

Observation File :

Debate 2 : Spain 2 vs. France 4

France 2 : Alice Bonatti, Marine Delanoë, Quentin Siegrist

Team Spain 2

1. Relevant points

- It was extremely interesting to see the Spanish team mention the EUCJ's **case law and conclusions of advocates generals**, and use it to elaborate on their argumentation.
- We appreciated the facts that the Spanish team focused on **Article 5.3 of the EAW FD (conditionnal surrender)**, and appropriately used it to take into account the rights of the suspected person (especially the objective of reintegration in society): they proposed alternatives to the refusal of the EAW, which were relevant.
- During the debate, the Spanish team adequately **mitigated the French argument about fundamental rights**, stating that even though this point has of course to be considered, it cannot be used as a ground for refusal in all EAWs.

2. Questionable points

- We are not sure to agree with the Spanish team when it sustains that the ground for refusal based on **amnesty** (Article 3.1 of the EAW FD) is reserved to political cases. This point could have been developed in a cleared way, because at least in some Member States, amnesty does not exclude non-political cases.
- It was interesting to mention the **victim's rights**, but according to us this point could have been less developed, because the question of the place of the victim in criminal procedures is harshly debated.

Team France 4

1. Relevant points

- We appreciated that the French team focused on **practical arguments**, like the effectiveness of the investigations, their duration, their cost, ...
- We are conscious that the position the French team had to occupy was a very delicate one, and they tried to use any possible argument and tried to imagine facts supporting their stance (for instance, imagining where the suspect's family lived...).

2. Questionable points

- The French team should have mentioned **Article 4.2 of the EAW FD, ie the conflict of jurisdiction** which is an optional ground for refusal. They could have built a part of their argumentation on this particular issue.

- It would have been interesting for the French team to focus more on the possible **other tools of cooperation** (like letters rogatory, joint investigation teams, Schengen agreements, spontaneous exchange of information in the MLA Convention, videoconferences, ...), which could have been used to keep on investigating.
- According to us, even though it was interesting to mention fundamental rights, the French presentation emphasized this point too much, and made it the heart of their argumentation while it was not so relevant regarding the circumstances of the practical case.

For both teams, it would have been interesting to elaborate on the **question of the solving of the conflict of jurisdiction**: when does this conflict has to be solved (before issuing an EAW or afterwards ?).