

EUROPEAN UNION  
THE COUNCIL

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10763/99

LIMITE

ENFOPOL 59

**NOTE**

from :	Presidency
to :	Police Co-operation Working Group
No. prev. doc.:	OJ C 193, 24.6.1997, p. 2; 6467/97 ENFOPOL 50; 13233/97 ENFOPOL 236; 7471/98 ENFOPOL 47 + COR 1; 7568/99 ENFOPOL 28
Subject :	DNA - Report to the Council on the implementation of the Council Resolution of 9 June 1997 on the exchange of DNA analysis results

**Introduction**

The Council Resolution of 9 June 1997 concerning the exchange of DNA analysis results (OJ C 193, 24.6.1997, p. 2) encouraged Member States to consider establishing national DNA databases with a view to facilitating the exchange of DNA analysis results between the participants. The resolution further called on Member States to build up their databases using the same DNA markers, in accordance with a set standard, and in a compatible manner.

The resolution urged the Presidency to submit concrete recommendations to the Council, with a view to implementing the resolution within one year of its adoption.

Progress on this issue was tracked with the aid of questionnaire 13233/97 ENFOPOL 236, focusing on DNA analysis, drawn up by the United Kingdom, the results of which were reported in document 7471/98 ENFOPOL 47. In addition, this document also addressed the work done by the European Network for Forensic Science Institutes (ENFSI) in the context of the desire for progress towards the harmonisation of the methodology of DNA analysis.

To facilitate the complete harmonisation of DNA analysis, it is essential to use same DNA markers (known as locus). The ENFSI DNA Working Group agreed in December 1998 on the use of seven joint DNA markers (plus amelogenin, the XY homologous gene 'sex test'). The ENFSI DNA Working Group subsequently informed the Interpol DNA Working Group of the agreement.

With this in mind, the Finnish Presidency is of the opinion that this rapid progress towards harmonisation should be further emphasised, as the ability to access DNA analysis data from across the Member States has a particularly significant role to play in cross-border crime prevention. The previous questionnaire mapped the state of the art as of February 1998. Scientific progress has however been ongoing since this time in research facilities across the Member States. Thus the PCWG decided on 22 April 1999, that the then forthcoming Finnish Presidency should seek to release a further questionnaire in order that the latest developments in the state of the art be mapped with precision.

#### **Results of the Survey (document no. 7568/99 ENFOPOL 28)**

Only 10 Member States (UK, Austria, the Netherlands, Belgium, Denmark, Finland, Ireland, Italy, Sweden and Luxembourg) responded to the questionnaire, thus the results presented here are based on the information received from those Member States only. Detailed results are given in the attached annex.

Three Member States (UK, Austria and the Netherlands) already have in place national DNA databases holding the profiles of persons suspected, or convicted, of certain classes of criminal offences, together with profiles derived from stains left at the crime scene. Thus, the present situation remains the same as it was in 1997 (document no. 13233/97 ENFOPOL 236 and document no. 7471/98 ENFOPOL 47).

The circumstances in which samples may be taken for DNA profiling purposes still however vary considerably from one Member State to another. For example, in the Netherlands only severe offences currently merit the taking of a DNA sample. This situation may alter in the near future however, as amendments to the law on DNA sampling in the Netherlands are now in preparation.

Finland, Sweden, Denmark and Belgium are all in the process of establishing their own national DNA databases, all of which should be operational within the next year. In these cases, the authority to take samples varies slightly, with Finnish legislation seeming to provide the weakest limitations.

Ireland, Italy and Luxembourg have no current plans to set up a national DNA database.

In the majority of cases, there appear to be no legal restrictions to the sharing of DNA profiling data with other Member States. If DNA profiling, as a means of combating cross border crime is however to be fully exploited, it is important the Member States' legislation in this area becomes fully harmonised.

