

DEBATING TEAMS
ITALY 2 v FRANCE 6

I- Presentation

Both teams have used power point presentations. It was very useful to follow the debates.

II- Content

ITALY has sustained the applicability of the mutual recognition principle to evidence issues.

ITALY, firstly, began by an overall presentation of the legal basis of the mutual assistance and recognition principles. Afterwards, they detailed the content of the green paper on obtaining evidence in criminal matters. According to them, the objectives stated in are not too ambitious. They underlined the fact that the issue of evidence admissibility remains a national matter. Because of that, it is necessary too introduce both common and specific standards for gathering evidence.

Secondly, they supported the interesting idea of replacing the today *locus regit actum* principle by the more efficient *forum regit actum*, to that regard. They advocated the mutual recognition as a valid method of cooperation (especially regarding the difficulties of slowness, bureaucracy and misunderstanding). Subsequently, they underlined the advantages European Evidence Warrant.

They suggested that evidence should be considered as goods, which appeared to us as a stimulating idea. They pointed out that the free movements of goods supposes common standards of quality and labels. And they smartly prompted the idea that the same principle should apply to evidence.

FRANCE argued the inapplicability of the mutual recognition principle to evidence issues.

They began their presentation by a very practical question: they described what kinds of evidence they were talking about (evidence which already exist, evidence that have to be gathered), which was very useful to settle the debate.

Then, they firstly focused on the differences that existed in different Member States on that matter (for instance, loyalty is comprehensible in many ways) and consequently on the necessity of a prior harmonization of rules about gathering evidence. They secondly focused on the problematic consequences of the application of the principal of mutual recognition on the rights and liberties of the defendants (personal data issues).

They made some proposals: need to frame the rule on gathering evidence especially by checking the proportionality of the investigation teams, necessity to apply the principle of mutual recognition on it to decisions of judicial authorities, necessity of a prior harmonization of rules on gathering of evidence is necessary. They insisted on the fact that mutual trust should be built step by step.

III- Overall appreciation

ITALY decided to begin by an overall presentation of legal instruments, which was interesting. Maybe, it would have been more relevant to enter directly into the subject and then to make reminds on the different legal instruments. They also decided to stay at their table during their presentation. It would maybe have been easier to follow the presentation if the have faced the audience. It would also have been useful to begin the presentation by a precision on explaining the notion of evidence.

FRANCE made a dynamic presentation. They seemed to be very involved and passionate. During the debates, the repartition between the speakers was maybe not totally balanced.