason for his/her inability to appear. (3) If a person fails to notify the respective body about his/her inability to appear on the date and at the hour and in the place indicated in the summons or if he/she fails to appear without giving a reason, a court fine may be imposed on him/her or he/she may be brought by force. **Article 236. Summoning** (Criminal Procedure Code of the Republic of Moldova) (1) A person shall be summoned to a criminal investigative body or to the court by a written summons. Summoning may also be performed by a telephone or telegraph note or other electronic means. (1^1) Summoning can be done via electronic mail or any other electronic messaging system where the investigator, the prosecutor, the court shall have the necessary technical means to prove that the summons was received. (2) Summoning shall be performed so that the person summoned is served the summons at least five days prior to the date when he/she is supposed to appear before the respective body. This rule shall not apply to the summoning of the suspect/accused/defendant or other participants in the proceeding when urgent procedural actions need to be undertaken as part of the criminal investigation or the case trial. If procedural action is unplanned and can not be postponed, the summons may be handed directly before presentation time. (2^1) A minor under the age of 16 years shall be summoned by their parents or guardian, except where this is not possible.

	(3) The summons shall be served by the authorized agent to serve a summons (hereinafter referred to as the agent) or by the postal service. (4) The court may communicate summon orally to the person that is present at the hearing, informing them of the consequences of absence. During the criminal investigation, summon made in this way is recorded in the protocol and signed by the summoned person. **Article 237. Contents of the Summons (**Criminal Procedure Code of the Republic of Moldova) (1) The summons shall be individual and shall refer to: 1) the name of the criminal investigative body or the court issuing the summons, its address, the date issued and the case number; 2) the last name and first name of the person summoned, his/her procedural status and the case object; 3) the address of the person summoned including the locality, street, building number, apartment, and any other data necessary to identify the address of the person summoned; 4) the hour, month, year and place the person summoned is supposed to appear and the legal consequences of the failure to appear. 5) the statement that the summoned person have the right to be assisted by a lawyer, with whom to be present at the appointed time; 6) if is applicable, the statement that the defense is mandatory, and if the party will not choose a lawyer to be present at the appointed time, he will assisted with a lawyer who will provide the guaranteed legal assistance. (2) The summons shall be signed by the person issuing it. **Article 238. Place of Summoning (**Criminal Procedure Code of the Republic of Moldova) (1) The summons shall be sent to the address of the person's domicile or if unknown, to the address of his/her place of employment via the human resources service of the institution he/she is employed by. (2) If in a previous declaration made in the course of a criminal proceeding the person specified a different address for summoning, the summons shall be delivered to the address specified. (3) Should the address specified in the person's declaration change, the summons shall be delivered to the new address provided that the person notified the criminal investigative body or the court of the address change or the criminal investigative body or the court identified the address change based on data provided by a respective agent. (3^1) Suspect, accused or defendant must inform within 3 days, the criminal investigation body, the prosecutor, the court of change of address. At the hearing, the suspect, accused or defendant is informed of this requirement and the consequences of its failure. (3^2) Suspect, accused or defendant may be summoned at the lawyer's address if he have been absent after the first summon duly effected. (4) Patients in hospital or in any other medical institution shall be summoned via the administration of these institutions. (5) Detainees shall be summoned at the place of their detention via the administration of the detention institution. (6) Servicepersons living in barracks shall be summoned at their military units via their commanders. (7) Persons living abroad shall be summoned in line with the provisions of the treaties on legal assistance in criminal matters. **Article 239. Serving a Summons to the Addressee (**Criminal Procedure Code of the Republic of Moldova) (1) The summons shall be served to the person summoned who shall sign the confirmation of receipt. (2) If the person summoned refuses to receive the summons or upon receiving it does not wish or cannot sign the confirmation of receipt, the agent shall leave the summons with the person summoned, or, if the person refuses to receive the summons, shall post it on the door of the person's domicile and a transcript shall be prepared.

	(3) Should the summoning take place in line with art. 238 paragraphs (1), (4)-(6), the administrations of the respective institutions shall be obliged to immediately hand the summons against signature, to the person summoned certifying his/her signature on the confirmation of receipt or by specifying the reason why the person could not sign it. The confirmation of receipt shall be provided to the procedural agent who shall transmit it to the criminal investigative body or to the court that issued the summons. **Article 240. Serving a Summons to Other Persons (**Criminal Procedure Code of the Republic of Moldova) (1) Should the person summoned be not at home, the agent shall hand the summons to his/her spouse, to a relative or to any other person living with him/her or usually receiving his/her correspondence. The summons may not be handed to a juvenile aged under 14 or to a mentally ill person. (2) Should the person summoned live in a house with several apartments, in a dormitory or in a hotel, in the absence of the persons specified in paragraph (1) the summons shall be served to the administrator, to the person on duty or to the persons usually replacing them. (3) The person receiving the summons shall sign the confirmation of receipt and the agent, certifying the identity and the signature, shall prepare the transcript. Should the person not wish or be not able to sign the confirmation of receipt, the agent shall post the summons on the door of the dwelling and this shall be documented in the transcript. (4) In the absence of the persons specified in paragraphs (1) and (2), the agent shall be obliged to inquire when he/she may find the person summoned to hand him/her the summons. If the agent cannot serve the summons, he/she shall post it on the door of the dwelling of the summoned person and this shall be documented in the transcript. (5) If the person summoned lives in a house with several apartments, in a dormitory or in a hotel, and if the summons did not refer to the apartment or room he/she lives in, the agent shall be obliged to find it out. If the agent's research is unsuccessful, the agent shall post the summons on the main door of the building or on the notice board and the transcript shall be prepared referring to the circumstances that made it impossible to serve the summons. **Article 241. Research to Serve a Summons (**Criminal Procedure Code of the Republic of Moldova) Should the person summoned change his/her address, the agent shall post the summons on the door of the dwelling indicated in the summons and shall undertake research to find out the new address. Any data collected shall be mentioned in the transcript. **Article 242. Confirmation of the Receipt and Transcript of Serving a Summons (**Criminal Procedure Code of the Republic of Moldova) (1) The confirmation of receipt of a summons shall include the number of the criminal case, the name of the criminal investigative body or the court issuing the summons, the last name, first name and procedural capacity of the person summoned, and the date the person summoned is supposed to appear before the respective body. The confirmation of receipt shall also refer to the date the summons was served and shall include the last name, first name, capacity and signature of the person serving the summons, certification by him/her of the identity and the signature of the person served the summons and the specification of this person's capacity. (2) Whenever transcript of serving or posting a summons is prepared, it shall correspondingly cover the data indicated in paragraph (1) **Article 243. Notification about Other Procedural Acts (**Criminal Procedure Code of the Republic of Moldova) Notification about other procedural acts shall be performed in line with the provisions of this Chapter.

Norway	Yes. The indictment and the summons to attend in the scheduled trial are served on the indicted person either by post or, if service by post does not succeed, in person.
Portugal	Yes. Service of the date set for the trial is carried out: (a) in person; (b) through registered mail; (c) trough regular mail, to the address previously appointed, whenever the person has produced a statement of identity and residence. In this case: - the judicial officer draws a note in the proceedings, containing the indication of the date of dispatch of the letter and of the address to which it was sent. - the postal service distributor deposits the letter in the mail box of the person to be served, draws up a statement indicating the date and confirming the exact location of the deposit and immediately sends it to the sending service or court. - the service is deemed to have occurred in the 5th day following the date mentioned in the statement drawn up by the postal service distributor and this information must be included in the notice. If the deposit of the letter in the mail box shows to be impossible, the postal service distributor draws a note of the incident, dates it and immediately sends it to the sending service or court. (d) if the previous attempts to serve the person on the different procedural acts have shown to be ineffective, the defendant is served through edicts in order to be present before the (trial) judge within a time-limit of 30 days. The edicts contain references to the defendant's particulars, the criminal offence which he/she is charged with and the provisions applicable to the offence. The defendant is also advised therein that the court will issue a **statement of contumacy** in case he/she fails to appear before the judge within the prescribed lapse of time (art 335, par 2-3 of the Code of Criminal Procedure).
Russian Federation	The copy of resolution on the appointment of a court session is sent to the accused (the defendant). Among other things, the resolution on the appointment of a court session should include the information on the family name, name and patronymic of each of the defendants and qualification of the crime, incriminated to him/her. Parties should be notified of the place, day and hour of the court session not later than five days prior to its start (Article 231 of the Criminal Procedure Code of the Russian Federation).
Slovak Republic	At the beginning of the first interrogation, the accused is obligated to state their address where the documentation shall be served, including documentation intended for delivery into their own hands as well as the method of serving with the fact that if they changed such address or method of serving, they must notify the competent authority of such fact without undue delay; the law enforcement

	authority or the court must instruct the accused on the serving and the consequences associated with it. Serving If the document was not served during an action of the criminal proceedings, it is usually served by the post office. If the addressee is the victim or the accused, it shall be served to them at the address indicated for that purpose. If it is necessary to repeat the act or to postpone the main trial or public hearing, it is sufficient to notify the parties present who are to participate of the new date. The contents of the notice, as well as the fact that these persons noted the new date, shall be recorded in the transcript. If necessary, particularly in the case of an ordered summons, unsuccessful attempts to serve a consignment into the own hands of the addressee in another manner or if there is a danger that the proceedings could be obstructed due to delays in service, the Police Force, or the Municipality may be requested for the serving. If the addressee of the consignment cannot be reached at the address they stated for such purposes, it shall be served to another adult person who resides in the same apartment or in the same house, or is employed at the same workplace, if they are willing to accept the documentation and procure its delivery. If there is no such person, the documentation shall be deposited with the authority that delivers the consignment and the addressee shall be notified in an appropriate manner, when and where they may collect it. The documentation is deemed served on the day when deposited, even though the addressee did not learn of its storage. Documents are deemed served to the addressee even if the consignment is returned from the address they stated for such purposes for the reason that the addressee is unknown as of the date the consignment was returned to the law enforcement authority or the court, even if the addressee never learns of the fact. If the addressee has reserved mail delivery to a mailbox, the post office shall notify the addressee of its arrival, the possibility of acceptance, and the collection deadline on the prescribed form which it shall insert into the mailbox. If the addressee collects the consignments at the post office based on an agreement and they do not have an assigned mailbox, the post office will not notify them upon their arrival. In both cases, the arrival date of the consignment is considered to be the date of storage. If the addressee fails to collect the consignment within three working days after its storage, the day of its serving is considered to be the last day of such deadline, even though the addressee did not learn about its storage. Documentations intended for persons enjoying privileges and immunities under an international law or persons in their homes shall be submitted to the Ministry of Foreign Affairs of the Slovak Republic to arrange for their serving. The law enforcement authorities and court are entitled to perform the serving by their own means and at their own expense. The law enforcement authorities and court may even serve the documentation to the accused, legal counsel, the victim and their proxy, reporter, legal representatives, party to an action and their proxy, and to penitentiary and custody institutions by electronic means signed by the advanced electronic signature. Serving into Own Hands Served into own hands is a) the indictment and summons for the accused, b) a copy of a decision to persons entitled to submit an appeal against the decision, c) any other document, if the judge, public prosecutor, the police officer, probation and mediation officer, high court clerk, court secretary or assistant prosecutor ordered it for important reasons. The post office shall serve the consignment into own hands of an addressee or release it to a person who can produce a verified power of attorney not older than six months or a permission to accept such consignments for the addressee issued by the post office.

	If the addressee, who is to be served a consignment into own hands, cannot be reached at the address which they listed for such purposes, the consignment shall be deposited at the authority which serves such consignment and the addressee shall be notified in an appropriate manner that the consignment will be served to them again on the specified date and time. If even the new attempt to serve the consignment is unsuccessful, the document shall be deposited at the post office or the authority of the Municipality, and the addressee shall be notified in an appropriate manner where and when they can collect it. If the addressee fails to collect the consignment within three working days after its storage, the last date of the deadline is considered to be the date of serving, even though the addressee did not learn about the storage; this shall not apply if it regards the serving an indictment, resolution on the conditional suspension of the criminal prosecution or a criminal warrant. Documents are deemed served to the addressee even if the consignment is returned from the address they stated for such purposes for the reason that the addressee is unknown as of the date the consignment was returned to the law enforcement authority or the court, even if the addressee never learns of the fact; this shall not apply, if it regards the serving an indictment, resolution on the conditional suspension of the criminal prosecution or a criminal warrant. If the addressee has reserved mail delivery to a mailbox, the post office shall notify the addressee of its arrival, the possibility of acceptance, and the collection deadline on the prescribed form which it shall insert into the mailbox. If the addressee collects the consignments at the post office based on an agreement and they do not have an assigned mailbox, the post office will not notify them upon their arrival. In both cases, the arrival date is considered to be the date of storage. If the addressee fails to collect the consignment within three working days after its storage, the day of its serving is to be considered the last day of such deadline, even though the addressee did not learn about its storage. Refusal of Acceptance If the addressee refuses to accept the documents, it shall be noted on the delivery note together with the date and reason for the refusal, and the documents shall be returned. If the judge, public prosecutor, or the police officer, the probation and mediation officer, high court clerk, court secretary or assistant prosecutor who sent the document admits that the acceptance of the document was unreasonably refused, the document is considered delivered on the date when the acceptance was refused; the addressee must be advised about such consequences by the deliverer.
Spain	Yes. In the notification shall indicate the date and place of the trial. It shall indicate also the status the person concerned will have in the trial. Summons shall be in person, or in the domicile or person that the person concerned has designated before.
Sweden	/
Switzerland	Under Art. 366, para. 1, of the CCP, the person concerned must have been duly summoned, ie in accordance with the procedure provided for in Art. 201 of the CCP et seq. (summons and warrant if the person concerned has not complied with the summons). The form and content of the summons are described in Art. 201 of the CCP. Under Art. 87, para. 4, of the CCP, the summons must have been served directly on the person concerned rather than solely through his or her legal counsel (who receives a copy). If the summons cannot be served directly on the person concerned (for instance,

	his or her whereabouts are unknown), it must be officially published in accordance with Art. 88 of the CCP. Official publication must take place at least one month before the date of the hearing, in accordance with Art. 202, para. 2, of the CCP.
Turkey	In our country, the summons are served to the relevant person, stating the place and date of the hearing. These services are to be made by means of the Turkish Postal Services. They are submitted directly to the person and to the address that is known before. However, if the person is not found at the address, then a close relative is notified of the summons.
United Kingdom	A person may be informed of the date of trial by written notice sent to his last known address: this is likely to be relevant only in regard to minor or regulatory offences where no preliminary hearing is thought necessary. In most cases, whether before the court of summary jurisdiction or before the court of jury trial, where the date of trial is set at a preliminary hearing, the person (if not remanded into custody) will be released by the court on bail with a duty to appear on the date of trial. It is the custom and practice of courts when proceeding in this way to give the person a note in writing of the conditions of his bail and this will include the date of his next hearing (see Bail Act 1976, section 5).

	4. Does your domestic law provide for the following safeguards with regard to the notification of the person concerned about the scheduled date and place of the trial? (multiple responses possible):					
	The person concerned is informed in such a manner that it is unequivocally established that he or she is aware of the scheduled trial	**The person concerned is informed in a language that he or she understands**	**The person concerned receives information in due time meaning sufficiently in time to allow him or her to participate in the trial and to effectively prepare and exercise his or her right of defence** **If so, please provide information as to the time limit:**	**The scheduled date of the trial may for practical reasons initially be expressed as several possible dates within a short period of time** **If so, please describe the regulation:**	**The summons contains information or the person is separately informed that a decision may be handed down even if he or she does not appear for the trial**	**Other safeguards (please, describe):**
Albania		X	X Within ten days from registration of the request of the prosecutor or of the injured accuser, the judge who chairs the panel and who is appointed to try the case, shall fix the date for the hearing to be held. The date of the hearing is notified to the prosecutor, defendant, defence lawyer, the injured, the private parties and their attorneys at least ten days before		X	

			the date fixed for trial. Notice to a free defendant (accused) is served by delivering him a copy of the document (article 140 of Criminal Procedure Code). -Where it may not be delivered to him in person, notice is served to his residence or working place, by delivering the document to a person who cohabitates with him or to a neighbour, or to a person who works with him. -Where the venues mentioned in paragraph 1 are not known, notice is served to his temporary residence or to a venue where he frequently resides, by delivering it to one of the persons mentioned in paragraph 1. -Where the persons mentioned in paragraph 1 are absent or are not			

			suitable, or refuse to accept the document, then the defendant (accused) is searched for in other venues. In case when even in this way the notice cannot be served, the document is delivered to the administrative center of the neighborhood or village, where the defendant lives or works. The notice of delivery is posted on the gate of defendant's house or working place. The court dispatcher notifies him on the delivery through registered mail with proof of receiving. Effects of the notice start to run from the time when receiving the registered mail.			
Armenia	X		X			
Austria			X The time limit between the service of the summons and the beginning of the proceedings is at least eight days, in case of a		X	X

			complicated trial it is fourteen days. The time limit can be abbreviated if the accused person consents.			
Bosnia and Herzegovina						
Cyprus	X	X	X	No	Not applicable	
Czech Republic	X	X	X 5 working days in advance. This deadline may be shorter only with consent of the defendant (and only if he/she does appear at the trial and expressly requests that the case is tried), his/her legal counsel and the prosecutor.	X No specific regulations.	X	
Denmark		X	X The summons containing information on the scheduled date and place of the trial must be served on the defendant with at least 4 days' notice. The court can, however, stipulate a shorter notice.		X	
Estonia	X	X	X No	No	X	

Finland	X	X	X There is no provision in the law on a precise time limit. The courts usually give ample time to the defendants to prepare for a trial.		X	
France	X		X In the case of a direct summons (Article 552 of the CCP) the period between the date of service and the date set down for the hearing before the criminal or police court must be at least ten days if the party summonsed lives in continental France or if he/she lives in an overseas *département* and is summonsed to appear before a court in that *département*. This period is increased by one month if a party summonsed to appear before the court of an overseas *département* lives in another overseas *département*, an overseas territory, Saint-Pierre-et-	The date of the trial is never hypothetical. It can, however, be expressed as a specific period if the trial is to last a number of days or months. In the event of a change of date, the person concerned must be served with a new summons.		The defendant is not specifically informed that a decision may be taken in his/her absence. The law nonetheless provides for a number of measures that should foster the convicted person's awareness of the summons to attend the hearing. That person however remains free not to appear. The remedies available to the defendant will depend on this knowledge, or lack of knowledge, of the date of the trial. French law in fact encourages defendants to appear for trial. For instance, Article

			Miquelon or Mayotte or in continental France, or if a party summonsed to appear before a court in continental France lives in an overseas *département* or territory, Saint-Pierre-et-Miquelon or Mayotte. If the party summonsed lives abroad, this period is increased by one month if he/she lives in a European Union member state and two months in other cases. Failure to comply with these time-limits voids the procedure, but the accused person may waive this measure by appearing in court on a voluntary basis or requesting that the trial be held in his/her absence, with representation by counsel. Following an order by the investigating judge committing the case for trial, if the accused is in pre-trial			390 of the CCP provides that the summons shall inform the defendant that the fixed procedural fee due under point 3 of Article 1018 A of the General Tax Code can be increased if the defendant does not attend the hearing in person or has not appointed counsel to represent him/her. The same applies to a notice to attend delivered by a police officer, clerk of court or prison governor (Article 390-1 of the CCP). Where the defendant has knowledge of the summons, the law considers that he/she must appear in court. Article 410 of the CCP therefore provides that a defendant duly summonsed in person must appear in court unless he/she provides an excuse recognised as valid by the court before which he/she

			detention, he/she must be tried on the merits within two months of the judge's order. However, as an exceptional measure the court may, by a decision indicating the grounds in fact or in law that prevent the hearing of the case, order an extension of the detention for a further two-month period. This decision can be renewed once under the same conditions. In the case of a notice to attend court under Article 390-1 of the CCP or of notification by a police officer the time-limits are the same as for a direct summons. Notification takes place in the presence of an interpreter. In the case of a notice to attend court with entry in the official record (Articles 394 et seq of the CCP) the			has been called. The defendant has the same obligation where it is established that, although not served with a summons in person, he/she was aware of a summons duly served concerning him/her as provided for in Articles 557, 558 and 560. If these conditions are met, a defendant who fails to appear and does not provide an excuse is tried by adversarial hearing subject to notification, except where Article 411 is applied. According to French case law Article 410 of the CCP is not incompatible with Article 6 of the European Convention on Human Rights, which does not entitle the defendant to fail to appear in court (decision of the criminal division of the Court of Cassation, 21 June

			hearing must take place within a period of not less than ten days, unless the person concerned expressly waives this time-limit in the presence of his/her counsel, and not more than two months. The prosecutor notifies the defendant of the offences with which he/she is charged and the place, date and time of the hearing. The prosecutor also informs the defendant that he/she must bring evidence of his/her income and his/her tax notices or tax exemption certificates to the hearing. This notification, which is entered in the official record, with a copy being given to the defendant immediately, has the effect of a summons in person. The prosecutor then informs the			1995). The defendant will be tried in absentia. The court can also decide to adjourn the hearing and, where the penalty incurred is two years' imprisonment or more, may issue an arrest or search warrant (Article 410-1 of the CCP). The same applies where the summons is not delivered to the defendant in person and it is not established that he/she was aware of it (Article 412 of the CCP). Mention should be made of the specificities of a trial in the assize court (for more serious crimes): A defendant who is aware of the decision and who fails to appear without a valid excuse upon the opening of the hearing is systematically tried by default. The same

			defendant that he/she is entitled to the assistance of counsel of his/her choice or appointed ex officio. The chosen legal representative or the Chairperson of the Bar is promptly informed of the date and time of the hearing by any means available. This notification is entered in the official record. Counsel may consult the case-file at all times (Article 393). Notification takes place in the presence of an interpreter. <u>In the case of an immediate hearing (Articles 395 et seq. of the CCP)</u> the defendant is sent for trial immediately after being brought before the public prosecutor. This procedure is intended to apply to simple cases that do not require further investigation, where the prosecutor			applies when the defendant's absence is noted in the course of the proceedings and it is not possible to suspend them until his/her return. However, the court may also decide to adjourn the case to a later session after issuing an arrest warrant in respect of the defendant, where such a warrant has not already been given (Article 379-2 of the CCP).

			considers that sufficient evidence has been gathered and that the case is ready for trial. The defendant must be assisted by counsel of his/her choice or appointed ex officio. Counsel must be able freely to consult the case-file and to communicate with the defendant. If the proceedings are not to be invalid, these procedural requirements must be mentioned in the prosecutor's official record. The President of the court must first inform the defendant that he/she can be tried immediately only with his/her consent. This consent must be obtained in the presence of the defendant's counsel and entered in the hearing records (Article 397 of the CCP). The defendant may seek an			

			adjournment. If the duration of the sentence provided for by criminal law is less than or equal to seven years, the adjourned hearing must take place within a period of not less than two weeks, unless the defendant expressly waives this time-limit, and not more than six weeks (first paragraph of Article 397-1 of the CCP). If the duration of the sentence provided for by criminal law exceeds seven years, and the defendant, having been informed of his/her rights, expressly requests, the hearing may be adjourned for not less than two months and not more than four months (second paragraph of Article 397-1 of the CCP). Where the defendant is placed in pre-trial detention, the judgment on the merits must be delivered within two months of the date of			

			his/her first appearance before the court, or within four months if the sentence incurred exceeds seven years and the defendant, having been informed of his/her rights, requests a longer adjournment (last paragraph of Article 397-3 of the CCP). Notification takes place in the presence of an interpreter.			
Germany	X	X	X According to section 217(1) of the Code of Criminal Procedure, a period of at least one week must elapse between the service of the summons and the day of the main hearing. Pursuant to section 218 of the Code of Criminal Procedure, this also applies to the summoning of defence counsel. The court is, further, responsible for setting the date of		X	

			the hearing at its discretion. Particularly in the case of comprehensive proceedings, the date must be scheduled sufficiently ahead of time so that all those involved in the proceedings have enough time to prepare. Please refer to our response to Question 3. as regards regulatory offence proceedings			
Greece	X					
Ireland						
Italy		X * ANSWER: In the Italian system (Article 134 of the Code of Criminal Procedure), as a general rule, defendants who do not understand Italian are entitled to be assisted by an interpreter free of charge so as to be informed of the charge pressed against them. However no	X Yes, this is the case. To concretely protect the right to defence the Italian legal system has different time limits in place depending on the activity to be carried out, the stage and/or the complex nature of proceedings. Reference is made hereinafter to some examples of the main time limits for a person “to appear” in	No, this is not the case. The court shall always set a specific date.		The decree of committal to trial shall include an express mention of the place, day and time of appearance and a warning that if a defendant fails to appear he/she will be tried in absentia. It shall also include the personal details of a defendant and other personal data to identify him/her, as well as of the victim if he/she is identified

		specific law provisions are in place to that purpose with respect to service of process or summons apart from service of process on defendants abroad (Articles 169 and 63 of the provisions implementing the Code of Criminal Procedure) when their residence and/or domicile is known and the case file shows that they do not speak Italian.	first-instance proceedings. In proceedings with preliminary hearings a notice of the day, time and place of the preliminary hearing shall be served at least ten days before the hearing (Article 419, paragraph 4 of the Code of Criminal Procedure); if a Pre-trial Investigation Judge has issued a decree committing somebody to trial not less than twenty days shall go by between the date of the decree and the date set for the trial (Article 429, paragraph 3 of the Code of Criminal Procedure). The decree shall be served on the victim and the defendant who had not been present at the preliminary hearing at least twenty days before the date set for the trial. In proceedings before a monocratic			and a clear and precise description of the fact and the allegedly applicable law provisions.

			court, the so-called direct summons proceedings – without a preliminary hearing in relation to minor offences or more serious offences punishable by a maximum term of imprisonment not exceeding four years (Article 552, paragraph 3 of the Code of Criminal Procedure), a summons shall be served on a defendant at least sixty days before the date set for him/her to appear. In urgent cases – and a justification must be given for this – provision is made for a 45-day term. In immediate trials – characterised by the lack of a preliminary hearing and a direct access to the trial stage when there is full evidence of the case – the decree shall be served on a defendant at least thirty days before the date set for the trial			

			(Article 456, paragraph 3 of the Code of Criminal Procedure). In proceedings carried out in chambers a notice of the hearing shall be served at least ten days before the date of such hearing (Article 175 of the Code of Criminal Procedure).			
Latvia	X	X	X			
Liechtenstein	X		X At least there must be three days between the service of the summons and the hearing. This time limit can be reduced in urgent cases when the defendant, which is located in Liechtenstein, just committed a little breach of the law (Article 325 para. 1 Criminal Procedure Code).			
Moldova	X	X	X Summoning shall be performed so that the person summoned is	We don't have such stipulations in our legislation. But the person might be		

			served the summons at least five days prior to the date when he/she is supposed to appear before the respective body. This rule shall not be applied to the summoning of the suspect/accused/defendant or other participants in the proceeding when urgent procedural actions need to be undertaken as part of the criminal investigation or the case trial. If procedural action is unplanned and can not be postponed, the summons may be handed directly before presentation time.	asked (by phone), when he is able to come.		
Norway	X	X	X At least 3 days before the trial, cf, The Criminal Procedure Act section 86.		X	
Portugal		X	X The court order sets the date time and place for trial. This order, together with a copy of the charge or	X This possibility is expressly provided for and regulated under article 312 of the Portuguese	X	X When producing the statement of identity and residence, the concerned person is informed, orally and

			of the judicial order sending the case for trial (*despacho de pronúncia*), is to be served on the defendant and on his/her counsel, **at least 30 days** before the day for trial. When setting the date for trial, the court shall avoid superposing it with the date of other judicial diligences, which lawyers or counsels are obliged to attend.	Code of Criminal Procedure. Thus, the judicial order setting the date for trial shall equally set another date in case of adjournment of the trial audience, or for the defendant to be heard following application by his lawyer or court-appointed counsel, where the audience started in his/her absence.		in writing, of his/her obligation to keep him/herself available to the authorities, for purposes of being served upon, including notice of the date for trial, and of his/her duty to keep the court informed of any change in the residence previously appointed, as well as of the circumstances of failure to comply with such duties, leading to a decision being issued even if he/she does not appear to stand trial. The information provided by the competent authority is written down in a form, filled in and signed by the defendant, who receives a copy. Please see an example of forms used by Portuguese authorities: http://guiaajm.gddc.pt/TIR/TIR-Ingles.dot
Russian Federation	X	X	X			

Slovak Republic	X	X	X The date of the main trial shall be determined by the presiding judge so that the accused from the serving of the summons, the public prosecutor and the legal counsel from the notification, have a deadline of at least five working days. Such deadline may be shortened only with their consent and also if the defendant refused to participate in the main trial or requested that the main trial was performed in their absence.		X	X In the absence of the defendant, the court may perform the main trial only if the court believes that the matter may be decided and the purpose of the criminal proceedings can be achieved even without the presence of the defendant, and if a) the indictment was duly served to the defendant and the defendant was duly and timely summoned to the hearing, b) the defendant had the opportunity to comment on the act, which is the subject of an indictment, before a law enforcement authority and the provisions on investigations or summary investigations were observed, and the accused was advised on the possibility to

						study the file and file petitions for the completion of the investigation or summary investigation, c) the defendant was advised on the possibility of the performance of the main trial even in their absence, d) the legal counsel of a defendant who is denied their legal capacity or whose legal capacity is restricted declares that they do not insist on the personal interrogation of the defendant. The main trial may not be performed in the absence of the defendant if they are in custody or serving a prison sentence, or if it is a criminal offence for which the law stipulates a prison sentence with an upper penalty limit exceeding ten years. This shall not apply if the defendant expressly refuses to participate in the

						main trial, or if they expressly request that the main trial is performed in their absence. In cases of mandatory defence, the main trial may not be performed without the presence of the legal counsel. If it is not a case of mandatory defence and the defendant has a legal counsel, the main trial may be performed in the absence of the legal counsel only if the defendant agrees with it.
Spain	X	X	X The time limit shall be at least 15 days after the defense has presented his statement of defense.	No	X	
Sweden						
Switzerland	X	X	X As a rule, summonses in proceedings in court must be served at least 10 days before the date of the hearing, in	The Code of Criminal Procedure makes no provision for the possibility of choosing several dates for the hearing. However, under Art. 202,	X	X Regarding the proposal that the person should be separately informed that a decision may be handed down even if he or she

			accordance with Art. 202, para. 1, of the CCP; if the summons has to be officially published, this must be done at least one month before the date of the hearing, in accordance with Art. 202, para. 2, of the CCP.	para. 3, of the CCP, when setting the dates for appearance in court, the judicial authority takes appropriate account of the availability of the persons being summoned.		does not appear for trial, Article 201, para. 2(f), of the CCP provides that the summons shall include a caution as to the legal consequences of failure to appear without excuse, which therefore has the effect of enabling the court to initiate proceedings in absentia.
Turkey	X	X	X In our domestic law, a reasonable time is given for the relevant person with the purpose of enabling him/her to take part in the hearing and to prepare an effective defense. There should be at least one week's time between the notification of the summons and the date of the hearing.			
United Kingdom	X	X	X Courts in England and Wales attempt to minimise in the trial process by listing trials as quickly as possible subject to the rights of the	X It is not uncommon for the court of jury trial to list the trial of an accused in a straight forward case "in the week commencing such	X	

			parties (including the prosecution) to have adequate time to prepare their case and secure adequate representation of their choice. Adherence to the provisions of Article 6 of the ECHR affords the accused person the right to seek the adjournment of a listed trial even he can establish that he reasonably needs further time to prepare. Where the accused person is in custody trial must normally start within 112 days of committal for trial or 182 days of sending for trial where no prior committal proceedings are required. Otherwise there is no statutory time limit for the commencement of trial, and even in a custody case the accused could seek to extend the period for commencement if necessary to afford him the chance to prepare his defence	and such a date". His legal representatives must then liaise with the court and the accused for more precise listing information issued administratively.		

