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ADDENDUM TO THE INITIATIVE

from : Swedish and Spanish delegations

Subject: Initiative of the Kingdom of Sweden and the Kingdom of Spain with a view to adopting a COUNCIL FRAMEWORK DECISION on Accreditation of Forensic Laboratory Activities
- Explanatory Memorandum

Accreditation as a confidence-building measure

Over the last couple of years, information exchange in the area of judicial and law enforcement cooperation has become a high priority for the EU and its Member States. The Swedish and Spanish delegations intend to keep the focus on this development – in the spirit of the Principle of Availability.

The international exchange of information used in law enforcement and judicial processes is by no means uncomplicated. As the amount of data transferred over our internal borders becomes greater, it will become increasingly important to ensure that the *quality* of the data is sufficiently high. As for information originating from forensic processes, there are always a number of steps that have to be taken using a controlled routine, how an item has been handled, what methods have been used and how the results have been interpreted, and there may always be a level of uncertainty. The competence of the persons involved in the forensic process is also essential to achieving a defined

level of quality. It is important to ensure the quality of data for several reasons, inter alia to improve police cooperation, guarantee the legal certainty to the suspects and improve judicial cooperation where evidence from one Member State is used in proceedings in another Member State. Most importantly, we need to strengthen the *confidence* between Member States so that we can rely on the quality of the data exchanged.

In point 3.4(h) of the Council and Commission Action Plan implementing The Hague Programme (2005/C 198/01), Member States stressed the need for a definition of the quality standards of forensic laboratories by the year of 2008.

The Swedish and Spanish delegations believe that it is time that all laboratories performing forensic work in all Member States to fully comply with EN ISO/IEC 17025 - General requirements for the competence of testing and calibration laboratories - and that this standard should be applied to the examination process for both DNA and fingerprints, as a start.

A mandatory accreditation of forensic processes is an important step towards a safer and more effective information exchange. The risk for evidence becoming obsolete due to breach of quality in the process is reduced to a minimum and compatibility is secured between results obtained in laboratories in different countries.

In October 2008, the French Presidency held a seminar in Lyon on “Scientific proof in criminal justice”. It was said that in some countries, evidence is rejected by the court, unless it has been analysed using methods that are covered by accreditation. Therefore, it is important to arrive at concerted European measures in this field. There also seemed to be a strong opinion among experts that the time had come to make accreditation mandatory for laboratory activities within the EU.

An international standard for ensuring the quality of laboratory activities

The idea with this proposal for a Council Framework Decision is that all laboratories providing forensic results in all Member States should be obliged to comply with the international standard ISO/IEC 17025 - " General requirements for the competence of testing and calibration laboratories". The ISO/IEC 17025 includes both management requirements and technical requirements.

Management requirements are primarily related to the adequate operation and effectiveness of the quality management system within the laboratory. Technical requirements address the competence of staff, relevance and quality of methodology and test and calibration equipment. The presence of all of these aspects in a laboratory, i.e. both an adequate and effective quality system and technical competence defines the total competence of the body performing the work. The aim with accreditation is to ensure that the total competence of the body performing laboratory activities is adequate for the work to be performed and to ensure correct results under the methodology required. It is important to underline that accreditation does not state which method to use. However, the methods that a laboratory applies have to be suitable for its purpose. Accreditation provides a third party attestation that the competence of the laboratory is fit for its purpose and that the laboratory has the systems in place to maintain this competence.

In brief, accreditation ensures that the methods used are validated and are performed in a correct manner, that the instruments are appropriate for that method, that the staff performing analysis are competent and that the organisation has the capacity to maintain the quality.

The first step towards a more uniform European forensic cooperation

The initiative will be limited to accreditation of laboratory activities regarding DNA and fingerprints. It would of course have been valuable if the entire process, from the crime scene to the delivery of an expert report, could be covered at the same time. However, bearing in mind that the work on a crime scene is partially dependant on experience and expertise rather than stated facts, there is still a lot of work to be done before agreeing on accreditation of this area on the European level. The forensic community, the police organisations and the accreditation bodies have to prepare for the inclusion of crime scene activities in the accreditation of the forensic process. However, regarding the laboratory activities, it is already well known how to document procedures and methods and how to assess that the activities fulfil the criteria in the international standard.

Accreditation of laboratory activities could be the first step in a process of improving the quality of forensic cooperation. In the longer term, thought could also be given to expanding the demand for a quality standard for crime scene activities as well.

The demand for accreditation will therefore apply from the moment an item or a sample is handled by a forensic laboratory. Accreditation will be needed for the development of fingerprints, the analysis of DNA and the interpretation of fingerprints and DNA.

The acknowledgment of accreditation as a process for quality assessment

Under the proposal for a Framework Decision, Member States must ensure that all their forensic laboratory activities are accredited by their national accreditation body. Under the Regulation on requirements for accreditation (765/2008), every Member State must appoint an accreditation body. In Sweden, the competent body will be the Swedish Board for Accreditation and Conformity Assessment – SWEDAC.

There is a European Network of Forensic Science Institutes, with 58 member laboratories representing 25 EU Member States. Out of these, 31 laboratories are accredited to comply with ISO/IEC 17025.

Taking the Swedish case as an example, the National Laboratory of Forensic Science (SKL) is a member of the ENFSI and is accredited. However, the technical units within the police authorities have not been accredited for their work with fingerprints.

In order to ensure the same quality for all DNA and fingerprints that are exchanged between Member States, all forensic providers, not only the major national laboratory in each Member State, need to be accredited.

Going back to the Swedish example, the Framework Decision would make it compulsory for the technical units within the police to be accredited by the Swedish accreditation body, SWEDAC.

To sum up, some Member States have a limited number of laboratories that provide forensic expertise, other Member states have various different players, ranging from large-scale public laboratories to small private actors. The aim of the proposal is that all actors handling items or samples of DNA and fingerprints with a view of providing expert opinions or exchanging scientific evidence, should be accredited by their national accreditation body, in order to comply with ISO/IEC 17025.

An assured quality of forensic evidence will provide confidence in the quality of current instruments for law enforcement and judicial cooperation

Regarding the impact on other instruments, for example the Prüm Decision, this proposal would improve the quality of the information that is already being exchanged (or in the Prüm case - is about to be exchanged). In the Prüm Decision, the need for accreditation is mentioned. However, at the moment of negotiating the Prüm Decision, there were a lot of different issues discussed. The accreditation part was not among the main issues and therefore was not included as a prerequisite for the information exchange. Furthermore, DNA and fingerprints are already being exchanged and will continue to be exchanged via channels other than the Prüm Decision.

Regarding judicial cooperation, a mandatory accreditation for all laboratories will facilitate the assessment of the quality of forensic evidence or forensic reports received from another Member State. However, it will of course always remain the responsibility of each individual judicial authority to assess any evidence, forensic or not, in accordance with its own national law.
