

OBSERVATION FILE about the debate held between Spain 2-France 4

As one of the Jurors said in one of the questions, the debate was mainly about both article 4 of the EAW Framework Decision and Conflicts of Jurisdiction. However, both teams focused on the application of the grounds for refusal of the EAW, but they failed to properly analyze and give solutions to the obvious Conflict of Jurisdiction that the facts of the case create.

In this regard, both teams should have discussed in further detail the possibilities of creating a joint investigation team, of applying the negotiation process specifically established in article 10 and following ones of the Council Framework Decision 2009/948/JHA of 30 November 2009, on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, on the role of Eurojust, i.e. on what this institution can do in order to help Member States solve a potential conflict of jurisdiction by determining which one would be in a better position to prosecute. These are important legal tools that should have been brought up during the debate.

On the approach taken by the teams, we would like to stress out that the French Team could have been more specific and could have elaborated more on their answers, even though it is obvious that their position was harder to defend. In relation to Spain, they focused too much in analysing the provisions of the EAW Framework Decision and failed to explain the potential solutions that could be available given the facts of the case.

Finally, we would like to point out that one of the questions of the Jury was left unanswered in relation to the available tools within the EU to know how a proceeding in another Member State is going. To such ends there are a number of mechanisms that could be used by the Member States, among which would be: the automated case management system provided by Eurojust (CMS) or the spontaneous exchange of information between Member States provided for by article 7 of Council Act of 29th of May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

Spanish Team 1

31st October 2012