In particular, the questionnaire (document no. 7568/99 ENFOPOL 28) was designed to map the methodical readiness of the Member States to run, or to establish, DNA databases that fulfil the recommendations issued by the Council (document no. OJ C 193, 24.6.1997, p.2). To facilitate harmonisation of DNA methods, it is essential to use the same DNA markers (known as locus). Work on developing agreed markers and standards for DNA profiling is pursued by the European Network of Forensic Science Institutes (ENFSI) with the assistance of EU funding under the STOP programme. The European forensic DNA laboratories co-operating in the ENFSI (ENFSI DNA Working Group) agreed, in December 1998, to use seven joint DNA markers (in addition to amelogenin, the XY homologous gene 'sex test'). The data received illustrates that the goal of the harmonisation of DNA markers has already almost been achieved. Once the new test systems containing these markers have been introduced the process will be complete.

## Conclusions

Many Member States have in place, or are in the process of putting in place, a national DNA database. The harmonisation work carried out within the context of the ENFSI STOP programme has been successful, and it seems that most Member States will use the seven agreed DNA markers. The initial number of agreed DNA markers was limited to four, vWA, HUMTH01, FGA, and D21S11. Three additional markers, D8S1179, D3S1358 and D18S51 have however now been added to this original list. In sum, the seven DNA markers now available enable a sufficient level of discrimination to take place between individual DNA profiles.

In this light, the Finnish presidency now proposes that the PCWG should move forward by initiating preparations for a forthcoming framework decision on the agreed DNA-markers. With a framework decision in place, time-consuming discussions as to the application of a benchmark for common DNA-markers could be terminated. In turn, such a decision would signal a clear and highly practical beginning to the new regime for the exchange of forensic DNA analysis results between the Member States.

# MEMBER STATES WHICH HAVE ALREADY ESTABLISHED A NATIONAL DNA DATABASE

Member State	When established	Holds profiles from persons	Hold profiles from crime scene stains	Persons from whom DNA samples can be taken?	Changes to the information given in the report of the previous questionnaire (7471/98 ENFOPOL 47)?			DNA markers (loci) used for the database profiles.	STR multiplex systems are in use
					legislation	sharing the information with other Member States	storing the samples		
UK	April 1995	Yes	Yes	From persons suspected of committing a recordable offence i.e. an offence which is punishable with a term of imprisonment.	Criminal evidence (amendment) ACT 1997 extends categories of persons from whom samples may be taken to include persons imprisoned or detained for sexual offences before 10.4.-95.	N/A	N/A	D21S11 vWA HUMTH01 FGA D8S1179 D18S51 amelogenin	FSS SGM  AmpFISTR SGM Plus (will be introduced in 1999)  PowerPlex 16 (will be introduced in 2000/2001)
The Netherlands	1997	Yes	Yes	Suspects of an offence for which the statutory penalty is a custodial sentence of eight years or more. Also in the case of persons suspected of defined articles involving sexual offences. When a suspect is willing to give a bodily sample then a DNA investigation can be performed in all categories of offences.	Proposals for new legislation on DNA are scheduled to Parliament		There will be some changes be in forthcoming new DNA legislation	D21S11 vWA HUMTH01 FGA D8S1179 D18S51 amelogenin	FSS SGM  AmpFISTR SGM Plus (will be introduced in 1999)

Austria  (Austria)	1 October 1997	Yes	Yes	<p>From persons who are suspected of having committed a particular delict/offence/crime an oral smear is taken. In addition to the basic requirements for criminal identification treatment under the Austrian Law, one of the following delicts/offences/crimes has to have had been committed:</p> <ul style="list-style-type: none"> <li>- premeditated homicide</li> <li>- sex crime/sex offences</li> <li>- wilful physical injuries</li> <li>- deprivation of liberty</li> <li>- kidnapping with extortion</li> <li>- grave duress</li> <li>- larceny in specified forms</li> <li>- robbery</li> <li>- extortion</li> <li>- arson</li> <li>- resisting a public officer in the execution of his office</li> <li>- drug addiction, as it is defined under Austrian Law</li> </ul>	No	No	No	<b>D21S11</b> <b>vWA</b> <b>HUMTH01</b> <b>FGA</b> <b>D8S1179</b> <b>D18S51</b> <b>amelogenin</b>	FSS SGM AmpFISTR SGM Plus AmpFISTR Profiler AmpFISTR Profiler Plus PowerPlex 1 QUAD 1 QUAD 2 QUAD Y1 QUAD Y2
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# MEMBER STATES WHICH DO NOT HAVE A NATIONAL DNA DATABASE YET