			(although applications for extension by the accused would be rare).			

Legal counsel	
5. What guarantees does the law of your state provide concerning the right to a legal counsel for the accused when he or she is not present during the trial?	
Albania	When the defendant in free state or in detention fails to appear before the hearing even after having been notified and there were no lawful excuses for the failure to appear, the court, after hearing the parties, shall declare his absence. In this case he will be represented by the defence lawyer. The decision stating the absence is void when it is proven that it is caused because of failure to receive notification or absolute impossibility to appear. In case the defendant appears after the announcement of the decision, the court revokes the decision declaring the absence. When the appearance is made before the start of the final deliberation, the defendant may request to be questioned. The previous actions shall be valid but when the defendant proves that the notification has been deleted not due to his fault, the court orders the acquiring or the reproduction of the action which deems relevant to the sentence. Where notice cannot be served in conformity with the rules prescribed for serving notice to a free defendant, the prosecuting authority orders a search for the defendant. If the search does not produce any positive results, a decision of failure to be found (absconding) is issued, which, after assigning a defence counsel to the defendant, the notice is ordered to be served by delivering a copy to the defence counsel. The person at large is represented by the defence counsel. During the trial in absentia of the defendant, the compulsory participation of the defense counsel is required. The defense counsel may be chosen by the defendant or may be appointed by the prosecuting authority ex officio, in conformity with articles 6-48-49-50 of the Criminal Procedure Code. The decision of absconding shall cease to have effects when the preliminary investigations are concluded or when the court delivers its decision.
Armenia	As it is anticipated the accused be present at the Proceedings, the RA law does not regulate the query of a legal counsel for the accused when they are not present during the trial. In absence of the accused the trial will simply be postponed.
Austria	The “judgments in absentia” foreseen under Austrian law do not fall within the scope of Article 3 of the Second Additional Protocol to the European Convention on Extradition (s. 1.). For the representation by a legal counsel in this very limited field of proceedings where also according to Austrian law proceedings “in absentia” can be held, no specific provisions concerning representation by a legal council apply.
Bosnia and Herzegovina	/
Cyprus	He is represented by his counsel otherwise no trial will normally take place in his absence.
Czech	In the proceedings against a fugitive, the person accused must be represented by a

Republic	legal counsel (member of the Czech Bar Association) who enjoys all the procedural rights otherwise enjoyed by the defendant. If the defendant has no legal counsel when the proceedings against a fugitive are initiated, he/she is invited to choose one (a deadline is set for him/her to do so). If he/she does not choose a legal counsel, the court appoints a legal counsel ex officio from a list of legal counsels maintained by the court.
Denmark	Under Danish law a person being charged of having committed a crime is entitled to choose a defence counsel to represent him or her during the trial. This right applies regardless of whether the accused is present during the trial or not. If the defendant has not chosen a defence counsel, a defence counsel is appointed by the court in a number of cases. As a general rule, a defence lawyer will be appointed by the court in cases where a prison sentence is a possible outcome. This also applies when the accused is not present during the trial. In situation no. 4, as described under item no. 1, it is mandatory for the court to appoint a defence counsel for the defendant, if a prison sentence is a possible outcome of the case.
Estonia	According § 270 of Estonian CPC the participation of legal counsel in obligatory despite the participation of the accused.
Finland	In a way this question does not make sense in the Finnish system, since the accused is always summoned and he/she is notified about the consequences of not appearing in court. However, it could be stated that in cases where the defendant's absence is allowed it is up to him or her to retain counsel.
France	French law guarantees the accused's right to be defended by counsel when he/she does not appear for trial. It is, however, for the defendant him/herself to opt for counsel of his/her choice or counsel appointed ex officio, except in the case of under-age defendants, for whom the presence of counsel is compulsory and on whose behalf a representative appointed ex officio is systematically asked to attend the hearing. Counsel coming before the court at the hearing so as to defend an absent defendant must be heard by the court if he/she so requests, whether or not he/she is in possession of a power of attorney: - Article 410 of the CCP concerns cases where an absent defendant has been duly summonsed in person or is aware of a summons not duly served in person, even if the counsel has no power of attorney. - Article 412 concerns cases where the summons was not delivered to the defendant in person and it is not established that he or she is aware of the summons. - Article 411 concerns cases where counsel holds a power of attorney: "Whatever the penalty incurred, the defendant may, by a letter sent to the President of the court, which will be appended to the case-file, request that the case be tried in his/her absence, with counsel of his choosing or appointed ex officio representing him/her at the hearing." These provisions are applicable irrespective of the conditions in which the defendant was summonsed. The defendant's counsel, who may address the court, makes his/her submissions and the case is tried adversarially. If counsel is not present the judgment is given by adversarial hearing subject to notification. If the court decides to adjourn the hearing, the defendant is tried adversarially if his/her counsel is present at the new hearing, even if the

	defendant does not respond to the new summons. If counsel is not present at the hearing, the judgment is given by adversarial hearing subject to notification. The same applies to proceedings in the assize court, which tries more serious crimes (Article 379-3 of the CCP). Counsel must be heard.
Germany	According to section 234 of the Code of Criminal Procedure, a defendant may be represented by defence counsel with a written power of attorney if the main hearing before the court of first instance against him is conducted in his absence because he has forfeited his right to be present (sections 231(2), 232 of the Code of Criminal Procedure) or on account of his being released from the obligation to be present at the hearing according to section 233 of the Code of Criminal Procedure. If the proceedings were preceded by a private prosecution, the defendant may, pursuant to section 387(1), second sentence, of the Code of Criminal Procedure, be represented in the main hearing by defence counsel on the basis of a written power of attorney. The same applies pursuant to section 411(2), first sentence, of the Code of Criminal Procedure in proceedings instituted by penal order. If a defendant who is represented by defence counsel with a written power of attorney fails to appear at appeal proceedings without an excuse, then the presence of the defence counsel does not in principle prevent the court from dismissing the appeal. However, the opposite is the case if the defendant has, as described in the above, already been released by the court of first instance from the obligation to appear at the hearing (cf. in particular sections 411(2), 233 of the Code of Criminal Procedure) or the proceedings are held against an absent defendant on minor offences pursuant to section 232 of the Code of Criminal Procedure. In the latter case, the summons to the appeal proceedings must again inform the defendant of the consequences of his non-appearance; in addition, they may not contain an order for him to appear in person according to section 236 of the Code of Criminal Procedure. In regulatory offence proceedings, a person concerned who has been released from the obligation to appear at the main hearing may be represented by defence counsel authorised in writing (section 73(3) of the Regulatory Offences Act).
Greece	According to the article 340 of the Greek Code of Criminal Procedure, the accused has the right to be fully represented by a legal counsel. The assignee legal counsel has the possibility to act freely all possible legal means, remedies etc. on behalf of his assignor and ask for every possible legal benefits.
Ireland	/
Italy	In the Italian legal system the defendant cannot defend himself/herself. The person under investigation, whether he/she takes part in the proceedings or not, shall always be represented and defended by a legal counsel. The defendant is entitled to appoint no more than two counsels of his/her choosing. In case the defendant does not designate a counsel of his/her choosing, the court shall appoint an ex-officio counsel to represent him/her.
Latvia	Criminal procedure law mandates mandatory participation of a Defence Counsel - During a trial the participation of a defence counsel is mandatory, if a case is examined while the accused is absent (in absentia) or without the participation of the accused.

Liechtenstein	There is the possibility that a legal counsel pleads the defendant's case (Article 24 Criminal Procedure Code).
Moldova	In the entire course of a criminal proceeding, the parties (suspect/accused/defendant) have the right to be assisted or, as the case may be, represented by a defense counsel of their choosing or by an attorney providing the legal assistance guaranteed by the state. If a case is heard in the absence of the defendant, the participation of the defense counsel and, as the case may be, of his/her legal representative is obligatory. The criminal investigative body and the court must ensure the right of the suspect/ accused/ defendant to qualified legal assistance provided by a defense counsel of their choosing or by an attorney providing the legal assistance guaranteed by the state and independent of the investigative body. If the suspect/accused/defendant cannot afford a defense counsel, he/she shall be assisted free of charge by a court-appointed attorney providing the legal assistance guaranteed by the state.
Norway	The right to a legal counsel is not dependent on the presence of the person in trial. Any person charged of a criminal offence is entitled to have the assistance of a defence counsel at any stage of the case. However; the defence counsel for the trial is appointed by the court (and paid for by the government) in cases listed in The Criminal Procedure Act section 96 which states that: The person charged is entitled to a defence counsel during the trial. However; some exceptions have been made for the trial in the first instance (the District Courts) - but for all practical reasons, these exceptions are not of relevance in relation to possible extradition cases.
Portugal	The order setting the date for trial must contain, *inter alia*, the appointment of a counsel for the defendant, if a chosen lawyer does not exist in the file. Moreover, as said before, if the lawyer chosen by the defendant or the counsel previously appointed by the court is not present at the beginning of the trial the court must replace that counsel with another one or a junior counsel (trainee) for purposes of assuming the defense and representing the defendant for all purposes possible. The appointed counsel may ask to be given some time to consult the file (art 330, par 1 of the Code of Criminal Procedure). If the court fails to observe any of the above described formalities, an irremediable nullity will occur.
Russian Federation	As a general rule, the participation of the counsel for the defence in the criminal proceedings is obligatory, with the exception of cases, when the accused (the defendant) has filed a written refusal to have the counsel (Article 51, 52 of the Criminal Procedure Code of the Russian Federation). At the same time the refusal is not obligatory for the court. The counsel for the defence is invited by the defendant. The defendant is entitled to invite several counsels for the defence. If there is no counsel for the defence, invited by the accused, the court will take measures in order to appoint the counsel for the defence (Article 247 part 6 of the Criminal Procedure Code of the Russian Federation).

Slovak Republic	The accused person must always have a legal counsel in proceedings against the fugitive. This legal counsel have the equivalent rights as the accused person. In the proceedings in absentia all documents intended for the accused shall only be served to the legal counsel. The summons to the main trial and the public hearing shall also be published in an appropriate manner. The main trial or the public hearing shall then be performed in the absence of the accused, regardless of whether the accused knows about it.
Spain	The holding of the trial will be impossible if the accused is declared in absentia by the court.
Sweden	/
Switzerland	Art. 367, para. 1, of the CCP grants the accused the right to a legal counsel, while para. 4 refers to the rules on first-instance proceedings; in particular, this means that the accused will automatically have a legal counsel in cases where the appointment of the latter is mandatory (Art. 130 of the CCP; the accused must have a legal counsel in certain circumstances) or where a duty defence lawyer is appointed (Art. 132 of the CCP; the director of proceedings appoints a legal counsel for the accused in certain circumstances).
Turkey	If the accused is not present during a trial, he has the right to get legal counsellor to represent himself.
United Kingdom	The Supreme Court (then known as the House of Lords) has indicted in a binding judgment that it is generally desirable that a defendant should be represented, even if he has voluntarily absconded (see R v Jones (Anthony) [2003] 1 A.C. 1, HL.

6. Does your domestic law provide for the possibility that the person concerned waives his or her right to appear and defend him/herself at trial, explicitly or implicitly, through his or her conduct? If so, does your domestic law provide for the possibility that the person concerned, who has waived his or her right to appear, is defended at the trial by a legal counsellor to whom he or she has given a mandate?	
Albania	When the defendant requests or gives the consent that the court examination is performed in his absence or, as imprisoned, refuses to participate, he shall be represented by the defence lawyer. The defendant who after appearing leaves voluntarily the hearing, shall be deemed to be present, provided that he is represented by the defence lawyer. The provisions of paragraph 2 shall also apply when the detained defendant leaves at any time of the court examination or during its intervals. The trial in absentia may be also held when proven that the defendant is absconding.
Armenia	The State law does not provide for the possibility that the person concerned waives their right to appear at trial, however, he/she has a right to have a defense attorney from the moment of presentation to him/her the resolution of the body of criminal prosecution, on detention, the protocol of detention or the resolution on selection of the precautionary measure; to refuse from defense attorney and to conduct the defense himself/herself.
Austria	According to Section 427 of the Austrian Code of Criminal Procedure a proceedings in absentia can be held, where the offence is punishable by a fine only or deprivation of liberty or detention order for a maximum period of no more than three years, where the accused person has knowledge of the charge brought against him and has been interrogated on this subject already, where the accused person has been officially summoned and where the presiding judge does not deem the presence of the accused person necessary in order to reach a comprehensive judgment. Where all these criteria are met, the proceedings can be held “in absentia”, even if the accused person decides not to appear before court. If the accused person falls ill during trial to such a degree, where a further participation in trial is not possible, he/she can waive his/her right to appear and defend him/herself at court by a personal and unambiguous declaration, which must also contain his/her express consent to the continuation of the trial in his/her absence (s.1.). Still, the court has to investigate whether the accused person’s presence is necessary in order to reach a comprehensive judgement. Only in such cases, where also the court does not consider the presence of the person, who consented to a continuation of trial in his/her absence, necessary proceedings in absentia can take place. In case of compulsory representation by a legal council the mandated legal counsel or duty counsellor appointed by the court has to be present at the trial.
Bosnia and Herzegovina	/
Cyprus	An accused person may be asked to leave the courtroom and continue to be defended by his counsel if he does not conduct himself properly(section 63 C.P.L.)

Czech Republic	The defendant may explicitly waive his/her right to be tried in his/her presence by submitting a request that the court tries the case in his/her absence. Legal counsel of the defendant retains the right to be present and participate in the trial. The defendant may implicitly waive his/her right to be tried in his/her presence by failing to appear at the trial without offering an excuse the court considers sufficient (see above under C in answer to Question No. 1). In such a case, the court may decide (if it is satisfied that the indictment had been duly and sufficiently in advance served on the defendant and he/she had been summoned to the trial, the defendant had been interviewed by the Police of by the prosecutor already in pre-trial proceedings, the criminal proceedings had been duly initiated and at the conclusion of the investigation had been invited to study the file and propose evidence not yet gathered, and the court believes that the case may be tried and decided even without the defendant's presence) to try the case in the defendant's absence.
Denmark	According to Danish law the defendant has an obligation to be personally present during the trial. However, the presiding judge can allow for the defendant to leave if his or her absence does not give any cause for concern. Also, as described under item 1 (situation no. 3), a court hearing may be set down for passing of sentence in the absence of the defendant if the defendant has consented to the case being processed, and the case concerns a demand for imprisonment for a term of no more than six months or seizure, deprivation of rights, or payment of damages. This procedure can only be applied if the court finds the presence of the defendant unnecessary. In the above-mentioned situations Danish law provides for the possibility that the defendant, who has waived his or her right to appear, is represented at the trial by a defence counsel, cf. item no. 5.
Estonia	/
Finland	See above.
France	The person concerned may decide not to attend court on the day of the hearing. He/she may inform the court of this decision by letter or through his/her counsel, or simply decide, without explanation, not to turn up for the hearing, of which he/she knows the date. In that case, he/she will be tried in absentia unless he/she can provide a valid excuse and requests an adjournment or the court itself decides an adjournment. This is not "waiver" of a right in the strict sense, as the person could in the end decide to attend court. The defendant may appoint counsel to represent him/her (see the previous point). In that case he/she will be tried adversarially. If counsel is not present at the hearing the judgment will be given by adversarial hearing subject to notification.
Germany	The cases described in response to Question 5. represent situations in which the defendant waives his right to be present at the main hearing (by implication). If, for example, the defendant who has been properly summoned and informed of the consequences of his non-appearance in insignificant criminal cases within the meaning of section 232 of the Code of Criminal Procedure does not appear at the main hearing, the hearing may be conducted in his absence on account of his having forfeited (by implication) his right to be present. The defendant may,

	however, pursuant to section 234 of the Code of Criminal Procedure, be represented by defence counsel. The German law on criminal procedure provides for no other possibilities for the defendant to waive his right to be present and to be represented by defence counsel other than those described in response to Questions 1. and 5. Please refer to our response to Question 2. as regards regulatory offence proceedings.
Greece	No, the Greek criminal procedural law does not provide anything for this kind of a possibility. The only possible manner for the defendant to waive his/her right or will to appear and defend him-/herself is his/her physical appearance before the court or his/her representation by a legal counsel.
Ireland	/
Italy	Yes, the defendant has the possibility not to appear, or, in case he/she has appeared, he/she may decide not to take part in the proceedings against him/her by means of an explicit declaration or implicitly through his/her conduct, but in any case he/she shall always be represented and defended by a lawyer.
Latvia	Criminal Procedure Law Section 464 provides: Trial of a Criminal Case without Participation of an Accused. A court may adjudicate a criminal case regarding a criminal violation and a less serious crime without participation of an accused if the accused fails to arrive at the court hearing or has submitted to the court a request regarding the adjudication of the criminal case without his or her participation. The court may adjudicate the criminal case if a defence counsel participates at the court hearing.
Liechtenstein	No.
Moldova	In accordance with Art. 71 (Waiver of Defense Counsel) of Criminal Procedure Code of the Republic of Moldova: (1) Waiving defense counsel means the suspect/accused/defendant has decided to personally defend himself/herself without any legal assistance from a defense counsel. The request for a waiver of defense counsel shall be attached to the case file. (2) A waiver of defense counsel may be accepted by the prosecutor or the court only if it is voluntarily filed by the suspect/accused/defendant on his/her own initiative in the presence of the attorney providing the legal assistance guaranteed by the state. A waiver of defense counsel shall not be accepted if the reason for it is the inability to pay for legal assistance or if it is caused by other circumstances. The prosecutor or the court shall have the right to reject a waiver of defense counsel by the suspect/accused/defendant in the cases set forth in art. 69 paragraphs (1) points 2)-12) *[(2) the suspect/accused/defendant cannot defend himself/herself because he/she is dumb,deaf, blind or has other fundamental disorders of speech, hearing, sight or other physical or mental deficiencies;* *3) the suspect/accused/defendant does not speak or insufficiently speaks the language of the criminal proceeding;* *4) the suspect/accused/defendant is a juvenile;*

	5) the suspect/accused/defendant is an active duty serviceperson; *6) the suspect/accused/defendant is charged with a severe, especially severe or exceptionally severe crime;* *7) the suspect/accused/defendant is under arrest as a preventive measure or is ordered* *by the court to undergo an in-patient psychiatric examination;* *8) the interests of the suspect/accused/defendant are contradictory and at least one of* *them is assisted by a defense counsel;* *9) the defense counsel of the injured party or of the civil party participates in the respective case;* *10) the interests of justice require his/her participation in the court hearing in the first* *instance, during an appeal or cassation, and in a hearing under extraordinary means of appeal;* *11) the criminal proceeding involves a person in a state of irresponsibility who is charged with the commission of prejudicial acts or a person who developed a mental disorder* *after the commission of such acts;* *12) the criminal proceeding is focused on the rehabilitation of the reputation of a person* *deceased at the time of the case hearing*.] and in other cases as required in the interests of justice. The prosecutor or the court shall determine whether the interests of justice require the mandatory assistance of a defense counsel depending on: 1) the complexity of the case; 2) the ability of the suspect/accused/defendant to defend himself/herself; 3) the seriousness of the act the commission of which the person is suspected or accused of and the punishment provided by the law for the commission of such an act. (3) The prosecutor or the court shall decide in a reasoned judgment whether to accept or reject a waiver of defense counsel. (4) Upon accepting a waiver of defense counsel, it shall be construed that the suspect/ accused/ defendant will defend himself/herself. (5) The suspect/accused/defendant who waives defense counsel shall have the right at any time in the course of the criminal proceeding to revert to the issue of the waiver and to invite a defense counsel or to request that the court appoint an attorney to provide the legal assistance guaranteed by the state who shall be admitted as of the moment of being invited or requested.
Norway	See The Criminal Procedure Act section 281 in question 1. Yes; the person indicted may explicitly consent to the case being dealt with in his absence. And implicitly; If the person has been legally summoned to the trial, and is absent without having a lawful excuse or he has absconded after the indictment was served, the trial may proceed even in the persons absence. Any person charged is entitled to a defence counsel during the trial, with some exceptions for minor offences (which as a main rule may not give rise to an extraditable sentence), see question 5.
Portugal	Apart from the cases where the concerned person may request or consent to be tried in his/her absence, the appearance before the court is both a right and a duty. The legal obligation of producing a statement of identity and residence, and its contents, seem to be based, at least, upon the idea of responsibility of the defendant towards appearing for trial within the proceedings instituted against

	him/her. To that extent, the unjustified absence from the trial session may be considered an implicit waiver of the right to appear. In case the defendant does not appear he/she shall be represented by his/her counsel – be it the lawyer whom he/she gave a mandate or a court-appointed counsel. Otherwise, nullity will occur.
Russian Federation	No, it does not.
Slovak Republic	No.
Spain	No.
Sweden	/
Switzerland	It should be noted first of all that, under Art. 366 of the CCP, the person concerned is not merely entitled to attend the hearing but must do so. If he or she fails to appear, the rules for hearings in absentia apply. Art. 366, para. 2, of the CCP provides that if the accused fails to appear for the re-arranged hearing or if it is not possible to bring him or her before the court, the hearing may be held in the absence of the accused. However, the court may also suspend the proceedings. If, however, the person concerned has deliberately made him or herself unable to plead or refuses to be brought from detention to the hearing, Art. 366, para. 3, of the CCP provides that the court may conduct proceedings in absentia. In this case, however, both requirements of Art. 366, para. 4, of the CCP must be met, ie the accused must have previously had adequate opportunity in the proceedings to comment on the offences of which he or she is accused and sufficient evidence must be available to reach a judgment without the presence of the accused. If these two requirements are not met, the court must suspend the proceedings. In addition, under Art. 367, para. 1, of the CCP, the accused also has the right to be represented by his or her legal counsel in his or her absence.
Turkey	A person can explicitly waive his right to present during trial and defend himself. Where the offence requires judicial fine or confiscation, the trial can be conducted even if the accused is not present. In these situations, It is stated that trial will be conducted even the summons for the accused is not received. If defendant who has been interrogated by the court or the counsel designated by the accused request, court can give the accused a right not to present during a trial. In this respect, upon the request of the person concerned, (in some important cases, accused person's request is not regarded) a legal counsellor is assigned.
United Kingdom	This is not generally done in England and Wales. The general principle is that the accused person should appear, be arraigned and (if convicted) be sentenced in person whether or not he is represented by an advocate. The judge has discretion to start or continue a trial in the absence of the accused but this has to be

	exercised with great caution and with close regard to the overall fairness of the proceedings.

Retrial (criteria and conditions)	
7. Does the law of your state provide for a possibility of a retrial in case of a judgment *in absentia*? If so, what legal conditions (e.g. *ex officio* or only on request of the person concerned, deadlines etc.) need to be met for the retrial to be granted? If there are more types of such judgments or *in absentia* proceedings, please provide information on each of them:	
Albania	The retrial in case of a judgement in absentia can be provided through two institutions of criminal procedure which are the leave to appeal out of time and the review of decisions. I-.Article 147 of Criminal Procedure Code provides for in case the decision is rendered in absentia, the defendant may request the leave to appeal out of time, in order to make an appeal when he proves that he had notice of the decision. II-The decision on the review can also be taken upon the request of the defendant tried in absentia to the Supreme Court, following the procedure foreseen by article 449 - 453 of the Code of Criminal Procedure. Following the submission of the request for review and its admission by the Supreme Court, it is the First Instance Court that will repeat the trial on basis of the request of the interested person who should certainly submit a request for taking of evidence and the questioning of his witnesses.
Armenia	Since the domestic law of the Republic of Armenia does not encounter the possibility of in absentia proceedings or judgements, it does not regulate the issues arising of retrial in cases of in absentia judgements. Moreover, according to the Article 10(2) of the RA Criminal Code, The repeated conviction of the person for the committal of the same crime is prohibited. However, any court decision can be appealed to a higher instance court in the time periods provided by law.
Austria	In addition to other remedies, which are equally applicable in case of a judgment rendered in the presence of the accused, a special remedy called “Einspruch” (“objection”) is provided aiming at holding a retrial in cases of “judgments in absentia” according to Article 427 of the Austrian Code of Criminal Procedure issued (s.1. and the restrictive possibilities to issue a “judgment in absentia” under Austrian law). A retrial has to be held where the convicted person provides evidence that he/she was prevented from appearing before court due to an unforeseen impediment. An objection against a “judgment in absentia” by a regional court is decided by the Court of Appeal, whereas the district court decides itself against an objection raised against a “judgment in absentia” issued by a district court.
Bosnia and Herzegovina	In Bosnia and Herzegovina there is no retrial because in accordance with Article 247. of the Criminal Procedure Code of Bosnia and Herzegovina “**accused may never be tried in absentia**“.
Cyprus	There is the possibility of retrial if the Appeal Court quashes a conviction because it considers that the discretion of the criminal court to hear the case in the absence of the accused was not judicially exercised(Criminal Appeal 197/10 ,Potamos v.Alpha Bank) Passage of time may lead the Appeal Court to refuse to order a retrial after

	annulling a decision rendered in absentia
Czech Republic	Retrial is possible only with regard to judgments (convictions and sentences) resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1). When a defendant convicted and sentenced in the proceedings against a fugitive returns (voluntarily, through extradition or deportation or otherwise) to the Czech Republic, the court must officially serve the judgment on the person. Within eight 8 days (counted from the day of service of the judgment), the defendant may request retrial. If he/she does request retrial, the court must (there is no discretion allowed) annul the judgment and retry the case (to the extent in which the case had been tried in his absence and so far as the nature of the evidence permits it to be repeated; if the evidence cannot be repeated, record of its production from the original trial is read or audio/video recordings played in the retrial and the defendant is invited to comment on it and propose additional evidence). The retrial cannot result in a decision that would be worse for the defendant than the decision rendered in the original trial (i.e. he/she cannot be convicted of more serious offences or imposed a longer sentence of imprisonment). Otherwise, retrial is possible only as an exceptional remedy in cases when new evidence is discovered following a final judgment (irrespective of the case having been tried in the absence of the defendant).
Denmark	Under Danish law a retrial can take place either as an appeal or as a reopening of the case. As a general rule the defendant is not entitled to lodge an appeal, when he or she has not appeared before the court of first instance. However, an appeal can be granted by the Appeals Permission Board in special cases and in cases of general public importance. In situation no. 4, as described under item 1, the defendant can lodge an appeal, if the appeal does not comprise the question of guilt or innocence. If a defendant proves lawful absence he can demand a reopening of the case under certain conditions. A reopening of the case can also be demanded by the defendant if he or she proves that the summons was not brought to his or her knowledge in due time. In situation no. 4, as described under item 1 of the questionnaire, the defendant has an absolute right to demand a reopening of the case.
Estonia	/
Finland	There are no decisions in absentia in Finland and therefore not retrial system. Thus, we will not answer to questions 8-21. (In exceptional cases, the law provides for a possibility of a retrial and requires the case to be tried anew. If a person was convicted and sentenced in his or her absence although he or she was not summoned or a person, despite having been summoned, was not heard during the proceedings to his or her detriment, the Supreme Court may vacate the judgment either ex officio or on application. In that case the Supreme Court orders the lower court in question to try the case anew.)
France	Two remedies are provided by law: Appeal: the case is re-heard on the merits by a court of second instance (known as

