



**COUNCIL OF
THE EUROPEAN UNION**

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REV 1**

LIMITE

ENFOPOL 65

NOTE

from : Presidency
to : Police Co-operation Working Group

No. prev. doc.: OJ C 193, 24.6.1997, p. 2; 6467/97 ENFOPOL 150; 13233/97 ENFOPOL 236;
7471/98 ENFOPOL 47; 7568/99 ENFOPOL 28; 10763/1/99 ENFOPOL 59
REV 1; 11634/99 ENFOPOL 65

Subject : Draft framework decision on the standardisation of DNA technology and the
exchange of DNA analysis results

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union and, in particular, Article 30 (1) and 34 thereof;

Having regard to the Council Resolution of 9 June 1997 on the exchange of DNA analysis results¹;

Having regard to the opinion of the European Parliament;

¹ OJ C 193, 24.06.1997, p. 2

Taking into account the work and the recommendations of the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI) on the harmonisation of DNA markers and DNA technology;

Taking into account the recommendations and obligations of the ICPO-Interpol DNA Working Party with regard to the establishment of national DNA databases and the practical implementation of the exchange of DNA information¹;

Whereas:

1. DNA analysis has proved to be a significant contribution to the investigation of crime, and an efficient exchange of DNA analysis results between Member States may further add to the importance of DNA analysis, particularly in the fight against international and organised crime;
2. The current situation relating to the harmonisation of DNA technology in Member States is such that it is possible to agree in detail on the standards required for exchanging DNA analysis results, particularly on the standardisation of the DNA markers used in analyses;
3. This framework decision aims to contribute to achieving the final objective of exchanging between Member States the DNA data needed to investigate crime in a controlled, efficient and routine way;

¹ Document AGN/67/RAP. No.12 drawn up by the ICPO-Interpol DNA Working Party

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this framework decision:

- a) 'DNA-marker' means the locus in a DNA molecule which typically contains different information as regards different individuals;
- b) 'DNA analysis result' means a letter or number code which is built up on the basis of analysing one or several loci in DNA and is used for reporting. For example, DNA analysis result D3S1358 14-15, D21S11 28-30 means that the subject is type 14-15 as regards DNA marker D3S1358 and type 28-30 as regards DNA marker D21S11;
- c) 'European Standard Set (ESS)' means a set of DNA markers chosen as a common European standard among a number of other DNA markers;
- d) 'ESS marker' means a DNA marker which is part of the European Standard Set (ESS); and
- e) 'ESS analysis result' means a DNA analysis result built up by using the above mentioned DNA markers which are part of the ESS.

Article 2

This framework decision aims to:

1. set a common standard for the DNA markers used in forensic DNA analyses in EU Member States. The objective of the standardisation is to guarantee the usefulness of the exchange of DNA analysis results between the Member States;
2. establish the operational mechanisms for maintaining and developing the harmonisation of forensic DNA analysis among the Member States in future; and
3. lay down the guidelines for the actual measures to be taken in view of exchanging DNA analysis results.

Article 3

Standardisation of DNA technology

1. In forensic DNA analysis EU Member States shall be obligated to use at least the DNA markers listed in the annex to this framework decision (Annex 1), which compose the European standard for DNA markers used in forensic investigation recommended by the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI).
2. ESS analysis results shall be built up by using scientifically tested and approved DNA technology. The DNA Working Group of the European Network of Forensic Science Institutes (ENFSI) shall be obliged to act as the official expert body of the EU Police Co-operation Working Group, being responsible for analysing, testing and evaluating the existing and any new DNA markers and DNA technology, and give advice and recommendations on these issues. In order to fulfil these responsibilities, the DNA Working Group of the ENFSI shall be guaranteed the necessary operational and financial support.

3. New ESS markers can be introduced and existing ESS markers discarded only by virtue of a common and unanimous decision by the Member States, and provided that the decision is not incompatible with the recommendation of the DNA Working Group of the ENFSI.

Article 4

Exchange of DNA analysis results

Exchange of DNA analysis results between Member States calls for national DNA databases. On this account, Member States shall in every way facilitate the establishment, maintenance and development of these databases. When building up new national DNA databases and developing the existing DNA databases, Member States shall follow the recommendations drawn up by the ICPO-Interpol DNA Working Party¹ as far as possible within the framework of their national legislation. In addition, Member States shall take into account more detailed recommendations on the matter which may be made by the DNA Working Group of the ENFSI. Final decisions and agreements on starting the exchange of DNA data and on other issues relating to the exchange of DNA data shall be made between Member States.

Article 5

Implementation

1. Member States shall take the measures in accordance with article 3 (1) of this framework decision within one year of the adoption of this framework decision.

¹ Document AGN/67/RAP. No.12 drawn up by the ICPO-Interpol DNA Working Party

2. Before the final approval of this framework decision, the Council of the European Union, or a body authorised by it, and the DNA Working Group of the ENFSI shall agree on the obligations and responsibilities placed on the DNA Working Group of the ENFSI in Article 3 (2) and on the necessary operational and financial support required for carrying them out.
3. Once this framework decision has been adopted, Member States shall immediately take the necessary measures in accordance with Article 4 to establish national DNA databases.
4. Within two years of the entry into force of this framework decision, Member States shall inform the Council of the fulfilment of their obligations pursuant to this framework decision.

The European Standard Set (ESS) comprises the following DNA markers:

vWA

HUMTH01

FGA

D21S11

D8S1179

D3S1358

D18S51

The list in question is unambiguous, but since there may be differences between Member States in specifying the markers concerned, and also between the DNA testing systems used, the DNA Working Group of the ENFSI shall retain, where necessary, the right to define in more detail which markers it means by the markers in the list concerned.