

(Acts adopted pursuant to Title VI of the Treaty on European Union)

Initiative of the Kingdom of Sweden with a view to adopting a JHA Council Decision establishing a system of special forensic profiling analysis of synthetic drugs

(2001/C 10/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 31 and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Sweden⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Whereas,

- (1) Conclusion No 43 of the European Council in Tampere in October 1999, point 4.1.1.4 of the European Union action plan on drugs (2000 to 2004) and point 7 of the Commission's scoreboard have been taken into account.
- (2) The production process in terms of recipes and production techniques gives synthetic drugs certain common characteristics allowing synthetic drugs which are seized at different occasions and places to be traced to the same origin, that is to say to establish matches between them.
- (3) Some national forensic laboratories in the European Union have developed specialised techniques in the analysing of synthetic drugs enabling the identification of such common characteristics.
- (4) Such characteristics provide new information in addition to traditional criminal intelligence or investigative data. Their combination could establish or reinforce links

between ongoing or finalised criminal investigations and thereby facilitate the identification of illicit centres or networks involved in the production and distribution of synthetic drugs.

- (5) The harmonisation of data provided by the specialised techniques developed is not technically possible in the short term. Laboratories having developed such techniques should be designated and tasked with the specialised physical and chemical characterisation and the impurity profiling of synthetic drugs.
- (6) The collation, combination and analysis of forensic and criminal intelligence or investigative data in real time is of crucial importance to achieve operative results, the transmission of samples of seized synthetic drugs to designated laboratories and criminal intelligence or investigative data to Europol must take place immediately after a seizure,

HAS DECIDED AS FOLLOWS:

Article 1

Analysis of samples

1. A European system of laboratories shall be set up with the aim of carrying out special forensic profiling analyses, hereafter referred to as 'special analyses', on samples of seized synthetic drugs for the purpose of the prevention, detection, investigation and prosecution of criminal offences.

2. For the purposes of this Decision, 'synthetic drugs' means amphetamines, MDMA and other ecstasy analogues (amphetamine type stimulants).

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

*Article 2***Designation of laboratories**

1. The laboratories that are to carry out special analyses on samples of synthetic drugs are designated in the Annex hereto.
2. Each laboratory shall be competent for the relevant synthetic drugs listed in the Annex.

*Article 3***Tasks of the laboratories**

1. The designated laboratories shall have two main tasks:
 - (a) to perform a special analysis of synthetic drugs of the samples transmitted to them on behalf of all Member States;
 - (b) to determine whether the samples analysed match with other samples analysed by that laboratory.
2. The designated laboratories shall apply the best possible chemical processes for the special analysis and shall keep a record of all samples analysed in order to allow checking to be made as to whether a match exists between samples.

*Article 4***Costs**

The designated laboratories shall, for the work carried out on the basis of this Decision, be funded by the Member State in whose territory they are located.

*Article 5***Obligation to take and to transmit samples**

1. Member States shall take samples of synthetic drugs seized at production sites and transmit these samples to the designated laboratories for the purposes of special analysis.
2. Member States shall furthermore take samples of synthetic drugs seized at locations other than production sites and transmit these samples to the designated laboratories in cases where a seizure is of a quantity larger than:
 - (a) for tablets or doses, 500;
 - (b) for liquid, 1 000 ml;
 - (c) for powder or other forms of bulk, 1 000 grams.

3. The samples shall be of a sufficient quantity to allow the designated laboratories to carry out the tasks laid down in Article 3.

4. The taking and subsequent transmission of samples shall take place as soon as possible and can only be refused if taking and/or transmission of samples would mean:

- harming essential national security interests, or
- jeopardising the success of a current investigation or the safety of individuals,
- involving information pertaining to organisation or specific intelligence activities in the field of State security.

5. The transmission of samples shall take place in accordance with Council Decision 2001/.../JHA of ..., on the transmission of samples of illegal narcotic substances⁽¹⁾. Neither the sending nor the receiving Member State may refuse to fill out the necessary sample transmission form referred to in Article 4 of the aforementioned Decision in cases where a sample is transmitted on the basis of this Article.

*Article 6***Informing Member States of results**

1. The laboratory shall inform the sending Member State as soon as possible of the results of the special analysis and of possible matches with other samples.
2. Member States having transmitted samples to the laboratory previously shall be informed of possible matches as well as of the origin of the matching sample.

*Article 7***Europol**

1. In accordance with Article 4(4) of the Europol Convention and without prejudice to Article 4(5) thereof, criminal intelligence or investigative data related to a seizure that is to be transmitted in accordance with Article 5 of this Decision for special analysis shall be transmitted to Europol at the same time as the transmission of the sample itself to a designated laboratory.

2. In accordance with Article 4(4) of the Europol Convention and without prejudice to Article 4(5) thereof, Europol shall be informed of all matching samples as soon as possible. It shall receive information on the nature of the drugs as well as the origin of the samples giving rise to the match.

⁽¹⁾ OJ L ...

3. The information referred to in paragraph 2 shall be transmitted to Europol through the national unit established in accordance with Article 4 of the Europol Convention of the Member State in whose territory the laboratory is located.

Article 8

Evaluation

1. This Decision shall be subject to evaluation within the Council of the European Union before ...(*).

2. For the purpose of the evaluation, the designated laboratories shall keep a record of all special analyses carried out for a period of at least five years.

Article 9

Entry into force

This Decision shall take effect on 1 September 2001.

Done at ...

For the Council

The President

ANNEX

Laboratory 1: MDMA and other ecstasy analogues

Laboratory 2: Amphetamines

(*) Five years after the date on which this Decision takes effect.