



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 November 2009

15870/09

**ENFOPOL 287
CRIMORG 170**

"I/A" ITEM NOTE

From: General Secretariat
To: COREPER/Council

No. prev. doc: 15246/09 ENFOPOL 274 CRIMORG 165

Subject: Draft Council Resolution on the exchange of DNA analysis results

1. In 2001, the Council agreed on a European Standard Set of Loci (ESS) comprising seven DNA markers. In 2005, the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI) started reviewing the usefulness of the ESS in light of the increased exchange of DNA analysis results. In 2007, the German Presidency informed the Police Cooperation Working Party about the work of the DNA Working Group of ENFSI.
2. As the exchange of DNA data between Member States increases and the national DNA databases are developing in size and number, there is a need to improve the match probability by reviewing the number of EU common DNA-markers. The DNA Working Group of ENFSI concluded in 2009 that it was deemed necessary to expand the existing ESS from seven to twelve markers.

3. The Presidency therefore submitted a proposal to replace Council Resolution of 25 June 2001 on the exchange of DNA analysis results¹ by a new draft Resolution.
4. At its meeting on 10 November 2009, the Article 36 Committee reached agreement on the text of the draft Council Resolution.
5. COREPER is therefore requested to invite the Council to adopt the Council Resolution as set out in annex.

¹ OJ C 187, 3.7.2001, p. 1.

DRAFT
COUNCIL RESOLUTION

on the exchange of DNA analysis results

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the objectives of the Treaty on European Union;

BEARING IN MIND the protection of personal data as regulated by the Framework Decision 2008/977/JHA, on the Protection of Personal Data processed within the framework of police and judicial cooperation in criminal matters² and Council of Europe Convention No 108 for the protection of individuals with regard to automatic processing of personal data, signed in Strasbourg on 28 January 1981, Recommendation No R (87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector, and, as appropriate, Recommendation No R (92)1 of 10 February 1992 of the Committee of Ministers of the Council of Europe on the use of DNA analysis within the framework of the criminal justice system;

TAKING INTO ACCOUNT the work of the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI) on the harmonisation of the DNA markers and DNA technology;

² OJ L 350, 30.12.2008, p. 60.

CONSIDERING the existence of technical aspects associated with DNA investigation that must be taken into account in the development of cooperation activities;

BEARING IN MIND that the current European Standard Set of DNA markers consists of seven DNA markers;

CONSIDERING that the exchange of DNA data between Member States is rapidly progressing and that the national DNA databases are increasing in size and number, and recalling that the statistical value of DNA data corresponds to the random match probability and depends entirely on the number of DNA-markers that have been reliably analysed, it is deemed necessary to expand the existing European Standard Set of Loci (ESS) adopted in 2001;

RECALLING that Article 7 (1) of the Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime³ obliges Member States to use existing standards for DNA data exchange, such as the European Standard Set (ESS) or the Interpol Standard Set of Loci (ISSOL) from the date of implementation in accordance with its Article 23.

RECALLING the properties of DNA-profiles as set out in paragraph 1.1 of Chapter 1 of the Annex to Council Decision 2008/616/JHA;

CONVINCED that an effective information exchange is facilitated by increasing the number of markers;

ENCOURAGING Member States to implement as soon as practically possible the new ESS and no later than 24 months after the date of adoption of this Resolution.

HAS ADOPTED THIS RESOLUTION WHICH REPLACES COUNCIL RESOLUTION 2001/C 187/01 OF 25 JUNE 2001 ON THE EXCHANGE OF DNA ANALYSIS RESULTS:

³ OJ L 210, 6.8.2008, p. 12.

I. DEFINITIONS

1. "DNA marker" means the locus in a molecule which typically contains different information as regards different individuals;
2. "DNA analysis result" means a letter or numerical code which is built up on the basis of analysing one or several loci in DNA and 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;
3. "European Standard Set (ESS)" means the set of DNA markers listed in Annex 1;
4. "ESS marker" means a DNA marker which is part of the European Standard Set (ESS);
and
5. "ESS analysis result" means a DNA analysis result built up using the above mentioned DNA markers which are part of the ESS.

II. FORENSIC DNA TECHNOLOGY

1. In forensic DNA analysis, Member States are invited to use at least the DNA markers listed in Annex 1 which form the ESS, in order to facilitate an exchange of DNA analysis results. Where information from additional loci is available, Member States are urged to provide this when exchanging DNA data.
2. Member States are invited to build up ESS analysis results in accordance with scientifically tested and approved DNA technology based on studies carried out within the framework of the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI). Member States should be able to specify upon request the quality requirements and proficiency tests in use.

III. EXCHANGE OF DNA ANALYSIS RESULTS

1. When exchanging DNA analysis results, Member States are urged to limit the DNA analysis results to chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics.
2. The DNA markers in Annex 1 are not known to contain information about specific hereditary characteristics. Should science develop in such a way that it can be determined that any of the DNA-markers recommended in this Resolution provide information on specific hereditary characteristics, Member States are advised to no longer use that marker when exchanging DNA analysis results. Member States are also advised to be prepared to delete any DNA analysis results, which they may have received, if those DNA-analysis results should prove to contain information on specific hereditary characteristics.

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

D3S1358

VWA

D8S1179

D21S11

D18S51

HUMTH01

FGA

D1S1656

D2S441

D10S1248

D12S391

D22S1045