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Subject: Cooperation on DNA technology

1. Introduction

At the World Congress against Commercial Sexual Exploitation of Children on 27 August 1996 in Stockholm, consideration was given to the idea of an internationally accessible databank containing data on sexual crimes against minors, including DNA profiles. This was also discussed at the informal JHA Council meeting on 26 and 27 September 1996. It was suggested that such a databank could be located at Europol. The President proposed that the future Presidency should assume responsibility for developing a DNA databank in a European context.

The exchanging of DNA profiles may be a way of making a significant contribution to the investigation of crime. It is therefore very important for Member States to exchange their DNA research findings with one another. Steps are being taken within the European Union to that end. The JHA Council has adopted for the period 1996-2000 a financing programme, known as STOP, which provides funding for, inter alia, a study of the advisability and feasibility of centralizing, on a structural basis, information concerning not only missing persons and victims of the trade in human beings and the sexual exploitation of children but also the perpetrators of these crimes, including DNA data and the criminal analysis of such data, taking ethical aspects into account.

Initiatives already under way in other international fora, such as the ENFSI and Interpol, should also be borne in mind.

The present note aims to provide further information about the problems involved in exchanging DNA profiles and in the possible establishment of a DNA databank. At this stage of preparation, it is mainly a question of exploring the various aspects involved in this kind of activity.

2. DNA background

DNA technology has now become a recognized method: using a specimen of human tissue present in hair, blood, saliva, etc., it is possible to produce a DNA profile. Two things are significant here: the profile is different for every person and is present in every human cell.
DNA technology is developing swiftly so that results derived from DNA are becoming more conclusive. It is possible to exclude the innocent with 100% certainty although it is not yet possible to guarantee identification fully. The possibility that two DNA patterns will be identical is, however,,extremely slight.

DNA offers a number of further advantages over fingerprinting:

* The use of fingerprinting is all too familiar to criminals. DNA on the other hand is less well known.

* It is far more difficult to avoid leaving a human cell than to avoid leaving a fingerprint.

* Since DNA is present in all human cells, it is possible to compare a single hair from a suspect with a trace of blood, or saliva on a cigarette end. With the development of DNA technology, it is clear that the number of possible combinations is increasing sharply. A fingerprint, on the other hand, always has to be compared with a fingerprint or part of one.

* The computer technology on which the use of DNA depends is far simpler than fingerprint technology. With DNA, it is relatively simple to store a profile: this involves storing numbers which it should be possible to consult using a fast database programme. With fingerprinting, the recording and recognition of (characteristics of) prints still require very powerful machines and major investment.
  On the other hand, there are of course also financial drawbacks: establishing a DNA profile is more expensive than taking a fingerprint. It also requires more time.

  In the United Kingdom, a national DNA databank has now been set up (in Birmingham at the Forensic Science Service, FSS). 135 000 profiles have been stored and there are plans to increase these to 5 million. It is hoped that this will improve criminal investigations.

3. Technology

As indicated in point 2, setting up a computer system with DNA profiles does not involve complicated information technology. It is necessary to establish a databank enabling records to be preserved and retrieved. As access to the record is a number, a search can be made very quickly.
There is greater difficulty in dealing with certain organizational problems. If national databanks have been set up, how are the data to be exchanged? Should there be links between databanks? Is distributed databasing a possibility (a method whereby a databank is spread throughout a number of countries and can then be consulted in each one)?
It is also necessary to decide whether countries will allow each other access to national data and on what conditions.

If useful exchanges of DNA profiles are to be possible, standardization of such profiles is a precondition.
In 1988 the European DNA Profiling Group (EDNAP) was set up so that experts from 14 European countries could informally pursue the aim of exchanging DNA profiles. The Group is directing its efforts in particular at standardization of methods and nomenclature.

4. Legality

A number of legal obstacles should be noted.

It is first necessary for *national legislation* to be established. France, the Netherlands, Austria and the United Kingdom already have legislation; in Belgium, Germany, Norway, Finland and Sweden such legislation is being prepared. Even if all EU countries have legislation in this field, there is still the problem that regulations differ (e.g. for what purposes may DNA profiles be stored?). This raises the question of whether national legislation has to be *harmonized*.

Secondly, it is necessary to regulate the *protection of personal data*. A central register of DNA profiles will obviously involve sensitive personal data. Although the function of a profile register is not unlike that of existing fingerprint records, the fact that DNA profiles are obtained by an intrusion into the physical person of the suspect makes the whole matter highly sensitive. In the Netherlands, anything taken from inside a person constitutes an intrusion into the physical person. DNA investigation has in practice to be carried out using such material. In the United Kingdom, only the taking of a blood sample constitutes intrusion into the physical person, while the taking of a sample of, for instance, mucous membrane from the inside of the cheek does not. The latter is therefore widely practised. Legislation thus differs in this respect from country to country, where there is any legislation on the matter.

As with fingerprints, it should only be possible to obtain and use DNA profiles for the identification of persons so that their availability for this purpose can also be made subject to the same conditions as those which have been laid down by national laws for fingerprinting. Regulations on personal data will have to comply with the Council of Europe Convention and Recommendation No (87) 15.

5. Organization

Where is the DNA-profile databank to be located? As indicated in the introduction, it has been suggested by the JHA Council that the databank should be at EDU/Europol. Neither the mandate of the EDU nor the Europol Convention provides for this at present. The possibility of extending the EDU's mandate to cover a databank for personal data seems out of the question. One solution might be to supplement the Europol Convention at a later date.

It is necessary to avoid initiatives being launched within the EU if they already exist in other fora where the fifteen Member States are represented. In 1992, the Committee of Ministers of the Council of Europe adopted a Resolution on DNA (Recommendation No R(92) 1 on the use of analysis of deoxyribonucleic acid (DNA) within the framework of the criminal justice system). This urges countries belonging to the Council of Europe to standardize DNA technology with a view to exchanging DNA profiles.
Initiatives are also under way within Interpol. At the Interpol European Regional Conference in Ljubljana (1995), a recommendation recognized the need for national DNA-profile databanks to be set up. To that end, the European Liaison Bureau produced a document entitled "DNA-profiling – a powerful tool for crime investigation". At its 15th meeting, on 5 November 1996, the Interpol European Committee decided to set up an Interpol European Working Party on DNA-profiling. The following EU countries are represented on it: Belgium, Spain, Germany, Italy, the Netherlands and the United Kingdom.

6. Procedural follow-up

There are various aspects which will have to must be developed further:

A. A technical aspect:
   1. **DNA chemistry**, and
   2. **DNA information technology**.

B. A legal aspect:
   1. **harmonization of national legislation**, and
   2. **regulation of protection of personal data.**

The chemical aspect (A.1), in particular the standardization of DNA technology, will form the first priority. An opinion on this is to be sought from the ENFSI in parallel with this note. In the meantime, the Police Cooperation Working Party can consider the information technology aspect (A.2). That aspect is closely bound up with the organizational framework within which DNA profiles are to be exchanged (a common databank at Europol or national databanks only).

Initiatives can be taken in cooperation with Steering Group III as regards the legal aspects of DNA (B.1 and B.2).

7. Conclusion

Given the powerful contribution which the tool of DNA can make to investigations, it would seem necessary to take initiatives within the EU at present. The Presidency proposes to begin by elaborating on the points made in this note.