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Subject: Exchange of DNA analysis results

1. Introduction

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

Exchanging DNA analysis results 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 investigation findings. 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 those crimes, including DNA data and the criminal analysis of such data, taking into account ethical aspects. Initiatives already under way in other international fora, such as the ENFSI and Interpol, should also be borne in mind.

This note aims to provide further information about the problems involved in exchanging DNA analysis results and in the possible establishment of a DNA database. 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 behind than it is 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. As DNA technology develops, it is clear that the number of possible combinations is increasing sharply. A fingerprint, on the other hand, always has to be compared with another fingerprint, or part of one.
- * The computer technology on which the use of DNA depends is far simpler than fingerprint technology. In the case of 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. In the case of 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 database 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 analysis results does not involve complicated information technology. What is needed is a database enabling records to be preserved and retrieved. As access to a record is by means of a number, a search can be made very quickly.

Dealing with certain organizational problems is more difficult. If national databases have been set up, how are the data to be exchanged? Should there be links between databases? Is distributed databasing (a method whereby a database is spread throughout a number of countries and can then be consulted in each one) a possibility?

It is also necessary to decide whether countries will allow each other access to national data and on what conditions.

For useful exchanges of DNA analysis results to be possible, such results need to be standardized.

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 analysis results. The Group is directing its efforts in particular at standardization of methods and nomenclature.

4. Legality

A number of legal obstacles should be noted.

First it is 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 it is being prepared. Even if all EU countries were to have legislation in this field, there would still be the problem that regulations differ (e.g. for what purposes may DNA analysis results be stored?). This raises the question of whether national legislation has to be *harmonized*.

Second, it is necessary to regulate the *protection of personal data*. A central register of DNA analysis results will obviously involve sensitive personal data. Although the function of a register of DNA analysis results is not unlike that of existing fingerprint records, the fact that DNA analysis results 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. Thus, such legislation as exists on the matter differs in this respect from country to country.

As with fingerprints, it should only be possible to obtain and use DNA analysis 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 R (87) 15.

5. Organization

As indicated in the introduction, it was suggested at the JHA Council that a European database should be located at EDU/Europol. Neither the EDU's terms of reference nor the Europol Convention provide for this possibility at present. The Working Party has been drawn to the conclusion that further steps towards the exchange of information on DNA analysis results within the European Union are not possible until there are properly operating national databases in the Member States. Most Member States do not as yet have a national database. In the interests of information exchange at European level, such databases should be established in accordance with the same standards and in a compatible manner. Only then does the question arise of how information can be exchanged in practice. This could be done either via a network of national DNA databases or by means of a European database.

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 Recommendation 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 analysis results. Initiatives are also under way within Interpol. At the 24th Interpol European Regional Conference in Ljubljana (1995), a recommendation recognized the need for national databases with DNA analysis results 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 Member States are represented on it: Belgium, Germany, Italy, the Netherlands, Spain and the United Kingdom.

6. Procedural follow-up

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

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.**

C. *A political aspect*

D. *A ethical aspect*

These four aspects need to be further developed in parallel. A start should be made in particular on technical standardization, in order to avoid Member States being prevented from exchanging technical data owing to rapid developments.

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 through this note. As regards the information technology aspect (A.2) involved in exchanging DNA analysis results, the EU Member States' representatives on the Interpol Working Party can be asked to report on progress in that Working Party. This could be done at the Police Cooperation Working Party meeting on 23 June 1997. It could then be seen which components of that aspect need to be considered more closely by the PCWP itself. The exercise could be financed with the aid of the STOP programme.

Initiatives regarding the legal aspects of DNA (B.1 and B.2) could be taken in cooperation with Steering Group III. Consideration will need to be given to a mechanism for monitoring the use of personal data.

Regarding the political and ethical aspects (C and D), discussion of the desirability of DNA registration in the Member States seems useful. Account needs to be taken here of the fact that proposals to exchange data made at European level exclusively concern data which can be used to compare a person's identity (as is the case with fingerprint comparison).

7. Conclusion

Given the powerful contribution which DNA can make to investigations, it would seem necessary to take initiatives within the EU as of now.
