

OBSERVATION FILE ON THE DEBATE BETWEEN ITALY 2 AND FRANCE 6

By The Netherlands

First of all, we would like to comment on the discussion between the two teams. We think both teams, but the Italians in particular, failed to make a strong point in their presentation. The French however limited their discussion to the question whether or not evidence/information can be used in court and if a judge should accept all evidence gathered, even if that was obtained in a way incompatible with the law of the country where the case is judged.

Our opinion is that the question how to weigh information/evidence is ultimately a question of a judge in the final court session when the guilt or non-guilt has to be decided. Whether or not information was obtained legally can be decided then and there.

In our opinion the debate neglected an important part of the investigative part: does mutual recognition dictate an investigative institution to gather evidence if a foreign judiciary authority decides certain evidence or information should be collected. We think this is the main question to be asked.

Another interesting point not further elaborated on is the question what should be done with information that is not relevant to the investigation, but is interesting from a wider law-enforcement perspective. Can information be transferred to other investigations or other institutions, in the investigating countries or abroad.

In practice how prosecution authorities in one country should cooperate with the investigative powers in another country will depend on the size of a investigation. In small investigations 1-1 contacts need to be made in which legality of evidence gathering can be discussed. In larger investigations a JIT can discuss and solve many of these questions. We know a European prosecutor is also mentioned in this kind of debates, it would have been nice to hear the views of the teams on this.