	the "appeal court"), which re-examines it in substance (conviction and sentence). Application to have the judgment set aside: the judgment, given by default, is deemed void in all its provisions (Article 489 of the CCP). Their availability depends on the qualification given to the judgment: **Judgment by adversarial hearing subject to notification**: The prosecutor may appeal within ten days of the judgment's delivery. The Principal State Prosecutor at the Court of Appeal may lodge an appeal within 20 days of the judgment's delivery. The convicted person may appeal within ten days of the service of the judgment irrespective of the form this takes (service in person, domiciliary service, service at the bailiff's office or at the prosecutor's office). Nonetheless, where a judgment by adversarial hearing subject to notification sentences the defendant to a firm prison term or a partly suspended prison term and is not served in person, Article 498-1 of the CCP provides that the defendant has a further right of appeal running from the date on which he/she has knowledge of the sentence (date of notification in person). This notification may be carried out by any means. The person may be committed to prison pursuant to the duly served judgment pronouncing sentence and remain in prison, under the pre-trial detention regime, pending the hearing of his/her appeal. **Judgment by default**: The prosecutor and the Principal State Prosecutor at the Court of Appeal may lodge an appeal under the same conditions as for judgments by adversarial hearing subject to notification. The convicted person has two possible remedies: applying to have the judgment set aside or lodging an appeal. An appeal (Article 499 of the CCP) must be lodged within ten days of the service of the judgment, irrespective of the form this takes. The time-limit may be extended for a person living in the overseas *départements* or territories. An application to have the judgment set aside (Article 492 of the CCP) must be filed within ten days (one month if the person lives outside continental France) from the moment when the person has knowledge of the decision. As long as the convicted person has no knowledge of the decision, an application to have it set aside remains admissible pending the expiry of the limitation period for the sentence (five years for criminal offences, two years for minor offences). If no remedy is exercised, a judgment by default becomes final. **Judgment by repeated default**: The application to have the challenged judgment set aside is void, and that judgment again becomes enforceable. The only possible remedy is to lodge an appeal. The procedure followed is identical to that for a judgment by adversarial hearing subject to notification (Article 494 of the Code of Criminal Procedure).
Germany	Where a main hearing was held in absentia in regard to a minor offence according to section 232 of the Code of Criminal Procedure, then the defendant may, pursuant to section 235 of the Code of Criminal Procedure, appeal against the judgment within a week of its service by applying for restoration of the status quo ante, unless he is responsible for the default according to section 232 Code of Criminal Procedure. If the defendant fails to obtain knowledge of the summons to the main hearing, there can be no question of fault. If the lack of knowledge was responsible for the default, the defendant may in such cases always apply for the restoration of the status quo ante. Restoration of the status quo ante immediately

	sets aside the judgment in absentia. With regard to the dismissal of an appeal, section 329(3) of the Code of Criminal Procedure contains a provision similar to that set out in section 235 of the Code of Criminal Procedure: Accordingly, the defendant may within one week after service of the judgment request restoration of the status quo ante if he was prevented from appearing at the main hearing through no fault of his own. As a consequence of the restoration of the status quo ante the previous judgment is set aside. A retrial must be held on the appeal(s). Section 329(3) of the Code of Criminal Procedure must be applied mutatis mutandis in appeal proceedings against a penal order (section 412 of the Code of Criminal Procedure). Finally, according to sections 230(1), 231(2), 231b(1), 232 and 233 of the Code of Criminal Procedure, a breach of the conditions for a trial in absentia represents compelling grounds to set aside a judgment according to section 338 no. 5 of the Code of Criminal Procedure if the defendant was absent from the majority of the main hearing. The defendant must assert the procedural error by means of an appeal on points of law pursuant to sections 333 and 335 of the Code of Criminal Procedure. **Specific features of regulatory offence proceedings:** Where the main hearing was wrongfully conducted in the absence of the person concerned, then a complaint on a point of law against the judgment is admissible pursuant to section 79(3), first sentence, of the Regulatory Offences Act read in conjunction with section 338 no. 5 of the Code of Criminal Procedure. The complaint on a point of law must be submitted in writing or for the records of the registry of the court; the time limit for submission is one week (section 79(3), first sentence, of the Regulatory Offences Act read in conjunction with section 341(1) of the Code of Criminal Procedure). Further, grounds for the appeal must be submitted. Since only a legal review is conducted in the complaints proceedings, complaints can only be raised against legal errors (section 79(3) of the Regulatory Offences Act read in conjunction with section 344(2) of the Code of Criminal Procedure). The fact that the main hearing was wrongly conducted in the absence of the person concerned constitutes a legal error in the judgment that represents grounds for setting aside the judgment within the meaning of section 338 no. 5 of the Code of Criminal Procedure read in conjunction with section 79(3), first sentence, of the Regulatory Offences Act. Irrespective of a complaint on points of law, the person concerned may also take recourse to the legal remedy of restoration of the status quo ante within a time limit of one week after service of the judgment in absentia according to section 74(4), first sentence, of the Regulatory Offences Act if he did not obtain knowledge of the summons through no fault of his own or was otherwise unable to attend the main hearing through no fault of his own. The person concerned must substantiate the reasons for the restoration of the status quo ante. The person concerned must be informed of the possibility of applying for restoration of the status quo ante when the judgment is served (section 74(4), second sentence, of the Regulatory Offences Act). In the event of the application for restoration of the status quo ante being successful, the judgment in absentia becomes void and a complaint on points of law submitted at the same time becomes invalid.
Greece	A) According to art. 341 of the Greek Code of Criminal Procedure the defendant has the right to ask for a retrial under the following conditions: a) the defendant is being accused for a misdemeanour; b) the defendant has been judged in absentia of his/hers; c) the defendant has a permanent residence or establishment known to the authorities;

	d) the defendant, at the day of the trial, could not present or be represented before the court due to force measure reasons; e) The defendant has been sentenced into a not appealable sentence. Under all those conditions, the defendant has the right to ask for a retrial within 15 days after he has been notified about the judgment in absentia of his/hers. B) According to art. 430 of the Greek Code of Criminal Procedure the defendant has the right to ask for a retrial under the following conditions: a) the defendant is being accused for a misdemeanour; b) the defendant has been judged in absentia of his/hers; c) the defendant has a permanent residence or establishment unknown to the authorities; d) the judgment rendered in absentia could be susceptible to remedies, but the defendant must previously resign from his right to appeal against that judgement. Under all those conditions, the defendant has the right to ask for a retrial within 8 days after the judgment in absentia has been rendered. C) As a rule, according to art. 432-436 of the Greek Code of Criminal Procedure, the defendant (accused of having committed a felony) cannot be judged in absentia. As a result, if the defendant is neither present nor represented by a legal counsel, the court is obliged to suspend the trial until the defendant is arrested, or by other means, taken before the court. The only exception, when someone, accused of having committed a felony, could be judged in absentia is being introduced when the defendant's absence is due to his having been released from prison due to lapse of the custody duration limit. That judgment rendered in absentia, however, could be easily overthrown as soon as the defendant is being arrested or by other means (willingly or unwillingly) subjected to its execution. As an immediate result to this subjection, the defendant demands for a retrial with his presence.
Ireland	/
Italy	Coming into line with the pronouncement of the European Court of Human Rights (ECHR, judgment delivered on 10 November 2004, Sejdovic v. Italy), the Italian legislator has modified Article 175 of the Italian Code of Criminal Procedure (by Law No. 60/2005), in that the possibility for the person concerned to be restored in the deadline to lodge an appeal has been increased considerably, reversing substantially the burden of proof. The latter is no longer incumbent on the defendant, but it lies with the judicial authority, which now, in order to be able to deny the right in question, has to prove the defendant's actual knowledge of the proceedings and his/her will to waive his/her right to appear. In accordance with **Article 175 of the Code of Criminal Procedure the defendant who has been sentenced in absentia may request and be granted a restoration of the previous deadline to appeal a judgment in absentia, except when the case file shows, or the court has otherwise gathered evidence that the person concerned has had actual knowledge of the proceedings or decision and he/she voluntarily renounced to appear or to file an appeal.** To this purpose the judicial authority shall carry out all the necessary controls (**Article 175, paragraph 2, of the Code of Criminal Procedure**). **The request shall be submitted within thirty days from the date on which the defendant was actually informed of the proceedings against him/her, failing which his/her entitlement elapses. In case of extradition from abroad, the term for submitting the request stars from the surrender of the sentenced person (Article 175 paragraph 2 bis, of the Code of Criminal Procedure).** It is not for the defendant to prove that he/she had no actual knowledge of the

	proceedings or of the judgment rendered in absentia; on the contrary, it is for the court to find evidence thereof, if any, in the case file. Restoration of the previous deadline has to be granted, unless there is evidence, or evidence can be gathered, that the defendant had actual knowledge of the proceedings against him/her and he/she voluntarily renounced to appear or to lodge an appeal.
Latvia	1)In cases provided for Section 465, the accused may appeal the ruling with higher instance court in accordance with appeal or cassation procedures within a time period of 30 days from the day when copy of a ruling was received. The convict is granted the status of accused and all rights of the accused as of a moment when a court has received the complaint. The judge of first instance court shall decide issue regarding suspension of ruling execution and applying of security measure. (Criminal Procedure Law section 465) 2)In cases provided for Section 464, a court may adjudicate a criminal case regarding a criminal violation and a less serious crime without participation of an accused if the accused fails to arrive at the court hearing or has submitted to the court a request regarding the adjudication of the criminal case without his or her participation. The court may adjudicate the criminal case if a defence counsel participates at the court hearing. (Criminal Procedure Law section 464) Furthermore, Criminal Procedure law section 549 provides that, appeal in accordance with appellate procedures is the submission of a written appellate protest or complaint regarding a court adjudication that has not entered into effect of a court of first instance for the purpose of achieving the revocation thereof completely or in a part thereof both due to actual and legal reasons. Criminal Procedure Law Section 550. Provides that an appellate complaint or protest shall be submitted not later than within 10 days or, if the court has extended the term for appeal, not later than within 20 days after the day when a full court adjudication became available. After a specific term, a judge may refuse to accept a submitted appellate complaint or protest with a decision that may be written in the manner of a resolution, if the submitter has not requested the renewal of the term. The submitter shall be notified regarding the taken decision, but the submitted complaint or protest shall be attached to the case. In requesting to renew the missed term, the requirements of Section 317, Paragraph one of this Law shall be observed and the complaint shall be attached. A decision of a judge with which the acceptance of an appellate complaint or protest has been refused may be appealed within 10 days in a court of appeals, whose decision shall not be subject to appeal. Criminal Procedure law section 569 provides Cassation Procedures, namely: An appeal in accordance with cassation procedures is the submission of a written cassation protest or complaint to the Senate of the Supreme Court regarding the legality of an adjudication of a court of appeals that has not yet entered into effect, for the purpose of achieving the revocation thereof completely or in a part thereof, or the modification thereof due to legal reasons. An adjudication of a court of first instance that was rendered during agreement proceedings and has not yet entered into effect may be appealed in accordance with the procedures, and for the purpose, specified in Paragraph one of this Section. A court of cassation shall not evaluate evidence in a case *de novo*.
Liechtenstein	No.
Moldova	The laws of Republic of Moldova provide possibility of a retrial in case of a

	judgment *in absentia* and in case of extradition. According with Article 559/1 from Criminal Procedure Code of the Republic of Moldova: in case if requested the extradition of tried and convicted person in its absence, the case will be retried, at the request of the convicted person by a first instance trial court. The request for retrial may be filed within 6 months after surrender of the sentenced person to the Moldavian's authorities. Criminal proceedings may be reopened if the convicted person didn't ask to be judged in his absence. After admitting a review, the case shall be reheard in line with the procedural rules for a hearing in the first instance. The court if it finds it necessary, at the request of the parties shall examine *de novo* the evidence managed in the course of previous hearings or due to admitting the review request.
Norway	Yes; on request of the person concerned, cf. The Criminal Procedure Act section 282 paragraph 1; Any person who is convicted in absentia and who has not explicitly consented to the trial in his absence, may apply for a retrial if; - he shows it to be probable that he had a lawful excuse and that he cannot be blamed for failing to notify the court in time, or - he shows it to be probable that he had not absconded. The application must be submitted before the expiry of the time-limit for lodging an appeal. The time limit for lodging an appeal is 2 weeks from the date the judgement was legally served.
Portugal	The defendant is not entitled to request for a new trial after being served with the judgment rendered in his/her absence. Only the second degree court, when deciding on appeal, may: - decide on every issue raised in the appeal; - refer the proceedings for new trial whenever, due to the errors of the judgment, it is not possible to decide the case (art 426º and 426º-A of the Code of Criminal Procedure); - allow a renewal of the evidence, in hearing, if there are reasons to believe that the renewal will avoid the referral of the proceedings (the provisions of the trial hearing in first instance shall apply correspondingly - art 430º of the Code of Criminal Procedure). According to the view of some practitioners, experience shows that second degree courts make full use of the legal provisions regarding the referral of the proceedings for a new trial. Under Portuguese law, the defendant is granted a fundamental right of appeal. It is up to him/her to define which issues will be raised regarding the appealed judgment – whether on points of fact or only on points of law. Except for limited cases, the appeal is lodged with the second instance court, which is competent to hear on fact and law. In this case, the appeal may have as ground any issues that the judgment under appeal might deal with. However, even where the law limits the jurisdiction of the court to legal matters, the appeal may be based on the following legal grounds (art 410 of the Code of Criminal Procedure): - As long as the error derives from the text of the appealed decision, in itself or associated to rules of common experience: a) An insufficiency for a decision on proven facts;

	b) A clear contradiction in the grounds, or between the grounds and the decision; c) A clear error in evidence evaluation - The failure to observe a requirement, which originates nullification of the procedural diligence in question. If, for instance, the court ignored the information conveyed to it by the defendant relating to his/her new address and notified such defendant (by regular mail) to the former address, this error would entail the annulment of the judgment, due to the absence of the defendant from his/her trial, in violation of the law.
Russian Federation	If the person, which have been convicted in absentia, within the period of limitation for making him/her criminally liable (Article 78 of the Criminal Code of the Russian Federation), expresses his/her will to personally appear before the court, then, at the petition of the convict or at the petition of his/her defence lawyer, the judgement (or the court ruling), which has entered in its legal force and which has been made in absentia, should be reviewed (in the cassation order) or abolished, and a criminal case should be sent for the new examination on merits with the participation of the defendant in ordinary procedure (Article 247 part 7 of the Criminal Procedure Code of the Russian Federation) and with the observance of guarantees for access to justice, defence, adversarial nature of trial, equality of rights of the parties and other guarantees, provided by the legislation.
Slovak Republic	The convicted person in proceedings against a fugitive has the right to file a petition for a repeated hearing of the matter by the court in their presence, until the expiry of the period of six months from the date when they learnt about the criminal prosecution or conviction, however, no later than within the period of limitation set out in the Penal Code. If the court ascertains that the mentioned conditions have been fulfilled, it shall revoke the earlier decision and continue in the proceedings on the basis of the original indictment; otherwise the petition shall be refused. A complaint against this court resolution is admissible.
Spain	No because in Spain a trial in absentia is not allowed.
Sweden	/
Switzerland	The possibility of a retrial is governed by Art. 368 et seq. of the CCP. First of all, the judgment handed down in absentia must have been served on the accused in person, in accordance with Art. 368, para. 1, of the CCP. Art. 368, para. 2, then provides that, in applying for a retrial, the person convicted must explain why he or she was unable to appear at the hearing. If the requirements for a retrial are met, the director of proceedings arranges a new hearing in accordance with Art. 369, para. 1, of the CCP. This is a two-stage process. The court begins by examining the preliminary issues regarding the application for a retrial, in accordance with Art. 339 of the CCP. If it allows the application for a retrial, it then examines the merits.
Turkey	Our law provides a possibility of retrial after judgment in absentia. That's to say, retrial is carried out without the accused person's presence, within one week when the court judgment and proceedings are received, in order to avoid the consequences because of time expiration; by using legal bases the accused can request to draft a petition for reinstatement. However, if the accused is given the

	right not to present during a trial upon his consent or he uses the authority to be represented by a counsel, he can no longer draft a petition for reinstatement.
United Kingdom	A person who has been convicted in their absence may seek the permission of the trial court or the Court of Appeal (Criminal Division) to appeal against that conviction. The applicant must submit written grounds of appeal; and permission to appeal will only be given if the Court is satisfied that one or more of those grounds is properly arguable.

8. If a retrial needs to be requested by the convicted and sentenced person and/or granted by a court or other authority, please provide information on the procedure (including the deadline for filing such a motion and the start date of this deadline):	
Albania	a).The application for renewal of the time limit is filed within ten days from the disappearance of the fact that constituted an event or force majeure, or from the day when the defendant has received actual knowledge of the act (decision). Renewal of time limit is not allowed more than once for each party at every stage of the proceedings. In extradition cases the receipt of knowledge of the act is considered the recognition of the decision reflected and certified only with the signature of the defendant in the relevant minutes that is drafted at the moment of his entry in the territory of the Republic of Albania. b). The review of final sentences is permitted at any time for cases provided by law, even when the punishment is executed or ceased. The request for review is made personally or through the attorney. It must comprise the evidence arguing it and must be presented, along with the eventual documents, to the Secretary of the Supreme Court that has rendered the sentence. The review may be requested a)when the facts of the grounds of the sentence do not comply with those of another final sentence; b) when the sentence is relied upon a civil court decision which has been subsequently revoked; c) when after the sentence new evidence have appeared or have been found out which alone or along with those ones evaluated, prove that the sentenced is not guilty; ç) when it is proven that the conviction is rendered as a result of the counterfeiting of the acts of the trial or of another fact provided by law as a criminal offence.
Armenia	N/A
Austria	An objection has to be raised within 14 days after delivery of the judgment.
Bosnia and Herzegovina	/
Cyprus	The request for a retrial may be made in the context of the appeal against conviction or sentence.
Czech Republic	See above answer to Question No. 7.
Denmark	A defendant who wishes to apply the Appeals Permission Board for a permission to appeal, cf. the answer given under item no. 7, must do so within 14 days of the service/notification of the judgement. In exceptional cases the time-limit can be extended to 1 year. A defendant wishing to lodge an appeal in situation no. 4, as described under item no. 1, must do so within 14 days of the service of the judgement. Under exceptional

	circumstances the appeal court may disregard a failure to meet the time limit of 14 days. A defendant who demands a reopening of the case due to lawful absence or due to the fact the summons was not brought to the defendant's knowledge in due time must do so within 14 days of the service/notification of the judgement. Under exceptional circumstances a failure to meet the time limit of 14 days may be disregarded. A defendant demanding a reopening of the case in situation no. 4, as described under item 1, must do so within 4 weeks of the service/notification of the judgement. In exceptional cases the time-limit can be extended to 1 year.
Estonia	/
Finland	/
France	This is covered by the reply to point 7.
Germany	An application for restoration of the status quo ante according to sections 235, 329(3) and 412 of the Code of Criminal Procedure must be submitted within one week after service of the judgment. The application must be made in writing. Pursuant to section 45(2) of the Code of Criminal Procedure, the facts cited as the grounds for the application must be substantiated. Pursuant to section 341(1) of the Code of Criminal Procedure, the appeal on law must be lodged in writing or for the records of the registry of the court. The time limit for submission of an appeal on law is one week. If the defendant was represented by defence counsel authorised in writing in the cases set out in section 234, 387(1) of the Code of Criminal Procedure and the judgment was made in absentia, the time limit begins to run on that date. Otherwise, the time limit runs from the date of the service of the written judgment. Pursuant to section 345(1) of the Code of Criminal Procedure, grounds for the appeal on law must be submitted within one month after expiry of the time limit for the lodging of the appeal. If the judgement was not yet served on that date, the time limit begins to run on the day of the service of the judgment. Pursuant to section 345(2) of the Code of Criminal Procedure, the grounds for the appeal on law may only be lodged by letter signed by the lawyer or for the records of the registry of the court. **Specific features of regulatory offence proceedings:** 1. The complaint on points of law must be lodged in writing or for the records of the registry of the court; the time limit is one week (section 79(3), first sentence, of the Regulatory Offences Act read in conjunction with section 341(1) of the Code of Criminal Procedure). If the defendant was represented in the main hearing by defence counsel authorised in writing according to section 73(3) of the Regulatory Offences Act, the time limit for lodging of the complaint on points of law commences upon pronouncement of the judgment. Otherwise, if the person concerned was not present at the main hearing, the time limit does not begin until the judgment is served on the person concerned or on the defence council authorised to have the judgment served on him. The grounds for the complaint on law must be submitted to the court whose judgment is being contested within one month after expiry of the time limit for submission; if the judgment had not been served on that date, the time limit begins after the judgment has been served (section 79(3) of the Regulatory Offences Act read in conjunction with section 345(1) of the Code of Criminal Procedure).

	2. If the person concerned chooses the legal remedy of restoration of the status quo ante according to section 74(4), first sentence of the Regulatory Offences Act because he did not obtain knowledge of the summons through no fault of his own or was otherwise unable to attend the main hearing through no fault of his own, the person concerned must substantiate the grounds for the restoration of the status quo ante. The application for restoration of the status quo ante must be submitted within one week of the service of the judgment.
Greece	Specific answers are provided above to the question N. 7.
Ireland	/
Italy	See answer No.7
Latvia	Please, see answer to 7.
Liechtenstein	There is the possibility for finally convicted persons (even after execution) to request for a retrial if they prove that their conviction is based on a crime committed by a third person (for example bribery or forgery of documents) or if they bring forward new evidence (Article 272 Criminal Procedure Code).
Moldova	The retrial needs to be requested by the convicted and sentenced person.
Norway	See question 7. An application for a retrial must be submitted before the expiry of the time-limit for lodging an appeal. The time limit for lodging an appeal is 2 weeks from the date the judgement was legally served. The application is dealt with by the court that has pronounced the judgement challenged. The application must state the grounds for a retrial. If the application contains no grounds that may lead to a retrial pursuant to the conditions mentioned above in question 7, the court will immediately pronounce an order rejecting the application. If the application is not immediately rejected, it shall be submitted to the opposite party for comment. The application shall be decided by a court order without oral proceedings. If the convicted person is absent from the retrial without it being made clear or shown to be probable that he has a lawful excuse, the case shall be dismissed and the sentence already pronounced shall remain in force.
Portugal	Where the proceeding are referred for new trial (question 7, above), the first instance court sets the date for the trial and the defendant is served with it. The provisions of the trial hearing in first instance shall apply.
Russian Federation	See answer to question No 7.
Slovak Republic	See response in the previous column.

Spain	There is no retrial because a trial in absentia is not allowed.
Sweden	/
Switzerland	Under Art. 368 of the CCP, the person convicted has 10 days after the judgment is served on him or her personally to make a written or oral application for a retrial. He or she must be notified of this right. In the application, the person convicted must briefly explain why he or she was unable to appear at the hearing. The application will, however, be rejected if the person concerned had failed to appear at the hearing without a valid excuse.
Turkey	The answer for this question has been given before.
United Kingdom	Normally grounds of appeal must be lodged with the Court of Appeal within 28 days of conviction but time may be extended by the Court on application. If having heard the appeal, the Court of Appeal is satisfied that the conviction is unsafe it may order a re-trial or it may quash the conviction entirely and discharge the appellant.

9. What are the legal conditions for a valid service (notification) of the judgment *in absentia* in terms of appeal or retrial procedures?	
Albania	Notice to a defendant who is evading service or a fugitive is served by delivering a copy of the document to his defence counsel and when he does not have a defence counsel, the prosecuting authority assigns ex-officio a defense counsel, who represents the defendant.(Article 141).
Armenia	N/A
Austria	A "judgment in absentia" under Austrian law has to be delivered to the sentenced person in a written form (s.1. and 7 above) .
Bosnia and Herzegovina	/
Cyprus	Normally counsel for the accused will represent him and so will have a copy of the judgment.
Czech Republic	The legal conditions of service in terms of appeal are the same as with any other judgment except that judgment resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1) are not served on the defendant but only on his/her legal counsel as long as the reasons for the proceedings against a fugitive last. For the service of a judgment resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1) with regard to the possibility retrial, see above answer to Question No. 7
Denmark	If a court hearing has been set down for passing of sentence in the absence of the defendant, cf. situation no. 1-5 as described under item 1, a notice of the judgement must be served on the defendant. Service can be done by means of service by letter, service by post or personal service. Reference is made to summary of the rules on service given under item 3. In situation no. 4, as described under item 1, the judgement must be served on the defendant personally, unless the summons for the trial was served on the defendant personally.
Estonia	All judgments are published on the website of the court during 30 days from the announcement of the judgments.
Finland	/
France	Service is governed by Articles 554 et seq of the Code of Criminal Procedure.

	It is performed at the prosecutor's request. The bailiff must exercise all due diligence so as to succeed in serving the process to the recipient in person. If the person concerned is not at home, the copy is given to a relative or relation by marriage, a servant or home help or a person residing at the recipient's domicile. The bailiff notes on the process the status declared by the person to whom it is given. If the copy is given to a person residing at the domicile of the person concerned by the process, the bailiff immediately informs the latter by registered letter with acknowledgment of receipt requested. Where the receipt acknowledgment slip, signed by the person concerned, shows that he/she has received the bailiff's registered letter, the process served at his/her domicile has the same effects as if it had been served in person. Instead of a registered letter with acknowledgment of receipt requested, the bailiff may send the person concerned a copy of the process by normal mail with an accompanying receipt slip, which the addressee is asked to return signed either through the post or by hand to the bailiff's office. Where the signed receipt has been returned, the process served at his/her domicile has the same effects as if it had been served in person. If the bailiff finds no one at the domicile of the person concerned by the process, he/she immediately checks that the address is right. Where the address indicated is indeed the person's domicile, the bailiff notes the steps taken and the findings on the process document and then immediately informs the person concerned, by registered letter with acknowledgment of receipt requested, that he/she must collect a copy of the process document without delay from the bailiff's office, in exchange for which he/she or any person specially appointed by him/her must sign or give a receipt. If the process document concerns notification of a judgment by repeated default, the registered letter mentions the nature of the process served and the time-limit for appealing. Where the receipt acknowledgment slip, signed by the person concerned, shows that he/she has received the bailiff's registered letter, the process deposited at the bailiff's office has the same effects as if it had been served in person. Instead of a registered letter with acknowledgment of receipt requested, the bailiff may send the person concerned a copy of the process by normal mail or leave a notification at his/her domicile informing him/her that a copy can be collected from the bailiff's office in exchange for a receipt or signature. The copy and the notification shall be accompanied by a receipt slip, which the addressee is asked to return signed either through the post or by hand to the bailiff's office. Where the bailiff leaves a notification he/she shall also send a letter to the person by normal mail. When the receipt slip has been returned, the process deposited at the bailiff's office has the same effects as if it had been served in person. If the person concerned by the process has no known domicile or place of abode, the bailiff delivers a copy of the process to the prosecutor's office for the court dealing with the case. Where it has not been established that the person concerned received the letter sent by the bailiff in accordance with the above provisions, or where the process has been delivered to the prosecutor's office, the prosecutor may ask a police officer to conduct inquiries so as to discover the whereabouts of the person concerned. If his/her address is discovered, the police officer notifies him/her of the process, which then has the same effects as it had been served in person. In all cases the police officer draws up an official record of his/her inquiries and transmits it to the prosecutor immediately.

