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LIMITE

ENFOPOL 47

NOTE

from : Presidency

to : Police Cooperation Group

No. prev. doc. : OJ C 193, 24.6.1997, p.2 ; 13233/97 ENFOPOL 236

Subject : **DNA**

- Report to the Council on the implementation of the Council Resolution of 9 June 1997 on the exchange of DNA analysis results.
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Introduction

1. Council Resolution of 9 June 1997 on the exchange of DNA analysis results (OJ C 193, 24.6.1997, p.2) invited Member States to consider establishing national DNA databases with a view to exchanging DNA analysis results between them. The resolution further called on Member States to build up their databases using the same DNA markers, in accordance with the same standards and in a compatible manner. The choice of markers and standards to be used and of a system of information exchange are to be determined on the basis of studies. The resolution urged that the Presidency put forward concrete recommendations before the Council, with a view to implementation of the resolution, within one year of its adoption.

2. The work on developing agreed markers and standards on DNA profiling and the system of exchanging DNA data between Member States is being taken forward by the UK and the Netherlands under the umbrella of the European Network of Forensic Science Institutes (ENFSI) and with the assistance of EU funding under the STOP programme. ENFSI was asked by the Police Co-operation Working Group to provide advice on these matters in February 1997 (document no. 6467/97 ENFOPOL 50).
3. In December 1997 the UK issued a questionnaire (document no. 13233/97 ENFOPOL 236) to ascertain progress by Member States in establishing their own national DNA databases.

Progress by ENFSI DNA Working Group

4. In formulating its advice to the Police Co-operation Working Group, the ENFSI DNA Working Group is addressing the following issues:
 - ensuring uniformity of DNA profiling methodology, in so far as is necessary for the exchange of data;
 - standardisation of the DNA markers (known as loci) for use by national DNA databases;
 - guidance on the interpretation of the results of DNA analysis;
 - development of arrangements for proficiency testing, competency testing and quality assurance to ensure the validity of data exchange between forensic laboratories;
 - population studies on which to base the statistical estimates of the frequency of occurrence of any given profile randomly matching that of another individual; and
 - the practical requirements for the storage and exchange of data.

Good progress has been made on the first two of these issues. A series of collaborative trials has demonstrated that laboratories in participating Member States can successfully use the latest DNA methodology and produce results that are capable of exchange. An initial set of four DNA markers or loci (HUMVWFA31/A; HUMTHO1(TC11); HUMFIBRA(FGA); and HUMD21S11) have been established; additional standard loci will need to be identified in order to achieve sufficient discrimination between individual DNA profiles.

Results of Questionnaire

5. All 15 Member States responded to the questionnaire. The results of the questionnaire are detailed in the attached annex.
6. Three Member States (Austria, the Netherlands and UK) have in place a national DNA database which hold the profiles of persons suspected or convicted of certain classes of criminal offences together with the profiles derived from stains left at the scenes of crime. One further Member State (Spain) has a database of profiles taken from scenes of crime stains.
7. The circumstances in which samples may be taken from persons for DNA profiling purposes varies considerably from one Member State to another. At one end of the scale, legislation in the UK permits samples to be taken, without consent, from any person charged or convicted of any offence punishable by imprisonment. Other Member States limit the power to take samples to a narrower category of serious offences.
8. Of the other eleven Member States without an existing national DNA database, eight are in the process of establishing one within the next two years. Again in these cases the power to take samples varies significantly from one Member State to another. Three Member States have no current plans to set up a database.
9. In the majority of cases there appears to be no legal restrictions on the sharing of DNA profiling data with other Member States.
10. If full advantage is to be taken of DNA profiling as a means of investigating and combating cross border crime it is important that Member States' legislation in this area satisfies certain minimum requirements governing the taking and retention of samples for DNA profiling purposes and the use to which DNA analysis results may be put in terms of cross searching them against DNA databases held by other Member States. Further consideration needs to be given to these issues with a view to putting recommendations to the Council.

Conclusions

11. Most Member States have in place, or are in the process of putting in place, a national DNA database. This is an essential first step if Member States are to exchange DNA data between them on any significant scale. As the Council Resolution of 9 June 1997 recognised a further prerequisite is that Member States also adopt common profiling markers and standards. Work on agreeing such markers and standards is continuing within ENFSI and it is anticipated that definitive advice will be submitted to the Police Cooperation Working Group by the end of 1999, with a view to placing before the Council firm recommendations to facilitate the exchange of DNA analysis results between Member States. Member States are invited to note current progress on implementing the resolution of June 1997. It is proposed that a further report be made to the Council within one year.

