

## **POSITION PAPER OF TEAM SPAIN 2**

### REGARDING THE DEBATE BETWEEN ITALY 2 AND FRANCE 6

We regard as our fellow teams that harmonisation of criminal procedure legislation within the European Union could enhance mutual trust between Member States and thus contribute to the effectiveness of the principle of mutual recognition in the transfer of evidence. The Commission also shares that view, as shown by its Proposal for a Council framework Decision on certain procedural rights in criminal proceedings throughout the European Union, which intended to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the European Union<sup>i</sup>. However, this Proposal has not been passed yet.

As regards human rights, the lack of harmonisation of procedural rights should not be an obstacle to the protection of human rights, especially since the entry into force of the Treaty of Lisbon<sup>ii</sup>, as Member States are presumed to comply with human rights and this presumption is only rebuttable on the clearest evidence possible<sup>iii</sup>. Nevertheless, it can be inferred from ECHR judgements that there is a difference between the *law in the books* and the *law in action*.

In the light of the foregoing, we regard that, even if the different criminal systems of the EU were to be approximated, a certain margin of discretion should be afforded to judicial authorities when recognising decisions regarding evidence, in order to avoid the **infringement** of human rights, as the application of the provisions of the Charter of Fundamental Rights of the European Union and the European Convention on the Protection of Human Rights and Fundamental Freedoms varies within the Member States. This view is also supported by the ECHR, who claims that the admissibility of evidence is a matter of national responsibility.<sup>iv</sup>

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<sup>i</sup> See recital 1 of the introduction

<sup>ii</sup> See article 6 of the TUE

<sup>iii</sup> See conclusions of Advocate General Eleanor Sharpston in Case C-396/11 *Ministerul Public - Parchetul de pe lângă Curtea de Apel Constanța v Ciprian Vasile Radu*, paragraph 41

<sup>iv</sup> *Schenk v. Switzerland*, App. 10862/84, paragraph 46