Member State	Plan to establish a national DNA database?	When would this be operational?	Will the database contain profiles from persons?	Will the database contain profiles from crime scene stains?	Persons from whom you will you be able to take samples?	Changes to the information given in the report of the previous questionnaire (7471/98 ENFOPOL 47)?			Which DNA markers (loci) are in use?	Which STR multiplex systems are in use?
						legislation	sharing the information with other Member States	storing the samples		
Finland	Yes	1 August 1999	Yes	Yes	For investigation purposes, samples can be taken from persons suspected of an offence for which the severest punishment in law is at least 6 months imprisonment. To be included in the Database, a person has to be suspected or convicted of an offence for which the severest punishment is at least 1 year's imprisonment.	No	No	No	D21S11 vWA HUMTH01 FGA D8S1179 D3S1358 D18S51 amelogenin D16S539 D2S1338 D19S433 D1S80 FES/FPS	AmpFISTR SGM Plus  Two home made triplex systems: 1. HUMTH01 FES/FPS vWA  2. HUMTH01 D3S1359 TPOX
Denmark	Yes	1999/2000	Yes	Yes	Suspects charged with a serious crime - normally with a prison term of more than 1½ years.	No	No	No	vWA HUMTH01 HUMF13A HUMFES D1S80 D16S539 D19S433 D2S1338	FSS Quadroxplex  AmpFISTR SGM Plus (will be introduced in 1999)

**(MEMBER STATES WHICH DO NOT HAVE A NATIONAL DNA DATABASE YET)**

Sweden	Yes	End of 1999	Yes	Yes	For investigative purposes, samples can be taken from persons suspected of a recordable offence.  The DNA-profile can be included in the Database if the person has been convicted of a particular offence which can lead to more than two years imprisonment, and if the DNA-analysis is made during the investigation of the crime.	Special legislation has existed since 1 April 1999	No	No	<b>D21S11</b> <b>vWA</b> <b>HUMTH01</b> <b>FGA</b> <b>D3S1358</b> <b>amelogenin</b> D5S818 D13S317 TPOX D7S820 CSF1PO SE33	AmpFISTR Profiler
Ireland	No	No fixed timeframe no plans in place for a national database	N/A	N/A	N/A	No	No	No	<b>D21S11</b> <b>vWA</b> <b>HUMTH01</b> <b>FGA</b> <b>D8S1179</b> <b>D18S51</b> <b>amelogenin</b>	FSS SGM
Italy	No	N/A	N/A	N/A	N/A	No	N/A	N/A	<b>D21S11</b> <b>vWA</b> <b>HUMTH01</b> <b>FGA</b> <b>D8S1179</b> <b>D3S1358</b> <b>D18S51</b> <b>amelogenin</b> TPOX CSF1PO D16S539 D7S820 D13S317 D5S18	AmpFISTR Profiler  AmpFISTR Profiler Plus



**(MEMBER STATES WHICH DO NOT HAVE A NATIONAL DNA DATABASE YET)**

Belgium	Yes, it is planned for late 1999, and scheduled to begin in 2000, depending on the publication of the Royal Act that will provide details on the application of the law.	1999/2000	Yes	Yes	<p>Any suspect giving informed consent, provided at least one human cell stain has been found and collected for the related case. The Examining Magistrate ("Juge d'Instruction") can force a person to provide a reference sample if this person does not give consent. The reason for the refusal is documented. However, this constraint can only be applied when:</p> <ul style="list-style-type: none"> <li>- the offence is of a serious nature, punishable by a minimum sentence of 5 years jail</li> <li>- the magistrate has every indication that the person is directly linked to the crime</li> <li>- at least one biological stain has been found and collected</li> </ul> <p>Any person convicted of serious crimes (mainly sexual assaults, murders,...the technical list is given in the law of 22 March 1999, art. 5) for which they have been sentenced to imprisonment or confinement. When the profile has not been obtained at the time of the judgement, reference sample will be obtained and DNA analysis will be performed. Consent is not required.</p>	Yes, the law was enacted on March 22, 1999 and published on May 20, 1999	?	Yes, the law requires destruction of the collected cell samples	<b>D21S11</b> <b>vWA</b> <b>HUMTH01</b> <b>FGA</b> <b>D8S1179</b> <b>D3S1358</b> <b>D18S51</b> <b>amelogenin</b> <b>TPOX</b> <b>CSF1PO</b> <b>D16S539</b> <b>D7S820</b> <b>D13S317</b> <b>D5S18</b>	<p>AmpFISTR Profiler</p> <p>AmpFISTR Profiler Plus</p> <p>AmpFISGM Plus will probably be introduced this year (1999)</p>
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**(MEMBER STATES WHICH DO NOT HAVE A NATIONAL DNA DATABASE YET)**

