



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Presidency
to :	Police Co-operation Working Group
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Subject :	Draft framework decision on the exchange of DNA analysis result

THE COUNCIL OF THE EUROPEAN UNION

Considering that exchanging DNA analysis results may be a way of making a significant contribution to the investigation of crime,

Believing that exchanging DNA analysis results for the purpose of investigating crime should be restricted to exchanging data from the non-coding part of the DNA molecule,

Emphasising that, to this end, it is very important for Member States to exchange their DNA investigation findings,

Taking into account initiatives being developed at European Union level within the framework of the incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP)¹,

¹ Joint Action of 29.11.1996, OJ L 322, 12.12.1996, p. 7

Taking into account the harmonisation work done by the Member States under the umbrella of the European Network of Forensic Science Institutes (ENFSI),

Taking into account initiatives already under way in the other international *fora*,

Whereas DNA investigation may involve not only technical, legal and political but also ethical aspects which need to be given appropriate consideration in the further development of cooperation activities,

Having regard to the protection of personal data as regulated by European Convention N° 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), Recommendation (87) 15 of 17 September 1987 of the Council of Europe Committee of Ministers regulating the use of personal data in the police sector, and Recommendation (92) 1 of 10 February 1992 of the Council of Europe Committee of Ministers on the use of DNA analysis within the framework of the criminal justice system,

Noting that for exchange of DNA analysis results to be useful DNA markers need to be standardised,

Having noted that further steps with a view to the exchange of DNA analysis results within the European Union are not possible until there are properly operating databases in the Member States,

HAS ADOPTED THIS FRAMEWORK DECISION:

I. Standardisation of DNA technology

1. With a view to exchange DNA analysis results within the framework of criminal justice system, Member States are obligated to build up DNA analysis results using the commonly agreed and evaluated DNA markers vWA, HUMTH01, FGA, D21S11, D8S1179, D3S1358 and D18S51, as a minimum set.
2. New markers will be added to the above-mentioned list as others are evaluated and agreed by the Member States.

II. Establishment of national DNA databases

1. Member States are urged to establish national DNA databases.
2. With a view to the exchange of DNA analysis results between Member States, they are obligated to build up those databases by using **at least** the evaluated and commonly agreed DNA markers. The possibility of exchange shall be limited to exchanging data from the non-coding part of the DNA molecule, which is generally assumed not to contain information about special hereditary qualities.
3. Member States should take into account, when setting up a computer system for DNA analysis results, the results of the investigation being carried out by the ICPO-Interpol on DNA.

III. Legal safeguards

1. It is up to each Member State to decide on the conditions under which, and the offences in respect to which, the DNA analysis results may be stored in the national database.

2. The taking of DNA material for the purpose of storing DNA analysis results should be subject to safeguards designed to protect the physical integrity of the person concerned.
3. National rules on personal data will have to be in accordance with the European Convention N° 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981). Recommendation (87) 15 of 17 September 1987 of the Council of Europe Committee of Ministers regulating the use of personal data in the police sector, and Recommendation (92) 1 of 10 February 1992 of the Council of Europe Committee of Ministers on the use of DNA analysis within the framework of the criminal justice system should be taken into consideration, where appropriate.

IV. Exchange of DNA analysis results at European level

1. A status which enables exchange of DNA analysis results between the Member States will be achieved stepwise. **Firstly**, the harmonised method for the analysis of DNA within the framework of the criminal justice system shall be applied in each Member State. **Secondly**, national DNA data bases should be established for storing the DNA analysis results. **Thirdly**, a system to exchange information between the Member States stored in the national data bases should be developed.
2. Such information exchange should be restricted to DNA analysis results which when compared can indicate whether a person appears in a file and whether a person can be connected with traces found in a given crime.
3. The need to establish a European DNA database should be considered as a further step once the exchange of the DNA analysis results have been effected.

V. **Conclusion**

The Council requires that, as a first step in the exchange of DNA analysis results, **the harmonised DNA markers shall be applied within the framework of the criminal justice system in each Member State within one year of the adoption of this framework decision.**