MEMBER STATES WHICH HAVE ALREADY ESTABLISHED A NATIONAL DNA DATABASE

Member State	When established	Holds profiles from persons	Holds profiles from crime scene stains	From whom can you take DNA samples?	Any legal restrictions to sharing data with other Member States?	Legal basis for retention of samples for later analysis?	Time limit on retention?
UK	April 1995	Yes	Yes	Those suspected, charged or convicted of a recordable offence (ie - any offence punishable by imprisonment)	Under the provisions of relevant legislation the DNA profiles of persons arrested or charged with an offence may only be checked against databases held by or on behalf of police forces in the UK and Islands. Consideration is being given to amending legislation to remove these restrictions. There are no such restrictions against checking the DNA profiles of convicted persons or profiles derived from crime scene stains against databases outside the UK.	Yes. Where someone is convicted or cautioned for a recordable offence; or where action against that individual is ongoing; or if another person from whom a sample is taken as a part of the same investigation.	No limit

AUSTRIA	October 1997	Yes	Yes	From those suspected of having committed a criminal offence, and where there is a danger that further crimes could be committed.	None, provided the information is used for cooperation with crime officers and the exchange of information is mutual, and above all, the rules and regulations of the police cooperation law are adhered to.	Yes	20 years.
SPAIN	October 1992	No	Yes (only sex offences)	Cannot force anyone to give a sample.	No specific legislation to protect personal information. But, in accordance with international agreements and if the receiving country has similar legislation, could exchange data for special police investigations vis Interpol	Yes	There is no limit on the retention of samples.
NETHERLANDS	1997	Yes	Yes	From suspects (compulsory sampling is possible) in offences attracting 8 years or more imprisonment, or of certain other offences listed in Articles	No. The Code of Criminal Procedure allows this, under the responsibility of a Public Prosecutor.	No	N/A

Member State	Plan to establish a national DNA database?	When would this be operational?	Has enabling domestic legislation been enacted?	Will the database contain profiles from persons?	Will the database contain profiles from crime scene stains?	From which people will you be able to take samples?	Are there existing legal restrictions which would preclude sharing data with other Member States?	Does/will legislation permit retention for later analysis? If "yes", any time limit?	Do you envisage having a database in 2, 5, 10 years, or none of these?
Portugal	Yes	Within 2 years (as at Feb 1998)	No, but is being prepared	Yes	Yes	Those suspected of having been involved in violent crime; and crime scene samples if the crime may be one of a series.	The legal framework for the exchange of data is being considered as part of the legislative process.	This will be discussed during legislative phase	2 years
Finland	Yes	Early 1999	Yes	Yes	Yes	For investigation purposes, samples may be taken from persons suspected of a crime for which the severest punishment in law is at least 6 months' imprisonment.	None in individual cases. However, "mass distribution", ie- sharing the total Database contents or a major part thereof, is prohibited.	Yes. The time limit will be the same as for the data in the Database: 10 years.	2 years

(Finland)						To be included in the Database, a person has to be convicted of a crime for which the severest punishment is at least 1 year's imprisonment.			
Greece	No	Not applicable	No	Yes	Yes	It will be legally arranged through national legislation	No legislation exists		None
Denmark	Yes	Awaiting a final decision on whether to have one	No	Yes	Yes	Current proposal is to hold profiles of those charged, convicted and acquitted	Will be able to exchange evidence, including DNA profiles, in preparation for investigation and hearing in court of a pending criminal case,	Yes; no time limit.	2 years

(Denmark)							within the framework of international cooperation on mutual legal assistance in criminal cases		2 years
Germany	Yes	Oct. 1998		Yes	Yes	Persons charged with an offence which carries a minimum sentence of one year or more.	Information awaited	Information awaited	
Ireland	No	N/A	No	N/A	N/A	N/A	N/A	N/A	None
Luxembourg	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	None
Belgium	Yes	1999-2000 (depending upon legislation)	No	Yes	Yes	Decision awaited, but likely to be from sexual/physical violence offenders	Data protection legislation (ie- Convention No 106 from the European Council)	Probably not	2 years

France	Yes	To be determined following legislation	No (in progress)	Yes	Yes	From persons convicted of murder or sexual offences	Final decision rests with judicial authorities	Yes. Time limit will be at the discretion of judicial authorities	2 years
Italy	Yes	No information provided	Yes	Yes	Yes	No information provided	No information provided	Yes	2 years
Sweden	Yes	January 1999	No (in progress)	Yes	Yes	People convicted of an offence leading to more than 2 years' imprisonment, provided DNA analysis is done during the investigation	None, provided they are members of Interpol	No	2 years