	The prosecutor may also instruct the bailiff to conduct further investigations, if he/she considers that those carried out are incomplete. The original of the process must be sent to the prosecutor within twenty-four hours, along with a copy. Lastly, Article 555-1 of the CCP provides that notification of a decision by the prison governor, if the person is imprisoned, or by a clerk of court or judge, if the person is within court premises, shall have the same effects as service of process in person by a bailiff.
Germany	The German law of criminal procedure does not set out any special provisions regarding the notification of judgments in absentia. Where judgment is pronounced in absentia, general provisions regarding the writing of a judgment (section 275 of the Code of Criminal Procedure) and service of the judgment (sections 36, 37 of the Code of Criminal Procedure) thus apply. If, in the cases set out in sections 234, 387(1) of the Code of Criminal Procedure, the defendant was represented in the main hearing by authorised defence counsel, the judgment may be pronounced on the defence counsel (section 341(1) of the Code of Criminal Procedure). The following applies to **regulatory offence proceedings**: The grounds for a complaint on points of law must be submitted to the court whose judgment is being contested within one month after the expiry of the time limit for lodging of the complaint. If the judgment had not yet been served on that date, the time limit begins to run upon service of the judgment (section 79(3) of the Regulatory Offences Act read in conjunction with section 345(1) of the Code of Criminal Procedure). The judgment in absentia must therefore be served in order for it to become final, even if the defence counsel was present when the judgment was pronounced. Service of the judgment is carried out in line with the general rules in the Code of Criminal Procedure regarding the service of judgments (cf. sections 35(2), 36 et seqq. of the Code of Criminal Procedure read in conjunction with section 46(1) of the Regulatory Offences Act). According to section 37(1) of the Code of Criminal Procedure, the provisions of the Code of Civil Procedure (Zivilprozessordnung, ZPO) apply mutatis mutandis to the procedure for service of the judgment (cf. section 166 of the Code of Civil Procedure).
Greece	The answer is mostly dependent on whether the defendant has or has not a permanent residence or establishment known to the authorities: a) If he/she has a known permanent residence or establishment, a valid notification is being determined under the terms of the art. 155 of the Greek Code of Criminal Procedure (notification to the place of his permanent residence/establishment or his professional installation), b) If he/she has an unknown permanent residence or establishment, a valid notification is being determined under the terms of the art. 156 of the Greek Code of Criminal Procedure (notification to the local municipality).
Ireland	/
Italy	The notice of deposit of judgment, accompanied by an abstract of the judgment, shall be served on the defendant in any case. This abstract shall include all the essential elements which are necessary to inform the defendant of the nature and content of the decision taken against him/her, so that he/she will be able to lodge an appeal in due time. For the defendant who has been sentenced in absentia the term of thirty days to lodge an appeal shall start from the date on which the aforesaid notice of deposit

	has been served; however, as indicated above, when the defendant, involuntarily, has had no knowledge of the proceedings against him, at his/her request, he/she may be granted a restoration of the previous deadline to lodge an appeal. In this case, the term shall start from the date on which he/she has had actual knowledge of the proceedings against him/her.
Latvia	Criminal procedure Law Section 60.1 provides duty of a Person who has the Right to Defence to Notify Address for Receiving Consignments, namely: A person who has the right to defence has a duty to notify in writing a postal or electronic address of receipt of his or her consignments upon request of a person directing the criminal proceedings. By a notification referred to in Paragraph one of this Section a person shall undertake to receive consignments sent by an official performing criminal proceedings within 24 hours and arrive without delay upon invitation of a person directing the criminal proceedings or to fulfil other referred to criminal procedural duties. If a consignment is sent in an adequate manner to the notified address, it shall be considered that after expiration of the term referred to in Paragraph two of this Section has been received by an addressee. A person has a duty immediately, but not later than within one working day, to notify the person directing the criminal proceedings regarding the change of an address for receiving consignments indicating a new address.
Liechtenstein	Judgments in absentia have to be served via personal service to the convicted person (Article 37 para. 4 Criminal Procedure Code).
Moldova	Please see point 3.
Norway	Service of a judgement in absentia follows the same rules as service of any other document in Norway. Consequently, it is served either by post, or if service by post does not succeed, in person (same as in question 3). When serving a jugdement, the judgement should be accompanied by a “Guide to the convicted”. The guide explains the possibilities for lodging an appeal against the judgement. It also contains information on the possibility to apply for a retrial in cases where the convicted failed to appear at the trial, and the conditions and the deadline for filing the application.
Portugal	The legal conditions consist of service in person and of obligation to inform on the right to appeal: The judgment shall be served in person on the defendant, as soon as he/she is arrested or willingly appears before the legal authorities (art 333, par 5-6, and 334, par 6-7, of the Code of Criminal Procedure). The judgment shall also be served upon the counsel or court-appointed counsel. The appeal lodged by another procedural subject (the Public Prosecutor, the private prosecutor/proxy or the civil party), which affects the person concerned by the judgment, shall be served together with the notice of the judgment (art 411, par. 7 of the Code of Criminal Procedure). The notice served on the defendant shall expressly inform about the possibility of lodging an appeal and about the delay for doing so. The delay counts from the date

	where the person was served. Non compliance with these provisions would entail a irremediable nullity (absence of the defendant or his/her counsel whenever their presence is mandatory by law) and a violation of fundamental rights of the defence in criminal proceedings, as enshrined in the Constitution of the Portuguese Republic. Regarding the special cases, where the defendant consented in being tried in his/her absence or the simplified proceedings have acquired the ordinary form (question 1, sub question 3, above), the defendant who is not present is deemed to be served of the judgment after it has been read by the court before the counsel, among other procedural subjects, at the end of the trial audience, or within the 10 following days, in more complex cases (art 373, par 3 of the Code of Criminal Procedure). After the reading of the judgment, the presiding judge deposits it at the court registrar (art 372. par 4 and 5 of the Code of Criminal Procedure). The term to lodge an appeal is counted from the date of that deposit at the court registrar (art 411, par 1-b of the Code of Criminal Procedure). This is to ensure that the defendant and his/her counsel do have an adequate, full, access to the text of the judgment.
Russian Federation	Replies to questions No. **9, 10, 11**. In compliance with Article 312 of the Criminal Procedure Code of the Russian Federation, a copy of the sentence (including the one, passed in absentia) is handed in to the convict, his defence lawyer within five days from its pronouncement. As a general rule, the resolutive part of the sentence should contain an explanation of the time terms and procedure for filing an appeal (Article 309 of the Criminal Procedure Code of the Russian Federation). Moreover, it is explained to a person, in whose absence a criminal case was examined, that he/she has a right to file a petition for abolishment of a sentence, passed in absentia, and for the new examination of the case with the participation of the defendant. However it is possible to hand in a copy of the sentence only if the person is interested herein. The convict (in whose absence a sentence has been passed) has a right to file an appeal against the court ruling, and to be present during the examination of his/her case by the court of appeal (Chapter 45^1 of the Criminal Procedure Code of the Russian Federation). The law provides for the single term for appealing against the court ruling – 10 days since the date when the sentence was passed (Article 389^4 of the Criminal Code of Russian Federation), and for the general terms and procedure of the appellate procedure on a criminal case.
Slovak Republic	All documents intended for the accused shall only be served to the legal counsel.
Spain	None. As mentioned above, a trial in absentia is not allowed.
Sweden	/
Switzerland	Under Art. 368 of the CCP, the judgment must be served in person on the person convicted, which rules out mere official publication or mere notification of the defence counsel. The judgment is deemed to have been served when the person

	concerned receives it personally, even if he or she refuses to accept it (for instance, serving of judgment by means of a letter requiring a countersignature).
Turkey	/
United Kingdom	The grounds of appeal will undoubtedly refer to the conviction/judgment but there are no specific legal conditions for valid service of the judgment. Where the person is convicted in his absence, the trial court may issue a warrant for his arrest at the request of the prosecutor.

10. What are the consequences of service of the judgment *in absentia* in terms of appeal or retrial procedures?	
Albania	-When the notice of the judgment in absentia is served to an ex-officio defense counsel, he may appeal within ten days. This period of time starts from the next day of the announcement of the sentence or the notification of decision. If the sentence is not appealed within the time limit of ten days, the decision becomes final and enforceable. - The defense counsel has reasons to appeal also the decision of the Court of Appeal, he can submit a recourse request within thirty days from the date in which the sentence has become final. It must explain exactly the causes why the sentence is considered unlawful.. Recourse against the final decisions of the Court of Appeal may be made under these grounds: a. non-compliance with or wrongful application of the criminal law; b. infringements that make the court decision null and void, in accordance with article 128 of Criminal Procedure Code; c. procedural infringements that have affected the decision.
Armenia	N/A
Austria	s.7.
Bosnia and Herzegovina	/
Cyprus	He can apply to the Court to have the time limits of appeal extended,giving reasons.
Czech Republic	A judgment resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1) can be appealed already during the proceeding against a fugitive like any other judgment. After the defendant returns to the Czech Republic, he/she has the right to retrial (see above answer to Question No. 7). A decision resulting from the retrial may be appealed like any other decision of the same type. Default judgments (described above under C in answer to Question No. 1) may be only appealed (by both the defendant and his/her legal counsel if he/she has one and, of course, by the prosecutor and also by certain other persons entitled to appeal a decision in criminal proceedings, e. g. the defendant's close relatives, the victim of the offence etc.). Whether the appellate decision may be worse for the defendant than the original judgment depends on whether the appeal (or at least one of the appeals filed in the case in question) is "against the defendant" (the appeal would have to be designated as such by the appellant). If a penal order (described above under B in answer to Question No. 1) is appealed by the defendant, his/her close relatives, his/her legal counsel or the prosecutor, the penal order is automatically annulled and the case must be tried in full trial. The full trial may result in a decision that is worse for the defendant than the original

	penal order.
Denmark	When service of the judgment has been given, cf. item 9, the various time limits relevant to a potential retrial, cf. item 8, will commence.
Estonia	No specific rules.
Finland	/
France	The service of the judgment starts time running for the remedies available to the convicted person (appeal or application to have the judgment set aside) as indicated above (point 7).
Germany	Please refer to our responses to Questions 8. and 9. In line with general principles, the time limits regarding applications for restoration of the status quo ante and submission of an appeal on points of law begin to run on the date of the service of the judgment. Only in the special cases in which an authorised defence counsel is present when judgment is pronounced (sections 234, 387(1) of the Code of Criminal Procedure) does the time limit for lodging an appeal on points of law begin to run on that date.
Greece	The main consequence is that, once the judgment in absentia has been notified to the defendant, then he/she is legally pursued by the authorities as absconder. This means that when he/she is being detected, he/she gets arrested in force of the previous judgment rendered in absentia.
Ireland	/
Italy	See answer 9. Furthermore, the Italian Constitutional Court, by decision No. 317 of 4.12.2009, has recognized the right to restoration of the previous deadline to lodge an appeal, provided that the conditions set out in Article 175, paragraph 2, of the Code of Criminal Procedure, as they have been specified above, are met, including when an appeal had already been filed previously by the counsel of the same defendant.
Latvia	Please, see answer to 7.
Liechtenstein	Convicted persons can appeal or object to court in a period within 14 days after getting served the judgment in absentia. An objection is allowed when the convicted person proves that it was inevitable to appear at the trial (Article 297 Criminal Procedure Code).
Moldova	/
Norway	See question 7 and 8. When the judgement is served, there is a 2 weeks deadline for filing an application for a retrial.

Portugal	The service of the judgment initiates the term to lodge an appeal, as prescribed by law. As a rule, it is a 30-day period, when the appeal concerns points of fact (in which case the evidence recorded is re-assessed by the appeal court). In the other cases it is a 20-day period. The subsequent procedural steps – reply of the procedural subjects affected by the appeal and decision of the appeal court on the acceptance of the appeal – shall wait until the judgment is served on the person tried in his/her absence and that person has appealed or the term for such purposes has ended. If appeals have been lodged by other parties (question 8, above), it also initiates the term for the reply, to be presented within the same time limit as the appeal.
Russian Federation	
Slovak Republic	The judgement in absentia should be served to the legal counsel.
Spain	None. See answer number 9.
Sweden	/
Switzerland	Under Art. 368 of the CCP, once the sentence has been served in person, the person convicted has a period of 10 days to make a written or oral application for a retrial (cf question 8 above).
Turkey	Even though the requests for reversing cannot be stated because of the reasons of the inability to service of the summons to the addresses in the file of convict, defense counsel, participants and representative or their lack of presence during the hearing although the summons are serviced, the hearing may be continued in absentia and finalized. However, if the sentence against the convict is more aggravated than the sentence subject to the reversing, the person must be heard in any case. In addition, with regard to the judgments concerning the sentence for 10 years or more imprisonment, the Court of Cassation conducts the examinations with the request in the appeal application of the convict or the participant or through hearing *ex officio*. The convict, participant, defense counselor and representative are informed about the date of hearing. The convict may be present at the hearing but he/she may have the counselor represent himself/herself. However, if the convict is a detainee, he/she may not request to attend the hearing.
United Kingdom	N/A

	11. Is the person concerned informed about his or her right to a retrial and, where applicable, about the specific conditions to be met?					
	No	**Yes (multiple responses possible)**				
		In the summons to trial	**With the service of the judgment *in absentia***	**Including information on any deadline for requesting retrial (if applicable)**	**In a language that he or she understands**	**In another way (please, describe):**
Albania			X	X	X	
Armenia		X				
Austria			X	X		
Bosnia and Herzegovina						
Cyprus	X					
Czech Republic			X	X	X	
Denmark			X	X	X	X In situation no. 4, as described under item 1, the defendant is informed about his or her right to a retrial (appeal or reopening of the case, cf. item 7) and the relevant deadlines with the service of the judgment in absentia.
Estonia	X					
Finland						
France			X			
Germany			X	X	X	X **Addition regarding regulatory offence proceedings:**

						The person concerned must be informed about the possibilities of contesting the judgment by means of a complaint on points of law as well as about the relevant form and time limits (section 35a, first sentence, of the Code of Criminal Procedure read in conjunction with section 46(1) of the Regulatory Offences Act). The person concerned must be notified of the possibility of applying for restoration of the status quo ante when the judgment is served (section 74(4), second sentence, of the Regulatory Offences Act).
Greece						X The defendant is informed about his/her right to a retrial after having been arrested and presented before the Prosecutor. In other words, after the arrest or the surrender and before the execution of the judgment, the defendant is being informed about his/her legal possibilities to overthrow the judgment rendered in absentia asking for a retrial.
Ireland						
Italy						
Latvia			X	X	X	X Criminal Procedure Law Section 413 part 4 provides order how person concerned is informed about his or her right, namely: A public prosecutor shall inform an accused, regarding the taking of a

						decision, and the sending of a criminal case to a court, by sending such person a copy of the decision, a copy of the list of the material evidence and documents, as well as a copy of the list of the persons who are to be summoned to a court session and information regarding the rights and duties thereof in court, as well as by indicating the court to which the criminal case has been sent. If the accused does not understand the official language in which a decision has been written, the public prosecutor shall ensure a written translation of the decision in a language understood by such accused. Criminal Procedure Law Section 71 provides Rights of an Accused in a Court of First Instance, namely: An accused has the following rights in a court of first instance: 1) to find out the place and time of the trial in a timely manner; 2) to invite a defence counsel or request the ensuring of the participation of a defence counsel in a court session; 3) to participate in the adjudication of a criminal case and to use the language that he or she understands, if necessary using the assistance of an interpreter free of charge; 4) to submit a recusation; 5) to request that a defence counsel be replaced, if there exist the

						obstacles to his or her participation specified in the Law; 6) to agree to the non-performance of an examination of evidence in a court session; 7) to express his or her view regarding each matter to be discussed, if such view applies to his or her prosecution or personal characterising data; 8) to participate in an examination performed directly and orally of each piece of evidence, if the evidence applies to his or her prosecution or personal characterising data; 9) to submit to the court a substantiated request to use the rights referred to in Paragraphs 7 and 8 of this Section also in cases where the matter or evidence to be examined does not directly apply to his or her prosecution or personal characterising data; 10) to submit requests; 11) to testify; 12) to speak in court debates, if the defence counsel does not participate; 13) to say the last word; 14) to receive a copy of a court adjudication and familiarise him or herself with the minutes of a court session, as well as to submit notes thereon in writing which are appended to the materials of the criminal case; and 15) to appeal a court adjudication in accordance with the procedures specified by law.

Liechtenstein	X					
Moldova				X	X	
Norway			X	X	X	
Portugal						As said before (question 9), when serving a person with the judgement issued in his/her absence, the notice must expressly inform about the possibility of appeal and about the delay for lodging it.
Russian Federation						
Slovak Republic					X	
Spain						No. Same answer as number 9. Holding a trial in absentia is not allowed.
Sweden						
Switzerland			X		X	
Turkey						The person who is entitled to retrial is informed about the remedies in which he/she may use this right and the term to use it together with the service of the judgment. At the same time, in the event that the judgment is reversed and retrial is conducted, the person will be asked if he/she has anything to say against the judgment of higher court and so that the person will be informed about the retrial. The person is informed about the retrial by the service to the last known address of the person or to the new address if he/she has changed it and informed the

						authorities about it. Thus the person may attend to the hearing himself/herself or he/she may have the representative attended to the hearing.
United Kingdom				X	X	X He will be informed of his legal rights by his legal representatives.

12. Is the person concerned entitled to participate in the retrial?	
Albania	(Article 6 of Criminal Procedure Code)The provisions of the first instance trial within the limits of the grounds presented in the request for review shall apply. The defendant has the right to present his own defense or with the assistance of a defense counsel. When he has no sufficient means, he is provided with the services of a defense counsel free of charge. The defense counsel shall assist the defendant to have his procedural rights guaranteed and his legitimate interests protected.
Armenia	/
Austria	S.7.
Bosnia and Herzegovina	/
Cyprus	Yes.
Czech Republic	Yes.
Denmark	Yes.
Estonia	/
Finland	/
France	Yes. He/she can attend the proceedings or be represented by counsel.
Germany	In line with general principles, the defendant is entitled to participate in the retrial: Where a main hearing is held on the basis of an application for restoration of the status quo ante, the defendant must be summoned to that hearing pursuant to section 216 of the Code of Criminal Procedure. Where a hearing is held regarding an appeal on points of law, the defendant must be informed of the time and place of the hearing pursuant to section 350(1) of the Code of Criminal Procedure. The following applies to regulatory offence proceedings: 1. In the case of a complaint on points of law, the appellate court always gives its decision in a ruling (section 79(5), first sentence, of the Regulatory Offences Act). Where the complaint is directed against a judgment, the appellate court may give its decision in a judgment following a main hearing (section 79(5), second sentence, of the Regulatory Offences Act). The person concerned is always bound to appear at the main hearing (section 73(1) of the Regulatory Offences Act). 2. In the case of restoration of the status quo ante, the judgment immediately becomes void on account of a successful application for restoration of the status

	quo ante. A new main hearing must be scheduled. The person concerned is always bound to appear at the main hearing (section 73(1) of the Regulatory Offences Act).
Greece	Yes he is entitled to participate to the trial either by himself or represented by a legal counsellor
Ireland	/
Italy	Yes.
Latvia	Yes.
Liechtenstein	Yes.
Moldova	Yes.
Norway	Yes.
Portugal	Whenever a new trial shall take place (question 7, above) the general rule applies, stating the right, and duty, of the defendant to be present at the trial hearing.
Russian Federation	Yes, he/she is. If the defendant, in whose absence the judgement was passed, has filed a petition for the new examination of a criminal case, the trial will be conducted with his/her participation subject to Article 247 of the Criminal Code of Russian Federation.
Slovak Republic	Yes.
Spain	In Spain there is no retrial because holding a trial in absentia is not allowed.
Sweden	/
Switzerland	The person concerned is not only entitled to participate, but must do so. Under Art. 369, para. 4, of the CCP, if he or she again fails to appear for the hearing without a valid reason, the judgment in absentia remains valid.
Turkey	Yes, the person asked what he/she wants to say to the authorities during the retrial. Even though the requests for reversing cannot be stated because of the reasons of the inability to service of the summons to the addresses in the file of convict, defense counsel, participants and representative or their lack of presence during the hearing although the summons are serviced, the hearing may be continued in absentia and finalized. However, if the sentence against the convict is more aggravated than the sentence subject to the reversing, the person must be heard in

	any case.
United Kingdom	Yes; but please note the hearing of the appeal is not the same as a retrial. Fresh evidence is only rarely admitted in the Court of Appeal. If the Court of Appeal find that the original conviction in absence was unsafe and order a re-trial then the person concerned has all the rights of an accused person as guaranteed by Article 6 of the ECHR.

13. Is the retrial considered according to your domestic law as a new trial meaning the trial starts anew with all possible appellate remedies (e.g. as if the decision rendered in the absence of the person concerned never existed) or is it rather considered as an extraordinary remedy?	
Albania	The retrial is considered rather as an extraordinary remedy. When the request is accepted, the criminal section of the Supreme Court decides the cancellation of the sentence and the delivering of the case for reexamination in panel to the court of first instance that has rendered the sentence or to the court of appeal, when it is only against its decision. The First Instance Court that will repeat the trial on basis of the request of the interested person, who should certainly submit a request for taking of new evidence and the questioning of his witnesses.
Armenia	The domestic law of the Republic of Armenia does not provide retrial as a remedy, however the court judgement can be appealed to a higher instance court that have not yet entered to legal force. The Article 395(3) of RA Criminal Procedure Code provides the essential breaches of proceedings law as grounds for turning down or changing a court decision which according to Art. 398(3)(3) includes the case being considered in the absence of the defendant.
Austria	According to Section. 16 of the Austrian Code of Criminal Procedure the prohibition of deterioration of the punishment (*reformatio in peius*) has to be respected in the retrial. Only in cases where the public prosecutor appeals the judgment in absentia, the trial starts entirely anew.
Bosnia and Herzegovina	/
Cyprus	It is a new trial.
Czech Republic	A decision resulting from a retrial (see above answer to Question No. 7) may be challenged by all possible appellate remedies.
Denmark	If an appeal is carried out, cf. item 7, proceedings will take place before the court of appeal. As a general rule the decision of the appeal court cannot be appealed. However, a permission to appeal to the Supreme Court may be granted under exceptional circumstances. If a reopening of the case takes place, cf. item 7 of the questionnaire, the trial starts anew with all possible appellate remedies.
Estonia	/
Finland	/

France	As mentioned above, in the event of: - an appeal, the case is re-heard on the merits by a court of second instance (known as the "appeal court"), which re-examines it in substance (conviction and sentence). The first-instance judgment is not annulled but the court of appeal re-examines the case in full. - an application to have the judgment set aside, the judgment by default is deemed void in all its provisions (Article 489 of the CCP) and the case is re-tried by the first instance court. Everything begins again from scratch.
Germany	Insofar as in the cases set out in sections 235, 329(3) and 412 of the Code of Criminal Procedure the law provides for the possibility of restoration of the status quo ante, a successful application for restoration of the status quo ante immediately sets aside the judgment in absentia. A new judgment must always be pronounced following a retrial. Once the new judgment has been pronounced, legal remedies are available against that judgment in line with general principles. By contrast, an appeal on points of law – especially based on absence contrary to the rules pursuant to section 338 no. 5 of the Code of Criminal Procedure – already represents a legal remedy against the judgment in absentia, thus it only leads to a review of possible legal errors in the judgment. The following applies to **regulatory offence proceedings**: Only legal errors can be complained of in proceedings to complain against points of law (section 79(3) of the Regulatory Offences Act read in conjunction with section 344(2) of the Code of Criminal Procedure). The fact that the main hearing was wrongfully conducted in the person concerned's absence constitutes a legal error in the judgment, which represents an urgent ground for setting aside the judgment within the meaning of section 338 no. 5 of the Code of Criminal Procedure read in conjunction with section 79(3), first sentence, of the Regulatory Offences Act. The Regulatory Offences Act does not provide for a legal remedy against the appellate court's decision. A successful application for restoration of the status quo ante means the judgment immediately becomes void. A new date for a main hearing must be scheduled.
Greece	The retrial, according to the Greek Criminal procedural law, is a new trial meaning the trial starts anew with all possible appellate remedies.
Ireland	/
Italy	The new trial may be considered as an extraordinary remedy; the defendant has a right to appeal, but not to a first-instance judgment.
Latvia	Yes, it is considered as a new trial.
Liechtenstein	The trial starts anew from the stadium of enquiry with all possible rights to appeal (Article 278 Criminal Procedure Code).
Moldova	The retrial is considered as a new trial meaning the trial starts anew with all

	possible appellate remedies.
Norway	It is considered as a new trial.
Portugal	Yes. It is a trial hearing, before a first instance court.
Russian Federation	Yes, it is. A criminal case in relation to such a person is examined under the general rules and with the observance of provisions of the criminal procedure law, general terms of the legal procedure, rights and legal interests of the defendant, including his/her right for the appeal and examination of a case by a court of superior jurisdiction.
Slovak Republic	According to Slovak law a new trial meaning that the trial starts anew with all possible appellate remedies.
Spain	In Spain there is no retrial.
Sweden	/
Switzerland	The granting of the application for a retrial has the effect of restoring the parties and the case to the state preceding the judgment in absentia. Under Art. 370 of the CCP, the retrial is regarded as a process at the end of which the person has all customary rights of appeal once the new judgment has been delivered, including the appeals provided for in Art. 398 et seq. of the CCP (where both the law and the facts are reassessed in respect of all contested points in the judgment). The person concerned must be notified of these remedies in accordance with Art. 368, para. 1, of the CCP. In addition, when the new judgment becomes legally binding, the judgment delivered in absentia, any appeals against it and any decisions already made in the appeal proceedings become void. Under Art. 371 of the CCP, it is also possible for the person concerned to appeal against the judgment in absentia at the same time as applying for a retrial. However, appeals may then only be considered if the application for a retrial is rejected.
Turkey	After the reversing of the judgment by the Court of Cassation, the court of first instance or the regional court conducting the proceedings asks the relevant person what they have to say against the reversal judgment. The court may comply with the judgment of higher court but may render resistance judgment. In the event that it renders the compliance judgment, the court retries and renders its judgment. In addition, in the renewing the proceedings which is an extraordinary legal remedy, if it approves the request of the court for renewing the proceedings, it may assign substitute judge or the court which holds the rogatory commission.
United Kingdom	If following a successful appeal against conviction a re-trial is ordered, this amounts as a trial *de novo* with all the attendant rights of appeal there from.

14. During the retrial, does your domestic law provide for a fresh determination of the merits of the charge, in respect of both law and facts, including possible new evidence?	
Albania	Yes. The retrial procedure provides the right to bring new evidence, upon the request of the defendant. Following the submission of the request for review and its admission by the Supreme Court, it is the First Instance Court that will repeat the trial on basis of the request of the interested person who should certainly submit a request for taking of new evidence and the questioning of his witnesses. The decision rendered in the trial of review is subject to appeal. In case of the leave to appeal out of time, the court that has decided the renewal of the time limit, upon the request of the party and to the extent possible, orders the repetition of actions in which the party was entitled to take part.
Armenia	According to Art. 385 of RA Criminal Procedure Code, the Appellate Court reviews the judical act in the scopes of the grounds and justifications for the appeal. According to Art. 385(2) the Appellate Court reviews the judical act with the evidence present in the case and in some exceptions with additional evidence. Art. 385(3) During the review of the appeal in the Appellate Court the verified factual circumstances in the First Instance Court are taken as a basis, with the exception of cases where the appeal addresses a particular factual circumstance and the Appellate court comes to a conclusion that the First Instance Court made an evident mistake regarding that particular factual circumstance. In those cases the Appellate Court has a right to determine a new factual circumstance or declare an already varified factual circumstance as not varified if it is possible to come to a similar conclusion on the basis of the provided additional evidence. Art. 385(4) If the Fist Instance Court did not come to any conclusion based on the investigated evidence, which the Court had the obligation to do, the Appellate Court has a right to declare a new factual circumstance verified if it is possible to come to a similar conclusion on the basis of the evidence investigated by the First Instance Court.
Austria	Within the conditions of due process according to Section 6 of the Austrian Code of Criminal Procedure a fresh determination of the merits of the charge may take place.
Bosnia and Herzegovina	/
Cyprus	Yes.
Czech Republic	Yes. However, the retrial cannot result in a decision that would be worse for the defendant than the decision rendered in the original trial (see above answer to Question No. 7).
Denmark	Yes. If an appeal is granted, cf. item 7, it can take place as a complete appeal or as a revisionary appeal. A complete appeal means that a full review of the case is made,

	including a review of the question of guilt or innocence. New evidence can be produced. A revisionary appeal is a review of the decision made by the court of first instance. This review can include legal questions and sentencing. In situation no. 4, as described under item no. 1, the defendant can lodge an appeal if the appeal does not comprise the question of guilt or innocence, cf. item 7. When reopening a case, cf. item 7, the trial starts anew and a full review of the case, in respect of both law and facts, takes place. New evidence can be produced.
Estonia	/
Finland	/
France	The court dealing with the case assesses whether the charge is founded on the merits and from a procedural standpoint. It examines the file as ensuing from the investigation. If the parties wish to adduce fresh evidence, it must be added to the case-file and examined on an adversarial basis.
Germany	Where the application for restoration of the *status quo ante* is successful (sections 235, 329(3) and 412 of the Code of Criminal Procedure), a retrial must be conducted according to general principles. More evidence may be heard and the legal situation may also be re-evaluated. An appeal on points of law (section 338 no. 5 of the Code of Criminal Procedure), by contrast, only permits a limited review. The judgment is merely examined in regard to legal errors. A renewed hearing of evidence is not possible. The following applies to **regulatory offence proceedings**: Only legal errors may be complained of in appeal proceedings (section 79(3) of the Regulatory Offences Act read in conjunction with section 344(2) of the Code of Criminal Procedure). A successful application for restoration of the *status quo ante* means the judgment immediately becomes void. A date must be scheduled for a new main hearing. In the context of the main hearing the factual and legal aspects of the accusation are re-examined.
Greece	No there are not such provisions.
Ireland	/
Italy	Article 176 of the Code of Criminal Procedure states that the court which has ordered the restoration of the previous deadline, at request of a party and provided that it is possible, shall carry out the **repetition of the procedural acts at which the party was entitled to be present**. A particular problem arises in relation to the right of the defendant tried *in absentia*, who has been granted restoration of deadline in accordance with the provisions of Article 175 of the Code of Criminal procedure, to produce **new evidence** in the appeal proceedings.

	Actually, according to the Italian criminal procedure a judgment of conviction may be delivered only when conclusive evidence of the defendant's guilt has been gathered. In fact, Article 530 of the Code of Criminal Procedure requires the defendant's acquittal when evidence "[…] *is lacking, insufficient or contradictory* […]". This principle is known as "principle of conclusiveness of evidence" and affects the possibility of acquiring fresh evidence within appeal proceedings. Actually, it is evident that the fact that a judgment of conviction has already been rendered always implies that conclusive evidence has been gathered in the first-instance trial. Hence, as a general rule, a new acquisition of evidence within appeal proceedings is never unrestricted and unconditional (nor is it directly available to the defendant), but it is allowed when the appeal judge holds that he cannot decide on the basis of the acts and evidence submitted to the first-instance court. In any case, the judge can order ex officio the acquisition of fresh evidence when this act is necessary to make a decision. The exercise of this power may also be requested by the defendant. Referring to proceedings *in absentia*, when amending Article 175 of the Code of Criminal Procedure, the legislator failed to establish a connection with Article 603 of the Code of Criminal Procedure, which governs the repetition of the taking of evidence within appeal proceedings, providing for both a new acquisition of the evidence already taken in the first-instance trial, and the taking of fresh evidence, which has emerged subsequently or has been gathered after the first-instance proceedings. The wording of paragraph 4 of Article 603 referred to above , concerning the case of a defendant in absentia during the first-instance trial, does not take into account the new text of Article 175 of the Code of Criminal Procedure, and admits the repetition of the taking of evidence only when the defendant demonstrates that he/she was unable to appear due to acts of God or force majeure, or on the grounds that he had no knowledge of the summons to trial, provided that his/her conduct was not due to his/her negligence, nor did he/she avoid being informed about the proceedings willingly. Therefore, the provision still relates the repetition of the taking of evidence to the conditions that being in absentia is due to acts of God or force majeure, and that the fact of having no knowledge of the summons to trial cannot be ascribed to a negligent or voluntary conduct. In this legal framework it may occur that not all the defendants to whom restoration of the previous deadline has been granted may be admitted to a retrial. Waiting for provisions aimed at removing incongruities, the case law, in particular the case law of the Italian Supreme Court of Cassation, is making praiseworthy efforts to align domestic law with the dictates of a fair trial, which have already been transposed into Article 111 of the Italian Constitution, and with other provisions of the European Convention on Human Rights. To this purpose it is worth making reference to the judgment of the Court of Cassation No. 1805 of 1st December 2010. Therein the Supreme Court, establishing that the person sentenced in absentia, who has been restored in the deadline to lodge an appeal for not having had knowledge of the proceedings, may be granted the repetition of taking of evidence within the appeal proceedings, without the pre-existent decree declaring the person to be unlawfully at large implying *per se* that the person concerned having no knowledge of the summons to trial is due to his/her fault (a person is considered to be unlawfully at large when he voluntarily eluded pre-trial custody in prison, house arrest, prohibition to go abroad or an order of enforcement of incarceration), has underlined that : "*The simple possibility to lodge an appeal*, granted to the defendant in absentia by Article 175 of the Code of Criminal Procedure, *is not sufficient when it is not accompanied by remedies aimed at re-establishing the rights the person concerned could not exercise in the first-instance trial; a different opinion could jeopardize the recognition of the compliance of the new version of Article 175 of the Code of Criminal Procedure with the Convention, as expressed by the ECHR by judgment of 25 November 2008 (Cat Berro – Italy)*".Therefore, the Supreme Court has recognized that a new taking of evidence within appeal proceedings has to be guaranteed in any case and that the defendant in absentia is entitled to request the

	taking of fresh evidence. To this end judgment No. 1085 of the Court of Cassation, III Section, 20 January 2011, should also be considered.
Latvia	Yes.
Liechtenstein	Yes.
Moldova	Yes.
Norway	Yes.
Portugal	Yes (art 430º of the Code of Criminal Procedure).
Russian Federation	Judicial proceedings are conducted only with respect to the defendant and only on the charges brought against him/her. A change of the charges in the judicial proceedings is admissible, unless this aggravates the defendant's position and violates his/her right for the defence (Article 252 of the Criminal Code of Russian Federation).
Slovak Republic	Yes, Slovak law provides a fresh determination of the merits of the charge, including possible new evidence.
Spain	As stated before, there is no retrial because it is not possible to hold a trial in absentia.
Sweden	/
Switzerland	The new judgment restores the parties and the case to the state preceding the judgment in absentia (see question 13 above). Accordingly, the charges may be challenged by the accused and any relevant new evidence may be considered by the court.
Turkey	If the court complies with the reversing judgment in the retrial after the judgment is reversed, retrial will be conducted and the court assess the new evidences and incidents.
United Kingdom	Yes: where re-trial is ordered following a successful appeal. The appeal hearing itself is unlikely to consider new evidence unless there is a compelling reason so to do and will confine itself chiefly to questions of law.