Luxembourg	No, in spite of the aforementioned Council resolution, we have not as yet established a database, nor do we have a concrete deadline for doing so. The reason being, that the capacity for undertaking such analysis does not exist in our country, thus samples are sent to different laboratories in neighbouring countries (especially Germany and Belgium) making comparisons difficult				Although we don't have a database, DNA profiles can be established in both cases (persons and crime case stains). The decision has to be taken by the judicial authorities, but the possibility does not exist to oblige a person to collaborate	No	No	No	Depends on the laboratory where the DNA profile is established	Depends on the laboratory where the DNA profile is established
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**10763/99 COR 1**

**LIMITE**

**ENFOPOL 59**

**CORRIGENDUM TO NOTE**

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from :	Presidency
to :	Police Cooperation Working Group
No. prev. doc.:	10763/99 ENFOPOL 59
Subject :	DNA

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– 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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**1. Page 6, column 1**

The word in brackets "(Austria)" should be deleted.

**2. Page 6, column 5**

Column 5 should read as follows:

*"An oral smear is taken from persons who are suspected of having committed a particular delict/offence/crime where that delict/offence/crime or the suspect's personality make it likely that, in the course of committing certain further delicts/offences/crimes, the suspect will leave behind traces which could identify him on the basis of the genetic information provided. In addition to the basic requirements for criminal identification under Austrian Law, one of the following offences must have been committed:*

- *premeditated homicide*

- *certain sexual offences*
- *in the case of drug addicts, if criminal identification takes place because of another delict/offence/crime (delinquency linked to drug dependence)*
- *wilful physical injuries*
- *deprivation of liberty*
- *kidnapping with extortion*
- *grave duress*
- *certain forms of larceny*
- *robbery*
- *extortion*
- *arson*
- *resisting state authority*
- *criminal offences under the Austrian Drugs Act*

*In addition to such obligatory oral smears, an oral smear may in special circumstances also be taken from persons suspected of having committed a delict/offence/crime other than those listed above. Such special circumstances include the suspected perpetration of repeated or serial delicts/offences/crimes and cases where there is reason to assume that DNA analysis could shed light on an offence.*

*Furthermore, an oral smear may be taken from persons on grounds of a pertinent delict/offence/ crime committed before 1 October 1997 where a sentence has been passed because of that delict/offence/crime, a serious crime is involved and the sentence has not yet been served, or where such persons are not prosecuted or sentenced for a serious crime due to their criminal incapacity.*

*If a person refuses to comply, it is not permissible to exercise direct coercive force to take an oral smear (e.g. by using a gag), as penetration of the mouth – a body cavity – would constitute a violation of that person's physical integrity.*

*As an alternative to using direct coercive force to remove DNA material, the neck/back and forehead of such persons may be swabbed with swab sticks in exceptional cases."*

**3. Page 6, column 6**

Column 6 ("Legislation") should read as follows:

*"Yes. The Order amending the Austrian Law on the Security Police came into force on 1 September 1999 (taking oral smears for identification purposes; DNA testing/taking oral smears to prevent suspects from committing further delicts/offences/crimes – the concept of deterrence; retrospective acquisition of genetic information by taking oral smears for DNA analysis in relation to cases arising before 1 October 1997)."*