

OBSERVATION FILE

1°.- Debate held between Italy 2-France 6

Firstly we would like to point out that we disagree with the arguments sustained by the Italian Team regarding how easy it would be to harmonize the criminal and procedural legislations of the EU Member States in order to be able to gather evidence in one of them that would be valid in another. Indeed, they actually said that the principle of mutual recognition should be applied in this context and that can be *“easily implemented by a minimum harmonization, which would be achieved without difficulties”*.

The French Team agreed on the fact that necessary solution for the problems raised in the case would be to harmonize the rules and regulations of the Member States on the gathering and validity of evidence.

However, we understand that harmonizing –even if it is just establishing minimum standards- it is extremely difficult considering that there are so many and such different legal systems currently within the EU. Therefore, if implementing the principle of mutual recognition has proven to be difficult, harmonizing would be almost impossible. That is why no action has been taken up to now in this regard.

Moreover, the application of the Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, does not have a direct effect. Thus, as a Framework Decision it is left to the legislative authorities of each Member State to decide how to implement it, which might mean in practice that there might be differences among the regulations of the Member States.

Finally, as for the opinion stated by the French team regarding who should or should not be considered a “judicial authority”, we would like to stress the fact that taking such decision corresponds to the different Member States. Therefore State A cannot decide whether a prosecutor from State B is or is not a “judicial authority”, but has to accept it if it is according to the applicable national law of State B.

2.- Debate held between Romania 2-France 2

This debate was interesting because both of the teams had studied the applicable legislation. However, it was a pity that the Romanian Team misunderstood the case and therefore they did not identify the issues that they had to discuss during their presentation correctly.

The Romanian Team should have discussed from the very beginning of their presentation why the legal mechanism identified by the other team were not really applicable in this case, in particular article 13.10 of the 2000 Convention of Mutual Assistance in Criminal Matters. Instead of arguing about why such provision is not applicable, they admitted that the exchange of “information” would in fact include the exchange of evidence in cases as the one that they were supposed to be arguing about.

On the other hand, it should be noted that even though the French Team provided a number of solutions to exclude the application of a Letter Rogatory, their recurrent solution of amending the agreement by which the JIT is created would be difficult to achieve in real life.

Spanish Team 1

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