	15. Does your domestic law provide for the possibility that the original decision rendered in the absence of the person concerned is reversed or changed?			
	No	**Yes, but only in favour of the defendant**	**Yes, in favour but also to the detriment of the defendant**	**There are other limitations (please, describe):**
Albania		X		
Armenia			X	Only in case if the rendered decision is appealed to a higher instance court by a competent person or a body, the court can revise the decision.
Austria			X	X The prohibition of deterioration of the punishment (*reformatio in peius*) has to be respected if the judgment in absentia is only appealed by the convicted person (s.13.).
Bosnia and Herzegovina				
Cyprus			X	
Czech Republic				X See above answer to Question No. 10.
Denmark			X	X In an appeal case the appeal court cannot reverse or change the original decision to the detriment of the defendant, if only the defendant has appealed. However, if the prosecution service has lodged a cross-appeal (which is often the case) the decision can also be reversed or changed to the detriment of the defendant. If a case is reopened the court can reverse or change the original decision to the detriment of the defendant.
Estonia	X			
Finland				

France				In the event of an appeal, the court may, on an appeal by the prosecution, either uphold the judgment or reverse it in whole or in part, whether or not in the defendant's favour. Conversely, where an appeal has been lodged solely by a defendant, a person liable under civil law, a civil party or the insurer of one of these persons, the court cannot worsen the defendant's position (Article 515 of the CCP). The defendant's absence or presence at the first-instance proceedings is of no import. In the event of an application to have the judgment set aside, if the defendant is absent at the new hearing, the application is void and the judgment by default again becomes enforceable.
Germany				
Greece		X	X	X **Specific features of regulatory offence proceedings**: The contested judgment may not be amended as regards the type and amount of the legal consequences of the act to the person concerned's detriment if only the person concerned, the public prosecutor on his behalf or his legal counsel has lodged a complaint on points of law (section 79(3) of the Regulatory Offences Act read in conjunction with section 358(2), first sentence, of the Code of Criminal Procedure).
Ireland				
Italy				
Latvia				X Criminal Procedure law Section 562. provides that a court investigation and court discussions in a court of appellate instance shall take place in the amount of and within the framework of the requirements expressed in a complaint or protest, which shall not be exceeded, except for cases where the court of

				appellate instance has doubts regarding the guilt of or the circumstances aggravating the liability of an accused, participants, or joint participants that has been determined by a court of first instance. A court of appellate instance shall apply a law regarding a criminal offence more serious than as recognized by a court of first instance only if so requested by a prosecutor in his or her protest, or by a victim in his or her complaint supported by the prosecutor. In such case, a law regarding an offence more serious than the offence regarding which the person has been accused in sending a criminal case to court shall not be applied, except for the case where the prosecutor modified the prosecution in a hearing of a court of first instance to a more serious prosecution. The determination of a more serious penalty for an accused shall be allowed if a protest of a prosecutor or a complaint of a victim has been submitted for such reason, as well as if a prosecution has been modified to a more serious prosecution upon the protest of a prosecutor or the complaint of a victim. The finding of an acquitted person guilty and the application of a penalty to such person shall be allowed only in cases where a protest of a prosecutor or a complaint of a victim has been submitted for such reason supported by the prosecutor. Criminal Procedure law Section 584. provides that, an examination of the lawfulness of the adjudication of a court shall take place in the amount of, and within the framework of, the requirements expressed in a cassation complaint or protest. (2) A court of cassation shall be permitted to exceed the amount and framework of requirements expressed in a cassation complaint or protest in the cases where such court determines the violations indicated in Sections 574 and 575 of this Law, and such violations have not been indicated in the

				complaint or protest. Criminal Procedure law Section 574. provides regulation of a violation of the Criminal Law is: 1) an incorrect application of sections of the General Part of the Criminal Law; 2) the incorrect application of a section, paragraph, or clause of the Criminal Law in qualifying a criminal offence; 3) the determination for an accused of a type or amount of punishment that has not been provided for in the sanction of the relevant section, paragraph, or clause of the Criminal Law. Criminal Procedure law Section 575. Provides that the following are substantial violations of the Criminal Procedure Law that bring about the revocation of a court adjudication: 1) a court has adjudicated a case in an unlawful composition; 2) circumstances have not been complied with that exclude the participation of a judge in the adjudication of a criminal case; 3) a case has been adjudicated in the absence of the accused or persons involved in the proceedings, if the participation of the accused and such persons is mandatory in accordance with this Law; 4) the right of the accused to use a language that he or she understands, and to use the assistance of an interpreter, has been violated; 5) the accused was not given the opportunity to make a defence speech or was not given the opportunity to say the last word; 6) a case does not have the minutes of a court session, if such minutes are mandatory; 7) in rendering a judgment, a secret of court deliberations has been violated; 8) a case has been adjudicated without examination of evidence not taking into account the conditions of

				Section 499 of this Law. (2) The expulsion of an accused or victim from a courtroom may be recognised as a substantial violation of this Law, if the expulsion was unjustified, and such expulsion has substantially restricted the procedural rights of such persons, and, therefore, led to the unlawful adjudication. (3) Other violations of this Law that led to an unlawful adjudication may also be recognised as substantial violations of this Law.
Liechtenstein			X	
Moldova		X		
Norway			X	
Portugal				X Only in favour of the defendant if the appeal was lodged by the defendant, by the Public Prosecutor in the exclusive interest of the defendant or by both (prohibition of *reformatio in pejus*). This limitation does not include the possible aggravation of the fine (days-fine), if the economic and financial situation of the defendant has significantly improved. Outside the cases referred to above, the original decision may be changed also to the detriment of the defendant.
Russian Federation				Upon the results of the new examination of a criminal case, the court passes a sentence relying on the law, criminal case materials, evidence examined and moral certainty. A new court ruling may be substantially different from the previous ruling, passed in absentia.
Slovak Republic			X	
Spain	X			As the moment a person is declared in absentia, stay of proceedings occurs until said person is found.
Sweden				

Switzerland			X	
Turkey				Only if the judgment is appealed by the convict or Public Prosecutor or spouse of the convict or his/her legal representative, the sentence to be given as a result of the retrial cannot be more aggravated than previous sentence.
United Kingdom		X		

16. Does the retrial or the request of a retrial by the person concerned suspend the execution of the decision rendered in the absence of the person concerned?	
Albania	The Criminal Section of Supreme Court and the court charged for the reexamination of the case may decide the suspension of the execution of the verdict. The verdict is of final decision.
Armenia	According to the Article 383 of the RA Criminal Procedure Code, the appeal against the verdict suspends the verdict preventing it from coming into legal force.
Austria	No.
Bosnia and Herzegovina	/
Cyprus	Yes.
Czech Republic	When the court, upon request of the defendant (see above answer to Question No. 7), annuls a judgement (conviction and sentence) resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1), the person must be released from imprisonment. He/she may be taken into custody if the court is satisfied that the legal grounds for custody are met.
Denmark	If an appeal is lodged by the defendant within the time-limit, the execution of the decision is suspended. If the defendant submits an application to lodge an appeal to the Appeals Permission Board, cf. item 7, the court can decide to suspend the execution of the sentence.
Estonia	No.
Finland	/
France	During the time-limits for lodging an appeal (except in the case of the Principal State Prosecutor) and throughout the appeal proceedings the judgment's enforcement is suspended except if the court ordered its provisional execution or issued an order committing the convicted person to prison or a pre-trial detention order (Article 506 of the CCP). An application to have a first-instance judgment set aside renders it void and it can no longer be executed.
Germany	Pursuant to section 449 of the Code of Criminal Procedure, a criminal judgement *in absentia* is not enforceable until it has become final. Timely applications for restoration of the *status quo ante* and for an appeal on points of law prevent the judgment becoming final. The following applies to **regulatory offence proceedings**: Regulatory fine orders cannot be enforced until they have become final (section 89 of the Regulatory Offences Act).

	Enforcement of a regulatory fine order is not prevented by an application for restoration of the *status quo ante*. However, as the person concerned may pursuant to section 74(4), first sentence, of the Regulatory Offences Act apply for restoration of the *status quo ante* against the judgement within one week of its service and the judgement *in absentia* must be served in order for it to become final, enforcement of a regulatory fine order is in practice ruled out before the expiry of the time limit for submission of an application for restoration of the *status quo ante*.
Greece	No, the retrial or the request of a retrial does not suspend the execution rendered in absentia.
Ireland	/
Italy	Paragraph 7 of Article 175 of the Code of Criminal Procedure stipulates that "if restoration of the deadline to lodge an appeal is granted, the judge, where necessary, shall order the release of the detained defendant and shall adopt all the necessary measures to cease the effects caused by the expiry of the deadline". From this follows that domestic law leaves to the discretion of the judge who grants the request for restoration of the deadline whether to suspend the enforcement of the judgment in absentia.
Latvia	Yes.
Liechtenstein	The request of a retrial does not suspend the execution of the decision rendered in the absence of the person. By contrast the retrial itself does suspend the execution (Article 280 Criminal Procedure Code).
Moldova	The retrial or the request of a retrial by the person concerned doesn't suspend the execution of the decision rendered in the absence of the person concerned. But on the request, the court may suspend the decision rendered in the absence.
Norway	Yes.
Portugal	Under Portuguese law, a judgment rendered in the absence of the defendant is not final until any possible appeals lodged, by the defendant or by other procedural subjects, are dealt with by the courts, leading to a final decision (*res judicata*). Therefore, after that judgment is issued, the arrest of the defendant, on the basis of a judicial warrant, aims at serving that person with the judgment, in order for the proceedings to be continued until they come to an end. Once arrested, the person will appear before the competent judge, who will decide on the applicability or the execution of a coercive measure.
Russian Federation	Yes, it does.
Slovak Republic	Yes

Spain	Same answer as number 14.
Sweden	/
Switzerland	Under Art. 369, para. 3, of the CCP, these matters are decided upon by the director of proceedings. In addition, under Art. 368, para. 3, of the CCP, the court rejects the application for a retrial if the person convicted was duly summoned, but failed to appear at the hearing without excuse.
Turkey	Yes, the application for appeal which is made in the required time period postpones the finalization of the judgment and thus the execution of the judgment until the finalization. However, if the application for appeal is not made within the required time period or a judgment which cannot be appealed is appealed or appellant is not entitled to do that, the court refuses the application for appeal. In this situation higher court renders its decision in 7 days. However, in this stage it does not constitute an obstacle to the execution of the judgment. In addition, renewing the proceeding does not postpone the execution. But the court may decide on the postponement of execution or the suspension of the judgment.
United Kingdom	No.

17. Is there a time limit within which the retrial has to (re)start?	
Albania	There is a time limit to submit the request but there is not a time limit within which the retrial has to (re)start.
Armenia	N/A
Austria	No. However the sentenced person may request the court of appeal to set a time-limit for the start of the retrial before the first instance.
Bosnia and Herzegovina	/
Cyprus	There is a time limit for filing an appeal challenging the trial in absentia. But an application for extension of the time limits may be made.
Czech Republic	No. However, it should be emphasized that Czech law provides strict deadlines for holding a defendant in custody.
Denmark	No. However, as a general principle all cases must be handled within due time given the circumstances of the case.
Estonia	No.
Finland	/
France	The time-limits are the same as those mentioned under point 4. If the person is being detained the case must be heard within two months of the date on which the remedy is exercised.
Germany	There are no specific provisions referring to the scheduling of the trial. Pursuant to section 213 of the Code of Criminal Procedure, it is up to the discretion of the court to set the date. It must fulfil the duty to expedite proceedings on the one hand and give all those involved in the proceedings sufficient time to prepare on the other hand. The same applies to regulatory offence proceedings.
Greece	No, there is not a time limit.
Ireland	/

Italy	No, there is not.
Latvia	No.
Liechtenstein	No.
Moldova	As I mentioned at point 7, the request for retrial may be filed within 6 months after surrender of the sentenced person to the Moldavian's authorities.
Norway	The retrial should start as soon as possible. There is no specific time limit.
Portugal	There are no specific rules. Regarding ordinary proceedings in general, the law establishes that the judge shall set the soonest possible date for trial so that, from the time when the judicial proceedings have been received by the court to the date of the trial, not more than two months have elapsed. In any case, the date for trial is set with priority over any other trial whenever the defendant is under preventive detention or compelled to remain at home (house arrest).
Russian Federation	The terms of the start of the court proceedings are set forth in the Criminal Procedure Code of the Russian Federation (Article 227 part 3, Article 233), and they are common for the cases, including the new examination of a case in respect of a person, whose judgement in absentia was repealed.
Slovak Republic	No.
Spain	Same answer as number 14.
Sweden	/
Switzerland	In principle, the Code of Criminal Procedure does not specify a time limit for a retrial to start. However, the general principles of the code set out in Article 5 provide that criminal proceedings shall be conducted immediately and without unjustified delay. Moreover, when an accused is in detention, they must be conducted as a matter of priority.
Turkey	There is not any time limitation on the beginning of retrial. The relevant persons are informed about the proceedings to be conducted by the service to their addresses and the court asks what they have to say about retrial on the date defined by the court
United Kingdom	The normal rule is that a new indictment (formal statement of charges) must be lodged at the trial court within 28 days of the date on which the judgment of the Appeal court is handed down unless the Appeal Court orders otherwise. The new trial will follow as quickly after that as the convenience of the parties, the availability of court time and the interests of justice require.

18. If the person concerned has not been personally served with the decision before his or her surrender, when will the person concerned receive a copy of the decision (if possible, please provide an approximate time frame)? Will the person concerned receive such a copy in a language that he or she understands?	
Albania	The person will be served the decision at the moment of his entry in the territory of Republic of Albania. The receipt of knowledge of the act is certainly considered the recognition of the decision reflected and certified only with the signature of the defendant in the relevant minutes drafted at the moment of his entry in this territory. It is precisely this moment when the defendant is effectively notified of the rendered judicial decision and at this moment the legal time-limit of 10-day period begins to run for the defendant to submit the request for leave to appeal out of time, according to article 147/3 of the Criminal Procedure Code. Yes, if the person is not an Albanian citizen, the translation in the language he understands should be provided.
Armenia	N/A
Austria	S.1. and 7.
Bosnia and Herzegovina	/
Cyprus	Court decisions are published and moreover every person can get a copy from the Court Registry. The person concerned will get the decision when he is surrendered and has the right to have it translated in a language he understands.
Czech Republic	There is no strict deadline in which the extradited/surrendered person must be served with the judgment resulting from a trial conducted in the proceedings against a fugitive (described above under A in answer to Question No. 1). However, courts serve such judgments without undue delays, usually within one or two weeks since surrender. The time served in imprisonment before the judgment is served on the defendant and annulation of the judgment if the defendant so requests would be counted against any new sentence if the defendant is convicted and sentenced in the retrial, too.
Denmark	Generally a Danish prison sentence rendered in absentia does not exceed 3 months, cf. the answer given under item 1. Consequently, Denmark will usually not request the extradition of persons for the purpose of carrying out prison sentences rendered in absentia, cf. inter alia article 2 (1) of the European Convention on Extradition. However, if the situation should occur, the person in question would be served with the decision shortly after his or her surrender to the Danish authorities, cf. the answer given under item no. 9. It should also be mentioned that in situation no. 4, cf. item 1, the court hearing may only be set down for passing of a sentence if the defendant has been duly summoned, and it appears from the summons that absence without due cause can lead to a conviction.
Estonia	/

Finland	/
France	In all cases, before being implemented, decisions are notified to a convicted person who was not present at the trial. If it has not been possible to serve the process to them in person, convicted persons are in addition notified of the decision, and given a copy of it, without delay in a language they understand (by the police, a clerk of court, a prosecutor or judge or a prison governor) where: - the sentence is a prison term and the judgment was by adversarial hearing subject to notification, or - the decision convicts them and the judgment was by default. The person concerned will therefore be aware of the decision before being imprisoned.
Germany	In such case, a request for extradition to Germany on the basis of an *in absentia* decision as described will not be made.
Greece	The defendant will receive a copy of the decision rendered in absentia as soon as he/she is being arrested and taken before the Prosecutor. In this case the terms are very short (1-2 days maximum). Besides, Greek authorities are not obliged to notify to the defendant a copy of the judgment in a language that he understands. The defendant will be informed about the content of the document in his mother tongue by the translator, who will be appointed by the competent authorities (the police or the Public Prosecutor's Office) for this purpose.
Ireland	/
Italy	The measure restricting personal liberty on which the extradition proceedings are based shall be served on the person concerned by the police officers escorting him/her upon his/her entry into Italy. No, when the sentenced person does not understand the Italian language, he/she is entitled to be assisted by an interpreter and to receive a translation of the document.
Latvia	1) As soon as possible after surrender; 2) Yes.
Liechtenstein	/
Moldova	At his request, he shall receive a copy of the decision, in a language that he understands.
Norway	Norway has no regulation on this. The judgement will probably be served once the person has been surrendered. The person will receive a copy in a language he or she understands.

Portugal	A said before, the person concerned must be personally served with the decision issued in his/her absence. Thus, the person will receive a copy of the sentence, in a language he/she understands, at the moment he/she willingly appears before the legal authorities or is arrested.
Russian Federation	In compliance with Article 312 of the Criminal Procedure Code of the Russian Federation, a copy of the sentence (including the one, passed in the absence of the defendant) is handed in to the convict, his defence lawyer within 5 days since the date of its proclamation. A copy of the court ruling may be translated into the language, which the personб against whom the court ruling in absentia was passed, understands. When the request for extradition of a person, against whom a foreign state has passed the court ruling in absentia, is received, extradition may be conducted regardless of fact whether this person has received a copy of the court ruling, but subject to the provision of guarantees by the requesting state that this person has a right for the retrial, where his right for the defence will be secured. If a person evaded coming to a court, escaped on the territory of another state and was arrested there due to his/her international search or due to the request for his/her extradition, then this person can get acquainted with or can receive a copy of the court ruling, passed against him/her, after his/her arrest. In any case, a copy of the court ruling is handed in to his/her defence lawyer.
Slovak Republic	Surrended person is usually few days after his/her extradition presented before the competent court and there will receive a decision in a language that he or she understands.
Spain	A trial in absentia is not allowed.
Sweden	/
Switzerland	According to the interpretation of Art. 368, para. 1, of the CCP, the judgment must be served on the person concerned as soon as he or she is detained or, more broadly, he or she is located. The person must in any case be notified without delay that a judgment in absentia has been handed down against him or her.
Turkey	In the event that the person requests the judgment rendered in absentia against him/her directly by himself/ herself or through his/her representative or counselor, it is possible that he/she obtains the original judgment and the translation of the judgment into the language of the country which he/she is a national.
United Kingdom	It is assumed that this is done immediately upon his arrest by those police officers who have gone to the country of his arrest to secure his return.

19. If the person concerned, after being surrendered, has exercised his or her right to a retrial, is the detention of the person considered as an enforcement of the decision rendered *in absentia* or as provisional detention?	
Albania	The detention can be considered as provisional detention. When the request for review is accepted, the court shall cancel the sentence. The sentence may not be rendered by only making another evaluation of the evidence taken in the previous trial.
Armenia	N/A
Austria	S.1. and 7.
Bosnia and Herzegovina	/
Cyprus	If retrial is ordered by the Appeal Court after quashing his conviction, then the person cannot be detained except by order of the court retrying the case.
Czech Republic	It is considered as provisional detention (custody). However, custody would be counted against a sentence imposed in the retrial (if the defendant is convicted and sentenced).
Denmark	It is considered as provisional detention.
Estonia	/
Finland	/
France	The person is considered to be in provisional detention and can therefore submit applications for release. The time spent in detention will be set off against any prison sentence handed down at the conclusion of the new trial.
Germany	See answer to question 18
Greece	In such a case the detention of the person condemned in absentia is considered as an enforcement of the decision rendered.
Ireland	/
Italy	The detention period is considered as execution of the decision rendered “in absentia” and is always calculated. The judge dealing with the case shall consider again whether it is necessary to order incarceration or another measure restricting

	personal liberty, taking into account the time when the offence was committed, the statute of limitations, the risk of flight, the risk of tampering with evidence and of recidivism.
Latvia	The judge of first instance court shall decide issue regarding suspension of ruling execution and applying of security measure. (Criminal Procedure Law Section 465).
Liechtenstein	Until the court has not decided about the request the detention of the person is considered as an enforcement of the decision rendered in absentia. After the court has allowed the retrial, it is considered as a provisional detention.
Moldova	In this case the detention of the person is considered as an enforcement of the decision rendered *in absentia.*
Norway	As a provisional detention.
Portugal	If detained, the defendant is subject to a provisional detention, until the judgment, including in the case of a new trial, may no longer be appealed against. The duration of the provisional detention is to be deducted from the custodial sentence eventually imposed.
Russian Federation	If the passed court ruling has entered into its legal force, then the person's detention reputed an execution of a sentence.
Slovak Republic	In such case it is considered as provisional detention.
Spain	There is no retrial because a trial in absentia is not allowed.
Sweden	/
Switzerland	Under Art. 369, para. 3, of the CCP, the director of proceedings decides on placing the person concerned in preventive detention and granting suspensive effect. The length of any provisional detention will be deducted from the sentence handed down.
Turkey	Arrest of the person is accepted as the enforcement of the judgment rendered in absentia against the person
United Kingdom	Until the determination of his appeal the person remains subject to the sentence originally imposed. If permission to appeal is granted the person may apply for bail but this is not normally granted.

	20. In both cases, is the detention of that person awaiting a retrial reviewed before the retrial proceedings are finalised? (Multiple responses possible)			
	No	**Yes, on a regular basis**	**Yes, upon request of the person concerned**	**Other:**
Albania		X	X	
Armenia				
Austria	X (s.1. and 7.)			
Bosnia and Herzegovina				
Cyprus			X	
Czech Republic		X	X	
Denmark		X		
Estonia				
Finland				
France	X No, but the person's entitlement to apply to the court for his/her release remains unaffected.			
Germany				X See answer to question 18.
Greece	X			

Ireland				
Italy				
Latvia		X	X	
Liechtenstein		X		
Moldova				X The retrial or the request of a retrial by the person concerned doesn't suspend the execution of the decision rendered in the absence of the person concerned. But on the request, the court may suspend the decision rendered in the absence.
Norway		X	X	
Portugal		X		X The person concerned may appeal from the decision ordering his/her provisional detention.
Russian Federation				Yes, it is reviewed.
Slovak Republic		X		
Spain				
Sweden				
Switzerland				X Under Art. 369, para. 3, of the CCP, the director of proceedings decides before the hearing on granting suspensive effect and placing the person in preventive detention. Under Art. 230, paras. 1 and 2, of the CCP, the person concerned may file an application for release with the director of proceedings.
Turkey	X			
United Kingdom			X	

21. If so, does such a review include the possibility of suspension or interruption of the detention?	
Albania	(Article 263) During the review, provisions applicable during the trial in the first instance court. Pre-trial detention, when necessary, may be renewed: With the renewal of the pre-trial detention, the time limits start to run again but, for the purposes of determining the total pre-detention period, the period served under the previous pre-trial detention is taken into account. The pre-trial detention ceases if, since the date of issue of the sentence in the first instance, the following time limits have lapsed, without a decision being issued in the court of appeal: a) two months when proceeding for criminal contraventions; b) six months when proceeding for crimes sentenced up to ten years of imprisonment; c) nine months when proceeding for crimes sentenced to not less than ten years of imprisonment or life imprisonment. In case where the decision is quashed by the Supreme Court and the case is remanded to the court of first instance or court of appeal and also where the decision is quashed by the court of appeal and remanded to the court of first instance, time limits provided for in each instance of proceeding start to run again from the day of decision in the Supreme Court or Appeal Court. The entire time period of pre-trial detention, taking also into account the extension of time provided for under article 264, point 2, cannot exceed the following time limits: a) ten months when proceeding for criminal contraventions; b) two years when proceeding for crimes sentenced for a minimum up to ten years of imprisonment; c) three years when proceeding for crimes sentenced to not less than ten years of imprisonment or life imprisonment.
Armenia	/
Austria	s.20.
Bosnia and Herzegovina	/
Cyprus	/
Czech Republic	Yes.
Denmark	Yes.
Estonia	/

Finland	/
France	/
Germany	See answer to question 18.
Greece	/
Ireland	/
Italy	Yes, this is the case.
Latvia	Yes, according to Criminal Procedure Law Section 249, during the term of the application of a procedural compulsory measure, the grounds for the application of such measure disappear or change, the provisions for the application of such measure, or the behaviour of the person, change, or if other circumstances are ascertained that determine the selection of the compulsory measure, a person directing the proceedings shall take a decision on the modification or revocation of such procedural compulsory measure.
Liechtenstein	Yes.
Moldova	Yes. As mentioned in point 16 and 20, the court may suspend the decision rendered in the absence.
Norway	Yes.
Portugal	The judge may impose other alternative, non custodial, coercive measures, which may apply in accordance with the law and the circumstances of the case.
Russian Federation	No, it does not. However, if, by the time of the arrival of the convict to the territory of the Russian Federation for serving of a sentence under the court ruling passed in absentia, the term of the sentence has elapsed, the person is released from custody.
Slovak Republic	Yes, it includes both possibilities.
Spain	There is no retrial because it is not possible to hold a trial in absentia.
Sweden	/
Switzerland	Under Art. 230, paras. 1 and 2, of the CCP, the person concerned may file an application for release with the director of proceedings in the court of first instance.

	The latter decides whether the person must remain in detention.
Turkey	There is not such an application.
United Kingdom	Where the Court of Appeal has ordered a retrial the accused person may apply to the court at which the new trial will be held to be released from custody on bail. This does not invariably follow.

