

Observation File

Debate 3: Italy 2 vs. France 6

Team France 2: Quentin Siegrist, Marine Delanoë, Alice Bonatti

Team Italy 2

1. Relevant points

The Italian team made a clear **historical report of the evolution of the principle of mutual recognition** in Europe, from the commercial field to ultimately the criminal field.

We really appreciated the link made by Team Italy 2 between **human rights and mutual recognition** in evidence matters: the high quality of protection of fundamental rights in the EU allows, according to them, for the transmission of evidence between Member States without jeopardizing human rights.

Finally we enjoyed the “chicken-and-egg” point made by the Italian team about **mutual recognition and mutual trust**.

2. Questionable points

We assume the Italian team was a bit **confusing between the tools** used to collect evidence throughout Europe, which are based on mutual recognition, **and the harmonization of the rules** regarding the admissibility of evidence, which is the next step.

According to us, it would have been interesting to speak about the project of a **European Investigation Order**, which will maybe be the next step towards an efficient instrument of collection of criminal evidence.

The Italian team could have elaborated more on the point that **legal assistance is not sufficient enough**, in order to sustain their argument.

Team France 6

1. Relevant points

We enjoyed that Team France 6 made the **distinction** between **how to obtain existing evidence** in another State on the one hand, and on the other hand, **the gathering itself of evidence** which is not already collected. This distinction is very relevant because the consequences for the admissibility of evidence are clearly different in each case.

The example quoted about the **distinction between collection of evidence, and provocation to commit the offence** was very interesting, and showed the difficulty of mutual recognition in this field.

We also appreciated the fact that Team France 6 **proposed some recommendations** in order to open the debate and foster cooperation in this field.

2. Questionable points

According to us, Team France 6 could have been a bit clearer on the point of **forum shopping** in evidence matters.

We do not agree that **mutual recognition is only a consequence of mutual trust** because mutual recognition can also enhance mutual trust: there is a complex dialectic between those two notions.

Team France 6 could also have been **more precise when proposing to harmonize evidence**, and could have developed some points such as how to approximate those rules, and where to begin this harmonization.

Finally, Team France 6 could have developed more on the **positive aspects of legal assistance** (protection of State sovereignty, speciality principle, ...). It would have emphasized their argument (even though we do not actually believe that this sovereignty should impede cooperation !).