***In absentia* as a ground for refusal to extradite (i.e. as the requested state)**	
22. Does your state extradite persons for the purpose of carrying out sentences or detention orders imposed by decisions rendered in the absence of the person concerned? If so, please describe the regulation (or identify the convention or legal instrument that you would apply). Does the legislation of your state provide for such a ground for refusal to extradite a person for the purposes of execution of a sentence rendered *in absentia* of this person? If so, is it an imperative (mandatory) or discretionary (facultative) ground for refusal?	
Albania	Yes, if the guaranties on the retrial have been given by a requesting state. A sentence rendered in absentia is not yet provided as a ground for refusal in the Code of Criminal Procedure but given the fact that according to constitution, the Convention on Extradition prevails the domestic legislation, it may be a ground for refusal. It is a discretionary ground for refusal.
Armenia	As mentioned above, the Article 302 of the Criminal Procedure Code provides, that a Court trial is done in the presence of the defendant whose attendance of the court is mandatory, the cases would be regulated by the Article 3 of the Second Additional Protocol to the European Convention on Extradition, i.e. if, in the State's opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defense recognized as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defense.
Austria	In relation to Parties to the Second Additional Protocol to the European Convention on Extradition the Protocol applies (in relation to MS of the EU specific EU law applies). Similar provisions to Article 3 of the Second Additional Protocol to the European Convention on Extradition can be found also in bilateral treaties concluded by Austria with some other States. According to Section 19 of the Austrian Federal Law on Extradition and Mutual Legal Assistance extradition is inadmissible if there is cause to suspect that the criminal proceedings in the requesting country will not comply are have not complied with the principles of Articles 3 and 6 of the European Convention of Human Rights (ECHR). Also in relation to States which are not Parties to the Second Additional Protocol to the European Convention on Extradition assurances that the person claimed will have the right to retrial are used. If such an assurance is considered sufficient to guarantee to the person claimed the right to retrial which safeguards the rights of defence, an extradition is admissible.
Bosnia and Herzegovina	In both cases, with other conditions met, extradition shall be granted if the requesting party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial.
Cyprus	We extradite fugitives sentenced in absentia pursuant to the provision of Art. 3 of the Second Additional Protocol to the European Convention on Extradition
Czech Republic	Yes. The provisions of the applicable extradition treaty (e.g. Article 3 of the Second Addition Protocol to the European Convention on Extradition) apply, the domestic law contains no specific provision on the issue of in absentia judgements when the

	Czech Republic is the requested State. However, even if the applicable extradition treaty is silent with regard to in absentia judgments, the court deciding on admissibility of extradition would have to consider, on a case by case basis, having regard to information the requested State obtains concerning procedural safeguards in in absentia trials in the requesting State and specific circumstances of the case, whether extradition would not violate its obligations under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [according to the case of the European Court of Human Rights, an issue might exceptionally be raised under Article 6 of the Convention by an extradition decision in circumstances where the fugitive had suffered or risked suffering a flagrant denial of a fair trial in the requesting country, which could include "conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits of the charge" – see for example Othman (Abu Qatada) v. the United Kingdom, application No. 8139/09, judgement of 17 January 2012, para. 259]. The Convention for the Protection of Human Rights and Fundamental Freedoms is part of Czech legal order – in fact, according to the case law of the Constitutional Court of the Czech Republic it is part of the "constitutional order". In view of the above, if the court comes to the conclusion that extradition requested for the purposes of the execution of an in absentia judgement would be in violation of Article 6 of the Convention, it would be a mandatory ground for inadmissibility (and refusal) of the extradition.
Denmark	As regards extradition to Member States of the European Union: Denmark has implemented the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States as well as the Council Framework Decision 2009/299/JHA of 26 February 2009. Accordingly, section 10 g of the Danish Extradition Act states that extradition for the purpose of executing a custodial sentence rendered in absentia cannot take place, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State and 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 was informed that a decision may be handed down if he or she does not appear for the trial, or (ii) being aware of the scheduled trial, had given a mandate to a legal counselor, 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 counselor at the trial, or (iii) after being served with the decision and being expressly informed about the 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, expressly stated that he or she does not contest the decision or did not request a retrial or appeal within the applicable time frame, or (iv) will be personally served with the decision 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 will be informed of the time frame within which he or she has to request such a retrial or appeal. If the above-mentioned conditions set out in section 10 g of the Danish Extradition Act are not fulfilled, it is considered a mandatory ground for refusal. As regards extradition to states outside the European Union: The Danish

	Extradition Act does not contain a specific provision on extradition for the purpose of carrying out sentences rendered in absentia. In general there are no obstacles for taking into account foreign in absentia sentences. However, Article 6 of The European Convention on Human Rights establishes that extradition may be barred if the person risks suffering a flagrant denial of justice in the receiving country, i.e. in cases of conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits (see ECHR judgment of 17 January 2012: Othman (Abu Qatada) vs. GB, para. 258-259). Consequently, Denmark may be barred from extraditing a person for the purpose of carrying out a sentence rendered in absentia. Non-compliance with the European Convention on Human Rights is a mandatory ground for refusal.
Estonia	Yes.
Finland	No, Finland does not extradite persons for the purpose of carrying out sentences imposed by decisions rendered in the absence of the person concerned. However, a detention order may be rendered in the absence of a person, if it is expected that a request for his extradition is to be made. This is regulated in the Coercive Measures Act. We apply the Second Additional Protocol to the European Convention on Extradition. No specific grounds for refusal in that respect exist in our common extradition law. It is worth to mentioning that regarding extradition between EU Member States, the provisions about grounds for refusal regarding in absentia situations may be found in Article 6a of the Act on Extradition between Finland and Other EU Member States.
France	The French government extradites persons wanted pursuant to decisions rendered in absentia. This possibility is not based directly on a conventional or legislative provision. It derives from the fact that the (bilateral or multilateral) conventions on extradition to which France is party, on one hand, and national law, on the other hand, make no express provision for a ground of refusal based on the non-adversarial nature of the decision underlying an extradition request. It must nonetheless be said that Article 694-4 7) of the Code of Criminal Procedure provides that extradition shall be refused "where the person would be tried in the requesting state by a tribunal which does not assure fundamental procedural guarantees and protection of defence rights." Similarly, upon ratifying the European Convention on Extradition, France made a reservation whereby "Extradition shall not be granted if the person sought would be tried in the requesting State by a tribunal which does not assure the fundamental procedural guarantees and the protection of the rights of the defence or by a tribunal created for that person's particular case or if extradition is requested for the enforcement of a sentence or detention order imposed by such a tribunal." Under these provisions, it is for the French courts examining an extradition request to verify that the procedure followed in the requesting state is not contrary to French public policy. In this connection, based on French public policy and the requirements of Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, case-law has established the principle that a person

	convicted by a criminal court in absentia must be able to obtain a re-trial in his/her presence, except where it is unequivocally established that he/she waived his/her right to appear in court and submit arguments in his/her defence (see, in particular, the judgments of the Conseil d'Etat of 7 February 2003, No. 247856, and 18 March 2005, No. 273714).
Germany	In principle, extradition of the person concerned for the purpose of enforcing a decision rendered in absentia is possible. The limits of extradition follow from the public policy principle pursuant to section 73 (2) of the German Act on International Legal Assistance in Criminal Matters (IRG) as well as Article 3 of the Second Additional Protocol to the European Convention on Extradition and Article 5 no. 1 of the Framework Decision on the European Arrest Warrant. In interpreting these provisions, the Federal Constitutional Court, in its consistent past decisions, has attached strict conditions to such extradition. Pursuant thereto, in examining whether an extradition is permissible, as a general rule German courts may not examine the lawfulness of the foreign criminal judgment, the enforcement of which is the purpose of the requested extradition. However, in the case of in absentia judgments, they are regularly obliged to examine whether the extradition and the underlying case file comply with the minimum standard under international law and with the imperative constitutional principles of public order of the Federal Republic of Germany. According to these principles, extradition for the purpose of enforcement of a foreign criminal judgment handed down in absentia is inadmissible where the person sought was not informed about the fact that proceedings concerning him/her have been conducted and concluded, or subsequently given the possibility, having obtained this information, of being given a hearing in accordance with the law and of defending himself/herself effectively. On the other hand, extradition is permissible if the person sought has been informed of the proceedings pending against him/her but has evaded prosecution by fleeing, yet was able to be represented in the proceedings by duly appointed mandatory defence counsel in compliance with the minimum requirements under the rule of law.
Greece	It is possible for the Greek authorities to extradite a person, although he/she is going to be the subject of detention by a judgment rendered in absentia. Art. 436-456 of the Greek Code of Criminal Procedure provide specifically. Besides, the national legislation does not provide for the possibility to refuse to extradite a person because he/she is going to execute a sentence rendered in absentia of his/hers.
Ireland	/
Italy	Yes. In Italy the failure of the person concerned to appear at trial is not a ground for refusing his/her extradition. The applicable legal instruments are: the Council Framework Decision of 13 June 2012, the European Convention on Extradition (Paris, 1957), the Second Additional Protocol to the European Convention on Extradition (Strasbourg, 1978), and the bilateral agreements with the different Countries. Proceedings conducted “in absentia” are not a ground for refusal.
Latvia	According to Criminal Procedure Law section 697.Part 1Paragraph 5 reason for a Refusal to Extradite a Person is if a foreign state requests the extradition of a person for the execution of a punishment imposed by judgment in absentia, and a sufficient guarantee has not been received that the extradited person will have the right to request the repeated adjudication of the case. It is discretionary (facultative) ground for refusal.

Liechtenstein	No.
Moldova	Yes, the Republic of Moldova extradites persons for the purpose of carrying out sentences rendered in the absence of the person concerned, if and only if, the requesting state provides the necessary guarantees in assuring the involved person the right to a retrial which ensures his rights of defense. The applied legal instrument in such cases is the Second Additional Protocol to the European convention on extradition. **Article 546. Refusal of extradition** (Criminal Procedure Code of the Republic of Moldova) (1) The Republic of Moldova shall not extradite its own citizens and the persons it has granted the right to asylum. (2) Extradition will be also refused, if: 1) the crime had been committed on the territory of the Republic of Moldova; 2) regarding the respective person a domestic court or a court of a third state had already delivered a sentence of conviction, acquittal or dismissal of the criminal trial for the crime for which extradition is requested, or if the criminal prosecution body had issued an ordinance on the dismissal of the criminal proceeding or if the national bodies are prosecuting the commission of this perpetration; 3) the term of limitations for holding criminally liable for that kind of crime has expired, according to the national legislation or, in case of amnesty act's intervention; 4) according to the law, criminal prosecution may be started only on the basis of the preliminary complaint of the victim and such a complaint is missing; 5) the crime for which extradition of the person is solicited is considered by the domestic law as a political or connected to it; 6) The Prosecutor General, the Minister of Justice or the court examining the extradition case have well-founded reasons to believe that: a) the request on extradition has been lodged with the aim to prosecute or punish a person for race, religion, sex, nationality, ethnical origins or political opinions considerations; b) the situation of this person risks to worsen for one of the reasons mentioned at the letter a); c) in case that the person will be extradited he will be subjected to torture, inhuman or degrading treatment in the soliciting state. 7) the requested person was granted the status of political refugee; 8) the state soliciting extradition does ensure mutuality in the field of extradition. (3) If the deed for which extradition is requested is punished by the legislation of the soliciting state with capital punishment, extradition of the person may be refused, unless the soliciting party gives enough guaranties that the capital punishment will not be executed regarding the extradited person. **Article 43. Refusal to extradition** (the Law on International Legal Assistance in Criminal Matters) (1) In considering the request for extradition to the Republic of Moldova within the meaning possible refusal, refusal under the conditions specified in the Code of Criminal Procedure to art.546, will take into account the situation following fields: a) the person whose extradition is sought to be tried in the requesting State by an extraordinary court established for a particular case and if the person whose extradition is requested would be tried in the requesting State by a court that not provide essential procedural guarantees and protection of rights of defense; b) the offense for which extradition is requested is a violation of military discipline

	and not common law offense; c) the penalty provided for the offense is capital punishment laws of the requesting Party. Notwithstanding this rule, extradition of the person may be granted only if the requesting State gives assurance, deemed sufficient by the Republic of Moldova, that capital punishment will not run and should be switched. (2) refusal to extradite an unconvicted person in Moldova decided by the Attorney General, and the person convicted, the justice minister.
Norway	Yes, Norway extradites persons for the carrying out of sentences imposed by decisions rendered in the absence of the person concerned. Norway is a party to the Second Additional Protocol to the European Convention on Extradition. Extradition in relation to in absentia judgements is not explicitly regulated in Norwegian law. However, the extradition act section 10 paragraph 1 states that a person cannot be extradited if there are specific grounds for believing that the judgement was not passed on a correct assessment of the question of the accused's guilt. In relation to in absentia judgements, this might be the case. Norway often asks for a guarantee from the requesting state that the person will have the right to a retrial. If we receive such a guarantee, the Supreme Court has ruled that the extradition case should be treated as a request for extradition for the purpose of prosecution.
Portugal	Yes, under applicable provisions of the European Arrest Warrant, the European Convention on Extradition and Additional Protocols and other multilateral and bilateral conventions binding upon Portugal, as well as under the Portuguese internal law on international cooperation in criminal matters, law 144/99, of 31 August. Therefore, the courts will surrender the person whenever they are satisfied that such person is granted the right to appeal or to request a new trial.
Russian Federation	The Russian criminal procedure legislation does not provide for the prohibition for the extradition of persons with a view of execution of sentences or decisions on taking into custody passed in absentia. Moreover, the Russian Federation has ratified the Second Additional Protocol to the European Convention for Extradition of 1957 without proviso, and thus the provisions of Article 3 of the Protocol are subject to implementation in the course of examination of requests for extradition, received from the competent authorities of the State Members to the Protocol. In compliance with Article 247 part 5 of the Criminal Procedure Code of the Russian Federation, in exceptional cases a court hearing on criminal cases of grave or especially grave crimes may be conducted without the attendance of the defendant, who is outside the territory of the Russian Federation and (or) declines to appear in court, unless that person has been held accountable on the territory of a foreign state due to this criminal case. The Prosecutor General's Office of the Russian Federation extradites persons for execution of a sentence, passed in absentia, in accordance with the international treaties or on the basis of the reciprocity principle. Article 464 of the Criminal Procedure Code of the Russian Federation does not consider the fact that the sentence was passed by the requesting Party in the absence of the defendant as the basis for the refusal to extradite. At the same time, the Prosecutor General's Office of the Russian Federation takes a decision on extradition of a person after the requesting Party provides guarantees that, in compliance with Article 3 of the Second Additional Protocol to the European Convention on Extradition the extradited person will have the right to retrial, which safeguards the rights of defence.

Slovak Republic	Yes, Slovak Republic may extradite person for the purpose of carrying out sentences or detention orders imposed by decisions rendered in the absence. Such extradition could be based on the principle of reciprocity, European Convention on Extradition or European Arrest Warrant. According to Slovak legal order – Law No. 154/2010 Coll. on European Arrest Warrant Art. 23 para. 3: Slovak court may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State: (a) 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; or (b) 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; or (c) after being served with the decision and being expressly informed about the 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: (i) expressly stated that he or she does not contest the decision; or (ii) did not request a retrial or appeal within the applicable time frame; or (d) 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. This provision implemented into Slovak legal order Art. 2 Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. So such ground for refusal is applied in cases of extradition based on the European Arrest Warrant between EU member states. It is always facultative ground for refusal.
Spain	Yes, the applicable law is Act 4/1985 of 21 March on Passive Extradition, the European Convention of Extradition Second Additional Protocol to the European Convention on Extradition, Strasbourg 17 March 1978. The fundamental principle established by this Law is the principle of reciprocity among countries and

	consequently the principle of reciprocity must be always kept in mind. It is expressly provided the extradition for the enforcement of judgments or detentions delivered in absentia on condition that the requesting country gives sufficient guarantees so that the claimed person will be subjected to a new trial in which he must be present and duly defended.
Sweden	Yes, Sweden can, under certain circumstances, extradite a person for the purpose of carrying out sentences or detention orders imposed by decisions rendered in the absence of the person concerned. Swedish law states the following. ***The Extradition for Criminal Offences Act*** *Section 9* *If the person for whom extradition is requested has been sentenced for the act in the foreign state, his extradition may not be granted unless the judgment is substantiated by the supporting documentation and does not give rise to a serious objection in other respects.* *If no judgment concerning the act has been pronounced in the foreign state, the request for extradition shall be based on a detention decision issued by a competent authority in that state. In the case of an act for which extradition is possible according to Section 4, second paragraph, the request may, however, be based on other documentation. The request may not be granted unless there is probable cause for believing that the person has committed the act.* *By agreement with a foreign state it may be decided that, in relation to that state, a conviction or such detention decision as issued by a court of law or a judge shall be accepted unless in a particular case the final judgment or detention decision is manifestly wrong. It may be stipulated in such an agreement that a judgment rendered without the sentenced person being personally present at the court hearing of the matter shall be accepted only if the person's right of defence can nevertheless be deemed to have been adequately provided for, or if he is entitled, according to an assurance given by the foreign state in the extradition case, to demand a retrial which safeguards that right. (SFS 1979:98)* If a judgment does not meet the conditions stipulated in paragraph 3, the request for extradition shall be refused. The ground for refusal is imperative (mandatory).
Switzerland	Switzerland may authorise extradition for the purpose of executing sentences imposed by decisions rendered in absentia. However, this is subject to restrictions and conditions. Article 37, para. 2, of the Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (EIMP, RS 351.1) provides that extradition may be denied if the request is based on a verdict issued in absentia and the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with a criminal offence. The only means for the requesting state to remedy this situation is to give an assurance considered sufficient to guarantee the defendant the right to a retrial which safeguards the rights of the defence. These safeguards are based on Article 3 of the Second Additional Protocol of 17 March 1978 to the European Convention on Extradition and the relevant rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. It should be noted that Articles 2 and 3 of the said act (EIMP) make provision for the inadmissibility of extradition requests on grounds relating to the foreign proceedings (violation of the European Convention on Human Rights, persecution of the defendant on account of his or her political opinions, risk of aggravation of the situation of the defendant or the presence of other serious shortcomings in the proceedings) or the nature of the offence (primarily political nature or violation of military service obligations).

Turkey	The extradition request is executed in the event that an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence as envisaged in accordance with the Second Additional Protocol to the European Convention on Extradition to the person who is requested to be extradited and against whom the judgment in absentia is rendered. If the mentioned guarantee is not given, the request is refused. Not giving this guarantee is a compulsory reason of refusal.
United Kingdom	**<u>Section 85 of the Extradition Act 2003</u>** Under this provision, in cases where the person is wanted in order to serve a sentence, the judge must decide whether the person was convicted in his/her presence. If the judge decides that the person was not present when convicted, the judge must then decide whether the person deliberately absented him/herself. If the judge decides that the person did not deliberately absent him/herself, the judge must then decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial. If the judge answers that question in the negative, s/he must discharge the person. The judge may only answer that question in the affirmative if in any retrial/review the person would have these rights – (a) the right to defend him/herself in person or through legal assistance of his/her own choosing or, if s/he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required; and (b) the right to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her. Only in those circumstances may a judge discharge a person on the grounds that s/he was tried in absentia.

	23. Do you understand Article 3 of the Second Additional Protocol to the European Convention on Extradition as follows: if the requesting party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence, it means that:		
	the person claimed has an automatic (i.e. without the need to make any further request) or semiautomatic (i.e. the person has to make a request but the request cannot be denied by the authorities) right to a retrial	**the person concerned only has the right to the possibility of a retrial being considered by the requesting state**	**or do you have a different interpretation of Article 3? (please, describe):**
Albania	X		
Armenia	X		
Austria	X		
Bosnia and Herzegovina	X		
Cyprus	X		
Czech Republic	X		
Denmark	X		
Estonia		X	
Finland	X		
France			France has neither signed nor ratified the Second Additional Protocol to the European Convention on Extradition.
Germany	X		
Greece	X		
Ireland			
Italy			

Latvia		X	
Liechtenstein			As mentioned in the answer to question 1: Liechtenstein did not sign the Second Additional Protocol of the European Convention on Extradition so far. Therefore we do not have any special interpretation of this clause.
Moldova		X	
Norway	X		
Portugal	X		
Russian Federation			The person, who has claimed the right for the retrial, should file a petition for the retrial, and this request cannot be declined by the requesting Party.
Slovak Republic	X		
Spain		X	
Sweden	X		
Switzerland		X	
Turkey			It is interpreted as the extradition request shall be executed if the assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence as envisaged in accordance with the Second Additional Protocol to the European Convention on Extradition to the person who is requested to be extradited.
United Kingdom	X		

24. What legal conditions need to be met according to the legislation and/or legal practice of your state with regard to the clause "minimal rights of defence" (within the meaning of Article 3 of the Second Additional Protocol to the European Convention on Extradition)?	
Albania	The Constitution of the Republic of Albania as the fundamental law (article 31) provides the right of everyone in a criminal proceeding : a. to be notified immediately and in detail of the charges against him, of his rights, and to have the possibility created to notify his family or relatives; b. to have sufficient time and facilities to prepare his defense; c. to have the assistance of a translator free of charge, when he does not speak or understand the Albanian language; ç. to be defended by himself or with the assistance of a legal defence counsel chosen by him; to communicate freely and privately with him, as well as to be provided free defense when he does not have sufficient means; d. to question witnesses who are present and to seek the appearance of witnesses, experts and other persons who can clarify the facts. This provision has been reflected also in the Criminal Code and Criminal Procedural Code. The defendant has the right to present his own defense or with the assistance of a defense counsel. When he has no sufficient means, he is provided with the services of a defense counsel free of charge. The defense counsel shall assist the defendant to have his procedural rights guaranteed and his legitimate interests protected.
Armenia	N/A
Austria	The minimal rights of defence comprise rights specified in the Human Rights Convention, in particular the rights mentioned in Article 6.3 of the Human Rights Convention.
Bosnia and Herzegovina	During whole proceeding the person claimed has a right to present his own defense or to defend himself with the professional aid of a defense attorney of his own choice. If he/she does not have a defense attorney, a defense attorney shall be appointed to him/her in cases as stipulated by the Criminal Procedure Code.
Cyprus	The right to be represented by counsel, to understand the language of the proceedings or have them translated into a language he understand, to be informed from the beginning what the charges against him fare to have sufficient time to prepare his defence, to be granted legal aid if he cannot afford to appoint counsel to defend him.
Czech Republic	This issue has not been authoritatively dealt with in Czech extradition jurisprudence. However, it seems that "minimal rights of defence" within the meaning of Article 3 of the Second Additional Protocol to the European Convention on Extradition could be interpreted within the meaning of Article 6(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms. In any case, extradition mustn't result in a flagrant denial of justice (see for example Othman (Abu Qatada) v. the United Kingdom, application No. 8139/09, judgement of 17 January 2012, para. 259).

Denmark	As mentioned under item 22, the European Convention on Human Rights is applicable Danish law. Accordingly, under Danish law the term “minimal rights of defence” is to be construed according to article 6 of the European Convention on Human Rights.
Estonia	Participation of legal counsellor in trial despite participation of accused.
Finland	There are two important precedents regarding extraditing persons from Finland on the basis of sentences rendered in absentia. According to the Finnish Supreme Court the person should be extradited only if the person has had a possibility to defend himself or herself in the sentencing state as provided for in Article 6 (3) (c) of the ECHR.
France	Not applicable, as France has neither signed nor ratified the Second Additional Protocol to the European Convention on Extradition.
Germany	According to the consistent past decisions of the Federal Constitutional Court, „minimal rights of defence" include the following rights of the person sought: - the right of the person sought to be informed about the fact that proceedings concerning him/her have been conducted and concluded, - opportunity for the person sought to be heard in accordance with the law and to defend himself/herself effectively after having been informed of the proceedings. There must be evidence that the person sought has actually acquired knowledge of the criminal proceedings conducted against him/her and of the scheduled or anticipated trial dates, and this knowledge must be based on official notification.
Greece	Art. 96-104 of the Greek Code of Criminal Procedure and the relevant articles of the European Convention on Human Rights determine the rights, which could be considered as “minimal rights of defense”. Those are: a) the right to assist and apologize with an attorney, b) the right to have access to interpreting services or to a language that the arrested can understand, c) the right to apologize after having been fully informed about his rights, d) the right to prepare his apology in cooperation with his attorney, e) the right to remain silent or not to answer to any question he does not wish to answer, f) the right to have direct access to the full content of the file.
Ireland	/
Italy	The sentenced person must have been informed of the proceedings initiated against him/her; the charges brought against him/her must be indicated; he/she must have been enabled to take part in the proceedings and legal assistance during the entire proceedings must have been guaranteed to him/her.
Latvia	According to Criminal Procedure Law Section 465 Part 1, a court may examine a criminal case in the absence of the accused, if the accused is located in a foreign state and his or her whereabouts are unknown or the ensuring of his or her appearance before the court is not possible.
Liechtenstein	/

Moldova	In accordance with Art. 17 (**Ensuring the Right to Defense)** of Criminal Procedure Code of the Republic of Moldova: (1) In the entire course of a criminal proceeding, the parties (suspect/accused/defendant, injured party, civil party, civilly liable party) have the right to be assisted or, as the case may be, represented by a defense counsel of their choosing or by an attorney providing the legal assistance guaranteed by the state. (2) The criminal investigative body and the court must ensure the full exercise of the procedural rights of the participants in a criminal proceeding in line with this Code. (3) The criminal investigative body and the court must ensure the right of the suspect/ accused/ defendant to qualified legal assistance provided by a defense counsel of their choosing or by an attorney providing the legal assistance guaranteed by the state and independent of the investigative body. (4) While examining the injured party and the witnesses, the criminal investigative body shall not be entitled to prohibit the presence of the attorney invited by the person examined to represent him/her. (5) If the suspect/accused/defendant cannot afford a defense counsel, he/she shall be assisted free of charge by a court-appointed attorney providing the legal assistance guaranteed by the state.
Norway	/
Portugal	According to Article 6 of Law 144/99, requests for co-operation shall be refused where the proceedings do not comply with the requirements laid down in the European Convention of Human Rights or other relevant international instruments ratified by Portugal (eg, of the Charter of Fundamental Rights of the European Union, Articles 47-48; Parliament and Council Directive 2010/64/EU of 20 October 2010, on the right to interpretation and translation in criminal proceedings). In the Portuguese legal order, the fundamental rights of the defence are enshrined in article 32 of the Constitution of the Portuguese Republic on safeguards in criminal procedure (*inter alia*, right to choose counsel and to be assisted by him/her in relation to every procedural act, the law specifying the cases and procedural phases in which the assistance by a lawyer is mandatory; right to appeal; nullity of evidence obtained through inadmissible means). More specifically within the context of a trial hearing without the presence of the defendant, the Supreme Court of Justice has declared that the right of the defence consists of the right to be heard until the end of the hearing, the right to request to be heard on the second date scheduled by the court for the hearing, the right to be served with the judgment, the right to appeal, the right to request that the hearing be held in one's absence and the right to counsel (Supreme Court of Justice, decision of 14 January 2009, proc. 08P2494; see also question 1, sub question 2, above). According to article 16, fundamental human rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules and the corresponding constitutional provisions must be interpreted and completed in harmony with the Universal Declaration of Human Rights.
Russian Federation	When a request for extradition is sent to the competent authorities of a foreign state, the Prosecutor General's Office of the Russian Federation guarantees that

	the person will be subject to criminal prosecution only for those crimes, in connection with which his /her extradition is sought, and after the criminal prosecution or court examination is over, and the sentence is served in case of indictment, he/she will be able to leave the territory of Russia. If the criminal law of the Russian Federation provides for the death penalty for the crime committed by a person whose extradition is sought, then the request for extradition guarantees that the death penalty as an exclusive penalty will not be applied and indicate that this is provided for by the Russian legislation (Article 59 part 2.1 of the Criminal Code of the Russian Federation). When examining a request for extradition, some states ask for the additional guarantees (possibility of visiting an extradited person in a custodial institution by the competent representatives of the consulate service of the state, which extradited the person, and holding private talks with him/her, i.e. without third parties; possibility of asking for information on the investigation of a criminal case by the competent representatives of the consulate service of the state, which extradited the person, and being present during the conduction of investigative activities with his/her participation, conducted during the preliminary investigation of a criminal case; advising of the competent body, which extradited the person, of any complaints, filed by this person or on his/her behalf, on ill-treatment or physical violence used by the Russian police officers and prison staff against him/her, and on the results of examination of complaints).
Slovak Republic	The concerned person or his/her legal counsel should have during the trial in absentia equivalent procedural rights as person during the standard trial in criminal proceedings.
Spain	The right of defence in a process with all guarantees in relation with Article 6.3 of the European Convention on Human Rights of 1950.
Sweden	Please see the answer to question number 22 (Section 9 of the Extradition for Criminal Offences Act). The conditions stipulated in Article 6 of the European Convention on Human Rights need to be met.
Switzerland	In order to meet the requirements of Article 37, para. 2, of the Federal Act on International Mutual Assistance in Criminal Matters, the minimum rights of defence must be respected. In the case of judgments in absentia, Swiss law takes this to mean that the person concerned is entitled to a fair hearing by an independent and impartial tribunal established by law and, more broadly, the right to be tried in his or her presence in accordance with Article 6 of the European Convention on Human Rights. These safeguards are also enshrined in Swiss legislation, at the level of the Federal Constitution (Cst.; RS 101), and included in the procedural laws of the various fields of law. Although hearings may be held in his or her absence, a person convicted in absentia must have the right to have his case heard again. In determining whether the rights of the defence have been safeguarded, Swiss case-law relies in particular on the presence of a legal counsel and his or her participation in the proceedings, in particular whether he or she appealed against the judgment delivered in absentia. It is accordingly necessary to ascertain whether the judgment in absentia was contested at some point and, if so, by which party. It is also necessary to assess the appeal authority's de facto and de jure review powers, as well as the way in which the defence was able to present its case (for instance, through the presentation of evidence or the hearing of witnesses).

Turkey	The minimum right of defense is recognized that the person whose extradition is requested should be given the right of defense to concerning the evidences against the person by bringing the person before the assigned or competent court which has rendered the judgment.
United Kingdom	Please refer to the response under question 22.

ANNEX I

Annex to the Portuguese reply to the questionnaire
Summary information

1. In the Portuguese law, as a rule, the presence of the defendant in the trial hearing is mandatory and is both **a right and a duty** of that defendant.

2. Judgments without the presence of the defendant are admissible in the following cases:

A) The person, duly served with the date for trial, failed to appear and did not justify his/her absence.

> In this case, the person has already been heard as a defendant in the proceedings and has produced, and signed, a **statement of identity and residence** (appointed an address to the court, in order to be subsequently served by non registered mail and was informed, notably, that an unjustified absence would lead to a trial without his/her presence);

B) The proceedings started as **simplified proceedings** but have acquired the form or ordinary proceedings and the defendant, duly served with the date for trial, does not appear for trial;

> In this case the proceedings relate to less serious offences and the person is aware of his/her statute as a defendant therein;

C) The defendant has **requested or consented** to be tried in his/her absence;

> In this case the defendant is unable to appear in court for trial due, notably, to old age, serious illness or for living abroad.

3. Contumacy: if the person has never been heard as a defendant and the attempts to serve him/her with the charges and the date for trial, including through edicts, have been ineffective, the law prevents the possibility of a trial in his/her absence.

4. In any of the preceding cases, the defendant is **represented by a counsel in the trial hearing, for all possible purposes**: lawyer or court-appointed counsel.

5. In the situations referred in 2.A., the defendant shall be **served in person**, in a language he/she understands, when he/she voluntarily appears or is arrested.

On that occasion he/she will be served with the judgment, as well as with any appeal previously lodged by other parties (Public Prosecutor, private prosecutor, civil party).

The notice shall expressly mention the right of appeal and the delay for lodging it, otherwise nullity will occur.

The defendant's counsel is also served with the judgment.

6. The defendant has a **right to appeal** but not a right to request for a new trial.

When exercising his/her right to appeal, it is up to the defendant to choose challenging the judgment on points of fact or only on points of law.

The second degree court is always competent to decide on points of fact. It may, under the law:

- confirm or change the appealed judgment;

- refer the judgment for a new trial or carry out the renewal of the evidence, if it is satisfied that a decision may not be reached due to the judgment's errors.

The **renewal of the evidence** takes place in a hearing held by the second degree court. The defendant is served with the date for it, but if he/she does not appear, the hearing shall be held without his/her presence.

The **new trial** is held before a first degree court, different from the one that issued the previous judgment, all the provisions about the trial applying in the case (eg, new evidence, right to appeal).

According to the view of some practitioners, experience shows that second degree courts make full use of the legal provisions allowing a new trial before a first degree court.

7. The judgment issued without the presence of the defendant **does not become final** (*res judicata*) until this judgment, or the judgment rendered after the new trial, may no longer be appealed against.

Until that moment the person concerned keeps his/her statute of a defendant in the proceedings and, if detained, this is a provisional detention, to be deducted from the custodial sentence eventually imposed.

ANNEX II

Questionnaire concernant les jugements par défaut et la possibilité d'être rejugé
Réponse de la France

Jugement par défaut

1. Dans votre pays, est-il possible de rendre un jugement par défaut qui se situe dans le champ d'application de l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition ou qui concerne des cas similaires ?

Si oui, quelles sont les conditions juridiques selon la législation et/ou les pratiques juridiques de votre pays ?

S'il existe plusieurs types de jugements ou procédures par défaut, veuillez donner des informations sur chacun d'entre eux.

OUI. Le droit français prévoit qu'une décision judiciaire prononçant une peine puisse être prononcée en l'absence du condamné. Ces décisions sont qualifiées, selon les distinctions ci-dessous énoncées, de décisions rendue par défaut, par itératif défaut ou par contradictoire à signifier. Les procédures respectent alors les « droits minimaux de la défense » et assurent, comme le prévoit l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition à la personne condamnée « le droit à une nouvelle procédure de jugement qui sauvegarde les droits de la défense » si elle le souhaite.

Les jugements rendus « par défaut » ne recouvrent donc pas en droit français l'ensemble des jugements rendus en l'absence du condamné. Chacune de ces catégories revêtent des conditions juridiques distinctes et emportent des effets distincts :

- **Jugement par défaut** (articles 412, 487, 488 du code de procédure pénale (CPP)):

Un jugement est dit rendu par défaut lorsque le prévenu cité régulièrement n'a pas eu connaissance de la citation et n'a pas comparu à l'audience ou n'a pas été représenté régulièrement. La personne ainsi condamnée peut former opposition et/ou appel de la décision.

- **Jugement par itératif défaut** (article 494 al 1 du CPP):

Un jugement est rendu par itératif défaut lorsque le prévenu qui a fait régulièrement opposition à un précédent jugement rendu par défaut ne comparaît pas pour voir statuer sur son opposition alors qu'il a été informé de la date d'audience. L'opposition est alors non avenue et le dispositif du jugement rendu par défaut est confirmé, sauf à la juridiction, si des circonstances particulières le justifient à modifier par décision spécialement motivée le jugement frappé d'opposition, sans possibilité d'aggravation de la peine.

- **Jugement par contradictoire à signifier** (articles 410, 412 du CPP):

Ces jugements concernent des prévenus qui, bien que cités à leur personne ou ayant eu connaissance de la citation régulière conformément aux articles 557 et 558 du CPP (citation à domicile, à étude d'huissier suivie d'une lettre recommandée avec accusé de réception signé ou récépissé renvoyé, convocation par officier de police judiciaire, remise de l'exploit par officier/agent de police judiciaire de l'article 560 du CPP) n'ont pas comparu ou n'ont pas été régulièrement représentés et n'ont pas fourni d'excuse reconnue valable par la juridiction.

Remarques:

- Quelles que soient les conditions de citation, si un avocat se présente pour assurer la défense du prévenu sans pour autant être dépositaire d'un mandat de la part du prévenu, il doit être entendu s'il en fait la demande, et les jugements sont alors qualifiés «contradictoires à

signifier » (articles 410 et 412 du CPP).

- Les citations délivrées à l'adresse déclarée par le mis en examen au cours de l'instruction sont réputées faites à personne, même si l'intéressé n'a pas été touché. Tous les jugements correctionnels après renvoi du juge d'instruction et tous les arrêts des chambres d'appels correctionnels (sur appel du condamné) sont des contradictoires à signifier et ne peuvent plus être rendus par défaut (articles 179-1 et 503-1 du CPP).

2. Dans la législation de votre pays, les décisions ci-dessous sont-elles considérées comme des décisions par défaut ? (plusieurs réponses possibles) :

☐	**Toutes les décisions rendues en l'absence de la personne concernée au procès**	
☐	**Les décisions rendues en l'absence de la personne concernée, qui était néanmoins défendue par un avocat pendant le procès :**	
	☐	**uniquement si l'avocat était mandaté par la personne concernée**
	☐	**même si la personne concernée était défendue par un avocat désigné par le tribunal qui n'a eu aucun contact avec elle**
☐	**Les décisions rendues en l'absence de la personne concernée qui, par la suite :**	
	☐	**a déclaré expressément qu'elle ne contestait pas la décision**
	☐	**n'a pas demandé la tenue d'un nouveau procès[2] dans le délai imparti**
☐	**Autres décisions (veuillez préciser) :**	
	La réponse est contenue dans le point 1.	

<u>Convocation</u>

3. Dans la législation de votre pays, la personne concernée doit-elle recevoir notification de la date et du lieu prévus pour le procès ayant abouti à la décision ? Si oui, veuillez décrire la procédure (par exemple convocation en personne et/ou par d'autres moyens ; information officielle, etc.) :

La personne prévenue doit recevoir notification de la date et du lieu du procès. Cette notification peut prendre plusieurs formes.

<u>La citation directe (articles 550, 551 et suivants du CPP):</u> La citation est l'acte, appelé « exploit », par lequel un huissier de justice donne connaissance à la requête du ministère public à la personne prévenu du procès à venir. Elle énonce le fait poursuivi et vise le texte de la loi qui le réprime. Elle indique le tribunal saisi, le lieu, l'heure et la date de l'audience, et précise la qualité de prévenu, de civilement responsable, ou de témoin de la personne citée. La personne reçoit copie de l'exploit et

[2] L'expression « nouveau procès » s'entend au sens générique, sans préjuger de la procédure retenue par les systèmes juridiques des Etats. Elle suit l'usage linguistique de la Cour européenne des droits de l'homme.

signe l'original.

La convocation par officier de police judiciaire ou un greffier et si le prévenu est détenu, par le chef de l'établissement pénitentiaire (article 390-1 du CPP): Il s'agit d'une convocation remise à la demande du parquet, soit par un officier de police judiciaire, soit par un greffier, soit par le chef d'établissement pénitentiaire, à la personne même de celui qui doit comparaître. La convocation énonce le fait poursuivi, vise le texte de loi qui le réprime et indique le tribunal saisi, le lieu, la date et l'heure de l'audience. Elle précise, en outre, que le prévenu peut se faire assister d'un avocat. Elle informe qu'il doit comparaître à l'audience en possession des justificatifs de ses revenus ainsi que de ses avis d'imposition ou de non-imposition. Elle l'informe également que le droit fixe de procédure dû en application du 3° de l'article 1018 A du code général des impôts peut être majoré s'il ne comparaît pas personnellement à l'audience ou s'il n'est pas jugé dans les conditions prévues par les premier et deuxième alinéas de l'article 411 du présent code. Elle est constatée par un procès-verbal signé par le prévenu qui en reçoit copie

La convocation par procès-verbal (articler 394 du CPP): Le procureur de la République peut lui-même convoquer la personne devant le tribunal après l'avoir déférée devant lui à l'issue de la garde à vue. A cette fin, il lui notifie les faits retenus à son encontre ainsi que le lieu, la date et l'heure de l'audience. Il informe également le prévenu qu'il doit comparaître à l'audience en possession des justificatifs de ses revenus ainsi que de ses avis d'imposition ou de non-imposition. Cette notification, mentionnée au procès-verbal dont copie est remise sur-le-champ au prévenu, vaut citation à personne. Elle est informée qu'elle peut choisir un avocat.

La comparution immédiate (article 395 et suivants du CPP) : Le procureur de la République fait déférer le prévenu et décide d'une comparution immédiate de l'intéressé devant le tribunal. Le procureur de la République reçoit le prévenu et établit un procès-verbal précisant la nature de la procédure, les faits reprochés et les textes de répression, ainsi que les diligences relatives aux droits de la défense (désignation d'un avocat). Il est avisé de son passage le jour même devant le tribunal. Le prévenu doit être assisté d'un avocat choisi par l'intéressé, ou désigné d'office.
Si le tribunal ne peut être réuni le jour même, le prévenu est alors présenté au juge des libertés et de la détention (JLD) à la demande du parquet qui peut décider de placer le prévenu en détention provisoire. La personne est alors avisée du jour et de la date de l'audience dans l'ordonnance du JLD dont elle reçoit copie. Le JLD peut également décider de la placer sous contrôle judiciaire. Le procureur notifie alors à l'intéressé la date et l'heure de l'audience selon les modalités prévues pour la convocation par procès-verbal (article 396 du CPP).

La notification par officier de police judiciaire : La décision rendue par défaut peut faire l'objet d'une voie de recours particulière, l'opposition, qui est une voie de réformation (article 489 du CPP). L'opposition vise à mettre à néant la décision rendue par défaut, et à faire rejuger l'affaire par le même tribunal**.** Lorsque le parquet a connaissance de l'opposition, il fait convoquer l'opposant à une nouvelle audience. La date de l'audience doit être notifiée au prévenu, soit par procès-verbal (policier, gendarme, établissement pénitentiaire, agent du greffe ou le procureur), soit par citation d'huissier. L'acte doit respecter les règles précitées relatives au délai de comparution, sur les faits reprochés, les textes de répression, et le rappel de la date de décision pénale de condamnation par défaut, ainsi que la nature exacte des sanctions prononcées.

4. La législation de votre pays prévoit-elle les garanties ci-dessous en matière de notification à la personne concernée de la date et du lieu prévus pour le procès ? (plusieurs réponses possibles) :

X	**La personne est informée de telle manière qu'il est établi sans équivoque qu'elle a connaissance de la prochaine tenue du procès**
☐	**La personne est informée dans une langue qu'elle comprend**
X	**La personne reçoit les informations en temps utile, c'est-à-dire suffisamment à l'avance pour lui permettre de participer au procès, de se préparer efficacement et d'exercer son**

	droit de se défendre **Si oui, veuillez donner des informations quant au délai :**
	En cas de citation directe (article 552 du CPP), le délai entre le jour où la citation est délivrée et le jour fixé pour la comparution devant le tribunal correctionnel ou de police est d'au moins dix jours, si la partie citée réside dans un département de la France métropolitaine ou si, résidant dans un département d'outre-mer, elle est citée devant un tribunal de ce département. Ce délai est augmenté d'un mois si la partie citée devant le tribunal d'un département d'outre-mer réside dans un autre département d'outre-mer, dans un territoire d'outre-mer, à Saint-Pierre-et-Miquelon ou Mayotte ou en France métropolitaine, ou si, cité devant un tribunal d'un département de la France métropolitaine, elle réside dans un département ou territoire d'outre-mer, à Saint-Pierre-et-Miquelon ou Mayotte. Si la partie citée réside à l'étranger, ce délai est augmenté d'un mois si elle demeure dans un Etat membre de l'Union européenne et de deux mois dans les autres cas. Le non-respect du délai entraine la nullité de la procédure mais la personne prévenue peut y renoncer en comparaissant volontairement, ou en demandant à être jugée en son absence, représentée par son avocat. En cas de renvoi après ordonnance de renvoi du juge d'instruction, et que la personne est détenu, il doit être jugé sur le fond dans les deux mois de l'ordonnance de renvoi. Le tribunal peut cependant, à titre exceptionnel, par une décision mentionnant les raisons de fait ou de droit faisant obstacle au jugement de l'affaire, ordonner la prolongation de la détention pour une nouvelle durée de deux mois. Cette décision peut être renouvelée une fois dans les mêmes formes. En cas de convocation selon l'article 390-1 du CPP ou de notification par officier de police judiciaire, les délais sont identiques à ceux prévus pour la citation directe. La notification a lieu en présence d'un interprète. En cas de convocation par procès-verbal (articler 394 et suivant du CPP), l'audience doit avoir lieu dans un délai qui ne peut être inférieur à 10 jours, sauf renonciation expresse de l'intéressé en présence de son avocat, ni supérieur à deux mois. Le procureur de la République lui notifie les faits retenus à son encontre ainsi que le lieu, la date et l'heure de l'audience. Il informe également le prévenu qu'il doit comparaître à l'audience en possession des justificatifs de ses revenus ainsi que de ses avis d'imposition ou de non-imposition. Cette notification, mentionnée au procès-verbal dont copie est remise sur-le-champ au prévenu, vaut citation à personne. Le procureur de la République informe alors la personne déférée devant lui qu'elle a le droit à l'assistance d'un avocat de son choix ou commis d'office. L'avocat choisi ou le bâtonnier est informé, par tout moyen et sans délai, de la date et de l'heure de l'audience ; mention de cet avis est portée au procès-verbal. L'avocat peut, à tout moment, consulter le dossier (Article 393) La notification a lieu en présence d'un interprète. En cas de comparution immédiate (article 395 et suivants du CPP), la personne est traduite sur le champ, après son déferement devant le procureur de la République, devant le tribunal. Cette procédure a vocation à s'appliquer à des affaires simples n'exigeant pas de nouvelles investigations, où il apparait au procureur de la république que les charges réunies sont suffisantes et que l'affaire est en état d'être jugée. Le prévenu doit être assisté d'un avocat choisi par l'intéressé, ou désigné d'office. L'avocat doit pouvoir librement consulter le dossier de la procédure et s'entretenir avec son client. Ces formalités doivent figurer au procès-verbal du procureur à peine de nullité (art.393 CPP). La personne prévenue est obligatoirement assistée par un avocat de son choix ou un avocat commis d'office qui consulte préalablement à l'audience le dossier et s'entretient avec son

	client. Le président doit d'abord informer le prévenu qu'il ne peut être jugé immédiatement que s'il y consent. Ce consentement doit être recueilli en présence de l'avocat du prévenu et consigné sur les notes d'audiences (article 397 du CPP). Le prévenu peut demander le renvoi de l'affaire. Si la durée de la peine privative de liberté prévue par les textes répressifs est inférieure ou égale à 7 ans, l'audience de renvoi doit avoir lieu dans un délai qui ne peut être inférieur à 2 semaines, sauf renonciation expresse du prévenu, ni supérieur à 6 semaines (article 397-1 al 1 du CPP). Si la durée de la peine prévue par les textes répressifs est supérieure à 7 ans, et si le prévenu, informé de ses droits, le demande expressément, l'audience de renvoi doit avoir lieu dans un délai qui ne peut être inférieur à 2 mois sans être supérieur à 4 mois. (article 397-1 al 2 du CPP). Lorsque le prévenu est placé en détention provisoire, le jugement au fond doit être rendu dans les 2 mois qui suivent le jour de sa première comparution devant le tribunal ou dans les 4 mois, si la peine encourue est supérieure à 7 ans et si le prévenu, informé de ses droits, a sollicité un délai de renvoi plus long (article 397-3 dernier alinéa du CPP). La notification a lieu en présence d'un interprète.
☐	**Au départ, la date prévue pour le procès peut, pour des raisons pratiques, être exprimée sous la forme de plusieurs dates éventuelles couvrant une courte période. Si tel est le cas, veuillez indiquer quelle est la règle :**
	La date pour le procès n'est jamais une date hypothétique. Elle peut en revanche consister en une période déterminée si le procès a vocation à durer plusieurs jours ou plusieurs mois. En cas de changement de date, une nouvelle convocation de l'intéressé devra être effectuée.
☐	**La convocation contient l'information ou la personne est informée séparément qu'une décision peut être rendue même en son absence au procès**
☐	**Autres garanties (veuillez préciser) :**
	La personne n'est pas informée spécifiquement qu'une décision peut être prise en son absence. La loi prévoit cependant un certain nombre de diligences de nature à favoriser une connaissance par la personne prévenue de la convocation à l'audience. La personne reste cependant libre de ne pas comparaître. De cette connaissance ou méconnaissance de la date de son procès dépendront les voies de recours qui seront ouvertes à la personne prévenue. La loi française encourage au contraire la personne prévenue à comparaître à l'audience. Ainsi l'article 390 du CPP prévoit que la citation informe le prévenu que le droit fixe de procédure dû en application du 3° de l'article 1018 A du code général des impôts peut être majoré s'il ne comparaît pas personnellement à l'audience ou s'il n'a pas mandaté un avocat pour le représenter. Il en est de même de la convocation par officier de police judiciaire, greffier, chef d'établissement pénitentiaire (article 390-1 du CPP). Dès lors que la personne a eu connaissance de la convocation, la loi estime que le prévenu doit comparaître. Ainsi, l'article 410 du CPP dispose que le prévenu régulièrement cité à personne doit comparaître, à moins qu'il ne fournisse une excuse reconnue valable par la juridiction devant laquelle il est appelé. Le prévenu a la même obligation lorsqu'il est établi que, bien que n'ayant pas été cité à personne, il a eu connaissance de la citation régulière le concernant dans les cas prévus par les articles 557, 558 et 560. Si ces conditions sont remplies, le prévenu non comparant et non excusé est jugé par jugement contradictoire à signifier, sauf s'il est fait application des dispositions de l'article 411 ». Notre jurisprudence a affirmé que l'article 410 du CPP n'était pas incompatible avec les dispositions de l'article 6 de la CEDH lequel ne confère pas au prévenu la faculté de s'abstenir de comparait en justice (cass crim 21 juin 1995).

	La personne prévenue sera jugée en son absence. Le tribunal peut également décider de renvoyer l'affaire à une date ultérieure et le cas échéant délivrer, si la peine encourue est égale ou supérieure à deux années d'emprisonnement, un mandat d'amener ou de recherche (article 410-1 du CPP). Il en est de même lorsque la citation n'a pas été délivrée à la personne du prévenu et qu'il n'est pas établi qu'il en ait eu connaissance (article 412 du CPP). Il convient de préciser la spécificité des procès devant la cour d'assises (affaires criminelles) : L'accusé absent sans excuse valable à l'ouverture de l'audience est jugé systématiquement par défaut, alors même qu'il aurait eu connaissance de la décision. Il en est de même lorsque l'absence de l'accusé est constatée au cours des débats et qu'il n'est pas possible de les suspendre jusqu'à son retour. Toutefois, la cour peut également décider de renvoyer l'affaire à une session ultérieure, après avoir décerné mandat d'arrêt contre l'accusé si un tel mandat n'a pas déjà été décerné (article 379-2 du CPP).

Avocat

5. Quelles sont les garanties prévues par la législation de votre pays en ce qui concerne le droit de l'accusé d'être défendu par un avocat lorsqu'il ne comparaît pas à son procès ?

Le droit français garantit le droit de l'accusé d'être défendu par un avocat lorsqu'il ne comparait pas à l'audience. Il revient en revanche au prévenu de faire lui-même la démarche de choisir un avocat désigné ou commis d'office, sauf pour les prévenus mineurs pour lesquels la présence d'un avocat est obligatoire et pour lesquels un avocat commis d'office est systématiquement convoqué.

L'avocat qui se présente à l'audience pour assurer sa défense d'un prévenu non comparant doit être entendu par le tribunal s'il en fait la demande, qu'il soit ou on en possession d'un mandat de représentation :

- L'article 410 du CPP vise l'hypothèse où le prévenu est cité à personne régulièrement ou a eu connaissance de la citation bien que n'ayant pas été régulièrement cité à personne, même lorsque l'avocat n'a pas de mandat de représentation.
- L'article 412 du CPP vise l'hypothèse où la citation n'a pas été délivrée à la personne du prévenu, et qu''il n'est pas établi qu'il ait eu connaissance de la citation.
- L'article 411 du CPP vise l'hypothèse où l'avocat dispose d'un mandat de représentation : « Quelle que soit la peine encourue, le prévenu peut, par lettre adressée au président du tribunal et qui sera jointe au dossier de la procédure, demander à être jugé en son absence en étant représenté au cours de l'audience par son avocat ou par un avocat commis d'office ». Ces dispositions sont applicables quelles que soient les conditions dans lesquelles le prévenu a été cité. L'avocat du prévenu, qui peut intervenir au cours des débats, est entendu dans sa plaidoirie et le prévenu est alors jugé contradictoirement. Il est jugé par jugement contradictoire à signifier si l'avocat n'est pas présent. Si le tribunal décide de renvoyer, la personne est jugée contradictoirement si son avocat est présent à la nouvelle audience, même si le prévenu ne répond pas à cette nouvelle citation. En l'absence d'avocat à l'audience, il est jugé par contradictoire à signifier.

Il en est de même en cas de procédure devant la cour d'assise, chargée de juger les faits criminels (article 379-3 du CPP). L'avocat devra être entendu.

6. La législation de votre pays prévoit-elle la possibilité que la personne concernée renonce à son droit de comparaître et de se défendre à son procès, explicitement ou implicitement, par sa conduite ? Si oui, la législation de votre pays prévoit-elle la possibilité que la personne ayant renoncé à son droit de comparaître soit défendue à son procès par un avocat qu'elle aura mandaté ?

La personne peut décider de ne pas comparaître le jour de l'audience. Elle peut faire part de cette décision par le biais d'une lettre adressée au tribunal, ou par l'intermédiaire de son avocat ou sans

explication faire le choix de ne pas se présenter à l'audience dont elle connait la date.. Elle sera alors, sauf excuse valable et demande de renvoi ou décision de renvoi du tribunal d'office, jugée en son absence.
Il ne s'agit pas à proprement parler d'une « renonciation » à un droit, car elle pourra décider de finalement comparaître.
Elle pourra mandater un avocat pour la représenter (voir point précédent). Elle sera alors jugée contradictoirement. Le jugement sera contradictoire à signifier si l'avocat ne se présente pas à l'audience.

Nouveau procès (critères et conditions)

7. La législation de votre pays prévoit-elle la possibilité d'un nouveau procès en cas de jugement par défaut ? Si oui, quelles sont les conditions juridiques (par exemple *ex officio* ou uniquement à la demande de la personne concernée, délais, etc.) à satisfaire pour obtenir la tenue d'un nouveau procès ? S'il existe plusieurs types de jugements ou procédures par défaut, veuillez donner des informations sur chacun d'entre eux :

Deux voies de recours sont prévues par la loi.
L'appel : la personne est rejugée par une la juridiction de second degré dite cour d'appel, qui réexamine le fond du dossier (culpabilité et peine).
L'opposition : le jugement par défaut est non avenu dans toutes ses dispositions (article 489 du CPP).

Leur accessibilité dépend de la qualification du jugement:

• la **décision est contradictoire à signifier :**

Le procureur de la République peut interjeter appel dans les 10 jours à compter du prononcé du jugement. Le procureur général près la cour d'appel peut interjeter appel dans un délai de 20 jours à compter du prononcé du jugement.
La personne condamnée peut interjeter appel dans un délai de 10 jours qui court à compter de la signification du jugement quel qu'en soit le mode (à personne, à domicile, à étude d'huissier, à parquet). Néanmoins lorsque le jugement rendu de façon contradictoire à signifier a condamné la personne à une peine d'emprisonnement ferme ou à une peine d'emprisonnement assortie d'un sursis partiel et que celui-ci n'a pas été signifié à personne, l'article 498-1 du CPP prévoit cependant que le condamné dispose encore d'un droit d'appel courant à compter de la date à laquelle le prévenu a eu connaissance de la condamnation (date de notification personnelle). Cette notification peut être faite par tout moyen. La personne pourra être écrouée en vertu de la décision de condamnation dûment signifiée et demeure détenue en attente de l'examen de son appel, sous le régime de la détention provisoire, jusqu'à l'audience devant la cour d'Appel.

• **La décision est prise par défaut** :

Le procureur de la République et le procureur général près la cour d'appel peuvent interjeter appel dans les mêmes conditions que pour les jugements contradictoire à signifier.

La personne condamnée a quant à elle deux voies de recours possibles : elle peut former opposition et /ou faire appel.
Si elle forme opposition et fait appel, la cour d'appel doit surseoir à statuer en attendant que le tribunal correctionnel ait rendu sa décision sur opposition.

L'appel (article 499 du CPP) doit être formé dans les 10 jours à compter de la signification quel qu'en soit le mode. Les délais peuvent être rallongés en cas de résidence dans les DOM TOM.

L'opposition (article 492 du CPP) doit être formulée dans les 10 jours (1 mois si le prévenu réside hors

de la métropole) à compter du moment où le prévenu a eu connaissance de la décision.
Tant que le prévenu n'a pas eu connaissance de la décision, l'opposition est recevable jusqu'à l'expiration des délais de prescription de la peine (5 ans en matière correctionnelle, 2 ans en matière contraventionnelle).

A défaut d'exercice d'un recours, la décision par défaut est définitive.

• **La décision est qualifiée d'itératif défaut** :
L'opposition est non avenue. Le jugement retrouve sa force exécutoire. Seul l'appel est possible. La procédure suivie est identique à celle retenue en cas de jugement contradictoire à signifier (art 494 du code de procédure pénale).

8. Si la tenue d'un nouveau procès doit être demandée par la personne reconnue coupable et condamnée et/ou autorisée par un tribunal ou une autre autorité, veuillez donner des informations sur la procédure (y compris le délai de dépôt de la demande et la date à laquelle le délai commence à courir) :

La réponse se trouve dans le point 7.

9. Quelles sont les conditions juridiques exigées pour une signification (notification) valable du jugement par défaut dans la perspective d'une procédure de recours ou de nouveau procès ?

La signification est régie par les articles 554 et suivants du code de procédure pénale.

Elle est effectuée à la requête du ministère public. L'huissier doit faire toutes diligences pour parvenir à la délivrance de son exploit à la personne même du destinataire.

Si la personne visée par l'exploit est absente de son domicile, la copie est remise à un parent allié, un personnel de maison ou à une personne résidant à ce domicile. L'huissier indique dans l'exploit la qualité déclarée par la personne à laquelle est faite cette remise.

Si la copie a été remise à une personne résidant au domicile de celui que l'exploit concerne, l'huissier informe sans délai l'intéressé de cette remise, par lettre recommandée avec avis de réception. Lorsqu'il résulte de l'avis de réception, signé par l'intéressé, que celui-ci a reçu la lettre recommandée de l'huissier, l'exploit remis à domicile produit les mêmes effets que s'il avait été délivré à personne.

L'huissier peut également, à la place de la lettre recommandée avec demande d'avis de réception, envoyer à l'intéressé par lettre simple une copie de l'acte accompagnée d'un récépissé que le destinataire est invité à réexpédier par voie postale ou à déposer à l'étude de l'huissier, revêtu de sa signature. Lorsque ce récépissé signé a été renvoyé, l'exploit remis à domicile produit les mêmes effets que s'il avait été remis à personne.

Si l'huissier ne trouve personne au domicile de celui que l'exploit concerne, il vérifie immédiatement l'exactitude de ce domicile. Lorsque le domicile indiqué est bien celui de l'intéressé, l'huissier mentionne dans l'exploit ses diligences et constatations, puis il informe sans délai l'intéressé, par lettre recommandée avec demande d'avis de réception, en lui faisant connaître qu'il doit retirer dans les plus brefs délais la copie de l'exploit signifié à l'étude de l'huissier de justice, contre récépissé ou émargement, par l'intéressé ou par toute personne spécialement mandatée. Si l'exploit est une signification de jugement rendu par itératif défaut, la lettre recommandée mentionne la nature de l'acte signifié et le délai d'appel.

Lorsqu'il résulte de l'avis de réception, signé par l'intéressé, que celui-ci a reçu la lettre recommandée de l'huissier, l'exploit déposé à l'étude de l'huissier de justice produit les mêmes effets que s'il avait été délivré à personne.

L'huissier peut également, à la place de la lettre recommandée avec demande d'avis de réception, envoyer à l'intéressé par lettre simple une copie de l'acte ou laisser à son domicile un avis de passage invitant l'intéressé à se présenter à son étude afin de retirer la copie de l'exploit contre récépissé ou émargement. La copie et l'avis de passage sont accompagnés d'un récépissé que le destinataire est invité à réexpédier par voie postale ou à déposer à l'étude de l'huissier, revêtu de sa signature. Lorsque l'huissier laisse un avis de passage, il adresse également une lettre simple à la personne. Lorsque ce récépissé a été renvoyé, l'exploit déposé à l'étude de l'huissier de justice produit les mêmes effets que s'il avait été remis à personne.

Si la personne visée par l'exploit est sans domicile ou résidence connu, l'huissier remet une copie de l'exploit au parquet du procureur de la République du tribunal saisi.

Lorsqu'il n'est pas établi que l'intéressé a reçu la lettre qui lui a été adressée par l'huissier conformément aux dispositions précédentes, ou lorsque l'exploit a été délivré au parquet, un officier ou un agent de police judiciaire peut être requis par le procureur de la République à l'effet de procéder à des recherches en vue de découvrir l'adresse de l'intéressé. En cas de découverte de ce dernier, l'officier ou l'agent de police judiciaire lui donne connaissance de l'exploit, qui produit alors les mêmes effets que s'il avait été délivré à personne.

Dans tous les cas, l'officier ou l'agent de police judiciaire dresse procès-verbal de ses recherches et le transmet sans délai au procureur de la République.

Le procureur de la République peut également prescrire à l'huissier de nouvelles recherches, s'il estime incomplètes celles qui ont été effectuées.

L'original de l'exploit doit être adressé au ministère public dans les vingt-quatre heures, accompagné d'une copie.

L'article 555-1 du CPP dispose enfin que vaut signification à personne par exploit d'huissier la notification d'une décision effectuée soit, si la personne est détenue, par le chef de l'établissement pénitentiaire, soit, si la personne se trouve dans les locaux d'une juridiction pénale, par un greffier ou par un magistrat.

10. Quelles sont les conséquences de la signification du jugement par défaut sur la procédure de recours ou de nouveau procès ?

La signification du jugement permet de faire partir le délais de recours du prévenu, appel ou opposition, selon les distinctions énoncées ci-dessus (voir le point 7).

11. La personne concernée est-elle informée de son droit à un nouveau procès et, le cas échéant, des conditions particulières à respecter ?

☐	**Non**	
X	**Oui (plusieurs réponses possibles)**	
	☐	**Dans la convocation au procès**
	X	**Lors de la signification du jugement par défaut**
	☐	**Par les informations concernant tout délai à respecter pour demander un nouveau procès (s'il y a lieu)**
	☐	**Dans une langue qu'elle comprend**

	☐	**D'une autre manière (veuillez préciser) :**

12. La personne concernée est-elle autorisée à participer au nouveau procès ?

Oui. Elle peut être assistée ou représentée par un avocat.

13. Dans la législation de votre pays, le nouveau procès est-il considéré comme une procédure où tout recommence à zéro, avec toutes les voies de recours possibles (c'est-à-dire comme si la décision rendue en l'absence de la personne concernée n'avait jamais existé) ou plutôt comme un recours extraordinaire ?

Comme précédemment énoncé, en cas :

-d'appel : la personne est rejugée par une juridiction de second degré dite cour d'appel, qui réexamine le fond du dossier (culpabilité et peine). Le jugement de première instance n'est pas annulé, mais la cour d'appel recommence un examen complet de l'affaire.

-d'opposition : le jugement par défaut est non avenu dans toutes ses dispositions (article 489 du CPP) et la personne est rejugée par la juridiction de premier degré. Tout recommence donc à zéro.

14. Pendant le nouveau procès, la législation de votre pays prévoit-elle une nouvelle appréciation du bien-fondé de l'accusation, à la fois sur le fond et sur la forme, y compris de nouveaux éléments de preuve éventuels ?

La juridiction saisie apprécie le bienfondé de l'accusation sur le fond et la forme. Elle examine le dossier tel qu'il résulte de l'enquête. Si les parties souhaitent se prévaloir de nouveaux éléments de preuve, ceux-ci devront être soumis au principe du contradictoire et être mis dans le débat.

15. La législation de votre pays prévoit-elle la possibilité d'inverser ou de modifier la décision initiale rendue en l'absence de la personne concernée ?

☐	**Non**
☐	**Oui, mais seulement en faveur du défendeur**
☐	**Oui, en faveur ou au détriment du défendeur**
☐	**Il existe d'autres restrictions (veuillez préciser) :**
	En cas d'appel, la cour peut, sur l'appel du ministère public, soit confirmer le jugement, soit l'infirmer en tout ou en partie dans un sens favorable ou défavorable au prévenu. La cour ne peut en revanche, sur le seul appel du prévenu, du civilement responsable, de la partie civile ou de l'assureur de l'une de ces personnes, aggraver le sort de l'appelant (article 515 du CPP). L'absence ou la présence du prévenu lors de son premier procès est indifférente. En cas d'opposition et d'absence du prévenu à la nouvelle audience, l'opposition est non avenue et le jugement par défaut retrouve sa force exécutoire.

16. La tenue du nouveau procès ou la demande de nouveau procès par la personne concernée suspend-elle l'exécution de la décision rendue en l'absence de l'intéressé ?

Pendant les délais d'appel (sauf le délai d'appel du procureur général) et durant l'instance d'appel, il est sursis à l'exécution du jugement sauf si le jugement a prononcé l'exécution provisoire, ou un mandat de dépôt ou le maintien en détention provisoire de la personne condamnée (article 506 du CPP).

L'opposition met à néant le jugement de première instance, qui ne peut plus être exécutée.

17. Le nouveau procès doit-il (re)commencer dans un certain délai ?

Les délais sont identiques à ceux évoqués en point 4. Si la personne est détenue, elle devra être jugée dans les deux mois de l'exercice de son recours.

18. Si la décision n'a pas été personnellement notifiée à la personne concernée avant sa remise, quand celle-ci recevra-t-elle une copie de la décision (si possible, veuillez indiquer un délai approximatif) ? Recevra-t-elle cette copie dans une langue qu'elle comprend ?

Dans tous les cas, les décisions sont notifiées à la personne condamnée qui n'était pas présente au procès avant d'être mises à exécution.

Ainsi, si la signification n'a pas pu être faite à la personne même condamnée, la décision lui sera en outre notifiée dans une langue qu'elle comprend dans les meilleurs délais avec remise d'une copie (par les forces de l'ordre, un greffier, un magistrat ou le chef d'établissement) lorsque :

- La peine prononcée est une peine d'emprisonnement et que la décision est contradictoire à signifier
- La décision porte condamnation et que la décision est par défaut.

Avant toute incarcération la personne aura donc connaissance de la décision.

19. Si, après sa remise, la personne concernée a exercé son droit à un nouveau procès, sa détention est-elle considérée comme une exécution de la décision rendue en son absence ou comme une détention provisoire ?

La personne est considérée comme en détention provisoire. Elle peut ainsi faire des demandes de mise en liberté. Ce temps passé en détention s'imputera sur la durée de la peine d'emprisonnement qui serait le cas échéant prononcée à l'issue du nouveau procès.

20. Dans les deux cas, la détention de la personne en attente d'être rejugée fait-elle l'objet d'un contrôle avant la finalisation de la procédure en révision ? (plusieurs réponses possibles) :

X	**Non**
☐	**Oui, régulièrement**
☐	**Oui, à la demande de la personne concernée**
☐	**Autre :**
	Non, sans préjudice du droit de la personne condamnée de former des demandes de mise en liberté auprès de la juridiction.

21. Si oui, ce contrôle inclut-il la possibilité de suspendre ou d'interrompre la détention ?

Le jugement par défaut, motif de refus d'extradition (par l'Etat requis)

22. Votre Etat extrade-t-il des personnes aux fins d'exécution d'une peine ou d'une mesure de sûreté prononcée par une décision rendue par défaut à leur encontre ? Si oui, veuillez indiquer quelle est la règle (ou préciser la convention ou l'instrument juridique que vous appliqueriez). La législation de votre pays prévoit-elle un motif de refuser l'extradition d'une personne aux fins d'exécution d'une peine prononcée par défaut à son encontre ? Si oui, le motif est-il impératif (obligatoire) ou discrétionnaire (facultatif) ?

Le Gouvernement français extrade des personnes recherchées en application de décisions rendues in absentia.

Cette faculté ne découle pas directement d'une disposition de nature conventionnelle ou législative. Elle résulte du fait que les conventions (bilatérales ou multilatérales) d'extradition auxquelles la France est partie, d'une part, et la législation nationale, d'autre part, ne prévoient pas expressément de motif de refus tiré de la nature non-contradictoire de la décision à l'origine d'une demande d'extradition.

Il doit toutefois être observé que l'article 694-4 7° du Code de procédure pénale dispose que l'extradition est refusée « lorsque la personne serait jugée dans l'Etat requérant par un tribunal n'assurant pas les garanties fondamentales de procédure et de protection des droits de la défense ». De même, au moment de ratifier la Convention européenne d'extradition la France a émis une réserve aux termes de laquelle « L'extradition ne sera pas accordée lorsque la personne réclamée serait jugée dans l'Etat requérant par un tribunal n'assurant pas les garanties fondamentales de procédures et de protection des droits de la défense ou par un tribunal institué pour son cas particulier, ou lorsque l'extradition est demandée pour l'exécution d'une peine ou d'une mesure de sûreté infligée par un tel tribunal ».
En application de ces dispositions, il appartient aux juges français saisis d'une demande d'extradition de s'assurer que la procédure suivie dans l'Etat requérant ne heurte pas l'ordre public français.
A cet égard, se fondant sur l'ordre public français et les stipulations des articles 6 et 13 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, la jurisprudence a énoncé le principe qu'une personne condamnée pénalement par défaut doit pouvoir obtenir d'être rejugée en sa présence sauf s'il est établi d'une manière non-équivoque qu'elle a renoncé à son droit à comparaître et à se défendre (voir notamment les arrêts du Conseil d'Etat du 7 février 2003 n° 247856 et du 18 mars 2005 n°273714).

23. Comment comprenez-vous l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition ?: « si la Partie requérante donne des assurances jugées suffisantes pour garantir à la personne dont l'extradition est demandée le droit à une nouvelle procédure de jugement qui sauvegarde les droits de la défense », cela veut dire que :

☐	**La personne dont l'extradition est demandée bénéficie d'un droit automatique (c'est-à-dire qu'aucune demande supplémentaire n'est nécessaire) ou semi-automatique (c'est-**

	à-dire que l'intéressé doit déposer une demande, qui ne peut toutefois pas être rejetée par les autorités) à une nouvelle procédure de jugement
☐	**La personne concernée a seulement droit à ce que la possibilité d'une nouvelle procédure de jugement soit examinée par l'Etat requérant**
☐	**Avez-vous une autre interprétation de l'article 3 ? (veuillez préciser) :**
	La France n'a ni signé, ni ratifié le Deuxième Protocole additionnel à la Convention européenne d'extradition.

24. Selon la législation et/ou les pratiques juridiques de votre pays, quelles sont les conditions juridiques à respecter au sujet des « droits minimaux de la défense » (au sens de l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition) ?
Sans objet, la France n'ayant ni signé, ni ratifié le Deuxième Protocole additionnel à la Convention européenne d'extradition.

ANNEX III

Questionnaire concernant les jugements par défaut et la possibilité d'être rejugé
Réponse de la Suisse

Jugement par défaut		
1. Dans votre pays, est-il possible de rendre un jugement par défaut qui se situe dans le champ d'application de l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition ou qui concerne des cas similaires ? **Si oui, quelles sont les conditions juridiques selon la législation et/ou les pratiques juridiques de votre pays ?** **S'il existe plusieurs types de jugements ou procédures par défaut, veuillez donner des informations sur chacun d'entre eux.**		
La procédure de jugement par défaut est prévue en droit suisse aux art. 366 et suivants du Code de procédure pénale suisse et est exclusivement régie par ce dernier (CPP; RS 312.0). Elle a lieu dans les cas où un prévenu dûment cité ne comparait pas aux débats de première instance. Il faut pour cela que, cumulativement, le prévenu ait eu suffisamment l'occasion de s'exprimer sur les faits qui lui sont reprochés et que les preuves réunies à son encontre soient suffisantes. A noter que lorsque la personne concernée ne comparaît pas aux débats de première instance, le tribunal commence par fixer de nouveaux débats comme le prévoit l'art. 366 al. 1 CPP. Ce n'est que si la personne concernée est absente auxdits nouveaux débats que la procédure par défaut peut être engagée, comme prévu à l'art. 366 al. 3 CPP.		
2. Dans la législation de votre pays, les décisions ci-dessous sont-elles considérées comme des décisions par défaut ? (plusieurs réponses possibles) :		
☒	**Toutes les décisions rendues en l'absence de la personne concernée au procès**	
☐	**Les décisions rendues en l'absence de la personne concernée, qui était néanmoins défendue par un avocat pendant le procès :**	
	☐	**uniquement si l'avocat était mandaté par la personne concernée**
	☐	**même si la personne concernée était défendue par un avocat désigné par le tribunal qui n'a eu aucun contact avec elle**
☐	**Les décisions rendues en l'absence de la personne concernée qui, par la suite :**	
	☐	**a déclaré expressément qu'elle ne contestait pas la décision**
	☐	**n'a pas demandé la tenue d'un nouveau procès[3] dans le délai imparti**
☐	**Autres décisions (veuillez préciser) :**	

[3] L'expression « nouveau procès » s'entend au sens générique, sans préjuger de la procédure retenue par les systèmes juridiques des Etats. Elle suit l'usage linguistique de la Cour européenne des droits de l'homme.

Convocation

3. Dans la législation de votre pays, la personne concernée doit-elle recevoir notification de la date et du lieu prévus pour le procès ayant abouti à la décision ? Si oui, veuillez décrire la procédure (par exemple convocation en personne et/ou par d'autres moyens ; information officielle, etc.) :

Selon l'art. 366 al. 1 CPP, la personne concernée doit avoir été dûment citée, c'est-à-dire en conformité avec la procédure des art. 201 CPP et suivants (mandat de comparution et mandat d'amener dans l'hypothèse où la personne concernée n'a pas donné suite au mandat de comparution). La forme et le contenu du mandat de comparution sont décrits à l'art. 201 CPP. Selon l'art. 87 al. 4 CPP, la personne concernée doit tout particulièrement avoir été personnellement citée et non uniquement par l'intermédiaire de son défenseur (celui-ci en reçoit une copie).

Dans le cas où le mandat de comparution ne peut pas être directement notifié à la personne concernée (par exemple parce que le domicile où il doit être notifié n'est pas connu), il sera publié de manière officielle selon l'art. 88 CPP. La publication officielle doit être effectuée au moins un mois avant la date du jugement, au sens de l'art. 202 al. 2 CPP.

4. La législation de votre pays prévoit-elle les garanties ci-dessous en matière de notification à la personne concernée de la date et du lieu prévus pour le procès ? (plusieurs réponses possibles) :

☒	**La personne est informée de telle manière qu'il est établi sans équivoque qu'elle a connaissance de la prochaine tenue du procès**
☒	**La personne est informée dans une langue qu'elle comprend**
☒	**La personne reçoit les informations en temps utile, c'est-à-dire suffisamment à l'avance pour lui permettre de participer au procès, de se préparer efficacement et d'exercer son droit de se défendre** **Si oui, veuillez donner des informations quant au délai :**
	En général, les mandats de comparution, dans le cadre de la procédure devant le tribunal, doivent être notifiés au moins dix jours avant la date du jugement, selon l'art. 202 al. 1 CPP; si le mandat de comparution doit être publié de manière officielle, un délai d'au moins un mois avant la date du jugement doit être respecté au sens de l'art. 202 al. 2 CPP.
☐	**Au départ, la date prévue pour le procès peut, pour des raisons pratiques, être exprimée sous la forme de plusieurs dates éventuelles couvrant une courte période.** **Si tel est le cas, veuillez indiquer quelle est la règle :**
	Le CPP ne prévoit pas la possibilité de pouvoir choisir plusieurs dates auxquelles se tiendrait le procès. Cependant, lorsqu'elle fixe les dates de comparution aux débats, l'autorité de jugement tient compte de manière appropriée des disponibilités des personnes citées au sens de l'art. 202 al. 3 CPP.
☒	**La convocation contient l'information ou la personne est informée séparément qu'une décision peut être rendue même en son absence au procès**
☒	**Autres garanties (veuillez préciser) :**
	Concernant la proposition précédente quant au devoir d'informer séparément la personne concernée qu'une décision peut être rendue en son absence au procès, l'art. 201 al. 2 litt. f CPP prévoit que le mandat de comparution mentionne les conséquences juridiques d'une

	absence non excusée de la personne concernée, ce qui a alors pour conséquence de permettre à l'autorité de jugement d'engager une procédure de jugement par défaut.

Avocat

5. Quelles sont les garanties prévues par la législation de votre pays en ce qui concerne le droit de l'accusé d'être défendu par un avocat lorsqu'il ne comparaît pas à son procès ?

L'art. 367 al. 1 CPP octroie à la personne concernée le droit à un défenseur, et renvoie au surplus, à son al. 4, aux règles de la procédure en première instance; il faut notamment comprendre par cela que le prévenu bénéficiera automatiquement de l'aide d'un défenseur en cas de défense obligatoire (art. 130 CPP; le prévenu doit avoir un défenseur dans certaines situations) ou de défense d'office (art. 132 CPP; la direction de la procédure octroie un défenseur au prévenu dans certaines situations).

6. La législation de votre pays prévoit-elle la possibilité que la personne concernée renonce à son droit de comparaître et de se défendre à son procès, explicitement ou implicitement, par sa conduite ? Si oui, la législation de votre pays prévoit-elle la possibilité que la personne ayant renoncé à son droit de comparaître soit défendue à son procès par un avocat qu'elle aura mandaté ?

Il faut tout d'abord être attentif au fait qu'au sens de l'art. 366 CPP, la personne concernée n'a pas un simple droit de se présenter aux débats, mais bien une obligation. Si cette obligation n'est pas respectée, les règles d'un jugement par défaut deviennent alors applicables.

L'art. 366 al. 2 CPP indique que si la personne concernée se met dans l'incapacité de se présenter aux débats ou ne peut y être amenée, les débats peuvent être conduits en son absence. Toutefois, le tribunal peut également suspendre la procédure.

Si par contre la personne concernée s'est elle-même mis dans l'incapacité de participer aux débats ou si elle refuse d'y être amenée depuis l'établissement de détention, l'art. 366 al. 3 CPP prévoit que le tribunal peut alors engager la procédure par défaut. Pour cela, les deux conditions cumulatives de l'art. 366 al. 4 CPP doivent néanmoins être réunies, à savoir que la personne concernée a eu suffisamment l'occasion de s'exprimer auparavant sur les faits qui lui sont reprochés et que les preuves réunies permettent de rendre un jugement en son absence. Si ces deux conditions ne sont pas réunies, le tribunal doit suspendre les débats. En outre, la personne concernée dispose également d'un droit à ce que son défenseur la représente en son absence de par l'art. 367 al. 1 CPP.

Nouveau procès (critères et conditions)

7. La législation de votre pays prévoit-elle la possibilité d'un nouveau procès en cas de jugement par défaut ? Si oui, quelles sont les conditions juridiques (par exemple *ex officio* ou uniquement à la demande de la personne concernée, délais, etc.) à satisfaire pour obtenir la tenue d'un nouveau procès ? S'il existe plusieurs types de jugements ou procédures par défaut, veuillez donner des informations sur chacun d'entre eux :

La possibilité d'un nouveau jugement est régie par les art. 368 et suivants du CPP. Il faut tout d'abord que le jugement prononcé par défaut ait été personnellement notifié à la personne concernée comme le prévoit l'art. 368 al. 1 CPP. L'art. 368 al. 2 CPP indique ensuite que pour pouvoir demander un nouveau jugement, la personne concernée doit expliciter les raisons qui l'ont empêchée de se présenter à l'audience. Si les conditions pour rendre un nouveau jugement sont réunies, la direction de la procédure fixe de nouveaux débats selon l'art. 369 al. 1 CPP. Cette dernière étape se déroule

en deux phases. Dans un premier temps, le tribunal examine la demande de nouveau jugement à titre préjudiciel, conformément à l'art. 339 CPP. Puis, en cas d'admission de la demande de nouveau jugement, il procèdera à une instruction au fond.

8. Si la tenue d'un nouveau procès doit être demandée par la personne reconnue coupable et condamnée et/ou autorisée par un tribunal ou une autre autorité, veuillez donner des informations sur la procédure (y compris le délai de dépôt de la demande et la date à laquelle le délai commence à courir) :

D'après l'art. 368 CPP, la personne reconnue coupable dispose d'un délai de dix jours après la notification personnelle du jugement à son encontre pour demander un nouveau jugement, oralement ou par écrit. Elle doit être impérativement informée de ce droit au préalable. Dans sa demande, la personne reconnue coupable doit brièvement exposer les raisons qui l'ont empêchée de prendre part aux débats. Sa demande sera toutefois rejetée si la personne concernée a fait défaut aux débats sans excuse valable.

9. Quelles sont les conditions juridiques exigées pour une signification (notification) valable du jugement par défaut dans la perspective d'une procédure de recours ou de nouveau procès ?

Selon l'art. 368 CPP, il doit y avoir une notification personnelle du jugement au condamné, ce qui exclut la seule publication officielle ou la seule notification au défenseur. Le jugement est réputé notifié dès que la personne concernée le reçoit en mains propres, même si elle le refuse (hypothèse de la notification du jugement par un courrier contre signature par exemple).

10. Quelles sont les conséquences de la signification du jugement par défaut sur la procédure de recours ou de nouveau procès ?

D'après l'art. 368 CPP, une fois la notification personnelle effectuée, cela fait partir un délai de dix jours dans lequel le condamné peut, par écrit ou oralement, demander un nouveau jugement (cf. question 8 *infra*).

11. La personne concernée est-elle informée de son droit à un nouveau procès et, le cas échéant, des conditions particulières à respecter ?

☐	**Non**	
☒	**Oui (plusieurs réponses possibles)**	
	☐	**Dans la convocation au procès**
	☒	**Lors de la signification du jugement par défaut**
	☐	**Par les informations concernant tout délai à respecter pour demander un nouveau procès (s'il y a lieu)**
	☒	**Dans une langue qu'elle comprend**
	☐	**D'une autre manière (veuillez préciser) :**

12. La personne concernée est-elle autorisée à participer au nouveau procès ?

Non seulement elle le peut, mais elle le doit. D'après l'art. 369 al. 4 CPP si la personne concernée ne se présente pas à nouveau au jugement sans justification valable, le tribunal prononcera que le jugement par défaut antérieur reste en vigueur.

13. Dans la législation de votre pays, le nouveau procès est-il considéré comme une procédure où tout recommence à zéro, avec toutes les voies de recours possibles (c'est-à-dire comme si la décision rendue en l'absence de la personne concernée n'avait jamais existé) ou plutôt comme un recours extraordinaire ?

L'admission de la demande de nouveau jugement a pour conséquence de replacer les parties et la cause dans l'état antérieur au jugement par défaut. D'après l'art. 370 CPP, le nouveau procès est considéré comme une procédure où à son issue la personne dispose de toutes les voies de recours possibles une fois le nouveau jugement rendu, y compris l'appel prévu aux art. 398 CPP et suivants (où le droit comme les faits sont réexaminés pour tous les points attaqués dans le jugement). La personne concernée doit être impérativement informée de ces voies de recours de par l'art. 368 al. 1 CPP. En outre, lorsque le nouveau jugement entre en force, le jugement rendu par défaut, les recours interjetés contre celui-ci et les prononcés déjà rendus dans la procédure de recours deviennent caducs. L'art. 371 CPP prévoit encore la possibilité pour la personne concernée de faire appel contre le jugement rendu par défaut parallèlement à la demande de nouveau jugement. L'appel n'est toutefois recevable dans un tel cas que si la demande d'un nouveau jugement a été rejetée.

14. Pendant le nouveau procès, la législation de votre pays prévoit-elle une nouvelle appréciation du bien-fondé de l'accusation, à la fois sur le fond et sur la forme, y compris de nouveaux éléments de preuve éventuels ?

Le nouveau jugement replace intégralement les parties et la cause dans l'état antérieur du jugement par défaut (cf. question 13 infra). Il en découle que l'accusation pourra être remise en cause par la personne concernée et que de nouvelles preuves pertinentes pourront être administrées par le tribunal.

15. La législation de votre pays prévoit-elle la possibilité d'inverser ou de modifier la décision initiale rendue en l'absence de la personne concernée ?

☐	**Non**
☐	**Oui, mais seulement en faveur du défendeur**
☒	**Oui, en faveur ou au détriment du défendeur**
☐	**Il existe d'autres restrictions (veuillez préciser) :**

16. La tenue du nouveau procès ou la demande de nouveau procès par la personne concernée suspend-elle l'exécution de la décision rendue en l'absence de l'intéressé ?

D'après l'art. 369 al. 3 CPP, ces éléments relève d'une décision de la part de la direction de la procédure. De plus, selon l'art. 368 al. 3 CPP, le tribunal rejette la demande de nouveau jugement lorsque la personne condamnée, dûment citée, fait défaut aux débats sans excuses valables.

17. Le nouveau procès doit-il (re)commencer dans un certain délai ?

Il n'existe pas a priori de délai dans le CPP pour recommencer un nouveau procès. Toutefois, les principes généraux du CPP prévoient à l'art. 5 CPP que la procédure pénale doit être menée sans délai, ni retard injustifié. De plus, lorsque la personne concernée se trouve en détention, la procédure à son encontre doit être menée en priorité.

18. Si la décision n'a pas été personnellement notifiée à la personne concernée avant sa remise, quand celle-ci recevra-t-elle une copie de la décision (si possible, veuillez indiquer un délai approximatif) ? Recevra-t-elle cette copie dans une langue qu'elle comprend ?

D'après l'interprétation de l'art. 368 al. 1 CPP, la notification du jugement à la personne concernée doit avoir lieu dès sa mise en arrestation provisoire, ou plus largement, dès qu'on la retrouve. Cette dernière doit dans tous les cas être informée sans délais de l'existence d'un jugement par défaut rendu à son encontre.

19. Si, après sa remise, la personne concernée a exercé son droit à un nouveau procès, sa détention est-elle considérée comme une exécution de la décision rendue en son absence ou comme une détention provisoire ?

D'après l'art. 369 al. 3 CPP, la direction de la procédure décide de la mise en détention pour des motifs de sûretés de la personne concernée ainsi que de l'effet suspensif du jugement rendu par défaut. La durée de cette détention provisoire, si elle a lieu, sera imputée sur le solde de la peine prononcée.

20. Dans les deux cas, la détention de la personne en attente d'être rejugée fait-elle l'objet d'un contrôle avant la finalisation de la procédure en révision ? (plusieurs réponses possibles) :

☐	**Non**
☐	**Oui, régulièrement**
☐	**Oui, à la demande de la personne concernée**
☒	**Autre :**
	D'après l'art. 369 al. 3 CPP, la direction de la procédure décide jusqu'aux débats de l'octroi de l'effet suspensif et de la détention pour motifs de sûretés. Selon l'art. 230 al. 1 et 2 CPP, la personne concernée peut déposer une demande de libération à la direction de la procédure.

21. Si oui, ce contrôle inclut-il la possibilité de suspendre ou d'interrompre la détention ?

Selon l'art. 230 al. 1 et 2 CPP, la personne concernée peut déposer une demande de libération à la direction de la procédure du tribunal de première instance. Cette dernière décide si la personne doit ou non être maintenue en détention.

<u>Le jugement par défaut, motif de refus d'extradition (par l'Etat requis)</u>

22. Votre Etat extrade-t-il des personnes aux fins d'exécution d'une peine ou d'une mesure de sûreté prononcée par une décision rendue par défaut à leur encontre ? Si oui, veuillez indiquer quelle est la règle (ou préciser la convention ou l'instrument juridique que vous appliqueriez). La législation de votre pays prévoit-elle un motif de refuser l'extradition d'une personne aux fins d'exécution d'une peine prononcée par défaut à son encontre ? Si oui, le motif est-il impératif (obligatoire) ou discrétionnaire (facultatif) ?

La Suisse peut autoriser l'extradition de personnes aux fins d'exécution d'une peine prononcée par une décision rendue par défaut. Toutefois, une telle procédure est soumise à des restrictions ainsi qu'à des conditions. L'art. 37 al. 2 de la Loi fédérale du 20 mars 1981 sur l'entraide internationale en matière pénale (EIMP; RS 351.1), prévoit que l'extradition peut être refusée si la demande se fonde sur une sanction prononcée par défaut et que la procédure de jugement n'a pas satisfait aux droits minimums de la défense reconnus à toute personne accusée d'une infraction. Le seul moyen pour l'Etat requérant de remédier à cette situation est de fournir des assurances jugées suffisantes pour garantir à la personne poursuivie le droit à une nouvelle procédure de jugement sauvegardant les droits de la défense. Ces garanties reposent sur l'art. 3 du Protocole additionnel du 15 mars 1975 à la Convention européenne d'extradition (PA II CEEXtr; RS 0.353.11) ainsi que sur les droits garantis en la matière par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH; RS 0.101). A noter que les art. 2 et 3 EIMP prévoient une irrecevabilité de la demande notamment quant à la procédure à l'étranger (violation de la CEDH, persécution à raison des opinions politiques de la personne concernée, risque d'aggravation de la situation de la personne concernée et présence de défauts graves au sein de la procédure) ou la nature de l'infraction (caractère politique prépondérant ou violation des obligations militaires).

23. Comment comprenez-vous l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition ?: « si la Partie requérante donne des assurances jugées suffisantes pour garantir à la personne dont l'extradition est demandée le droit à une nouvelle procédure de jugement qui sauvegarde les droits de la défense », cela veut dire que :

☐	**La personne dont l'extradition est demandée bénéficie d'un droit automatique (c'est-à-dire qu'aucune demande supplémentaire n'est nécessaire) ou semi-automatique (c'est-à-dire que l'intéressé doit déposer une demande, qui ne peut toutefois pas être rejetée par les autorités) à une nouvelle procédure de jugement**
☒	**La personne concernée a seulement droit à ce que la possibilité d'une nouvelle procédure de jugement soit examinée par l'Etat requérant**
☐	**Avez-vous une autre interprétation de l'article 3 ? (veuillez préciser) :**

24. Selon la législation et/ou les pratiques juridiques de votre pays, quelles sont les conditions juridiques à respecter au sujet des « droits minimaux de la défense » (au sens de l'article 3 du Deuxième Protocole additionnel à la Convention européenne d'extradition) ?

Afin d'être en adéquation avec l'art. 37 al. 2 EIMP, le respect des droits minimaux de la défense doit être assuré. Dans le cadre des jugements par défauts, le droit suisse entend par cela que la personne concernée a droit à un procès équitable instruit par un tribunal indépendant et impartial établi par la loi, et plus largement le droit d'être jugée en sa présence conformément à l'art. 6 CEDH. Ces garanties sont également largement consacrées en droit suisse, au niveau de la Constitution fédérale (Cst.; RS 101), et reprise au sein des lois de procédure des différents domaines du droit.

Bien que les débats puissent se tenir en son absence, la personne condamnée par défaut doit avoir le droit d'obtenir la reprise de sa cause. Pour admettre que les droits de la défense ont été sauvegardés, la jurisprudence suisse se fonde tout particulièrement sur la présence d'un défenseur et de sa

participation à la procédure, notamment s'il utilise des moyens de droit contre le jugement rendu par défaut. Il faut dès lors vérifier si le jugement par défaut a été attaqué à un moment donné et par quelle partie. Il s'agit également de déterminer le pouvoir d'examen, en fait et en droit, de l'autorité de recours et la façon dont la défense a pu faire valoir ses droits (par exemple par la présentation de moyens probatoires ou par l'audition de témoins).