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(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.

Initiative of the Kingdom of Sweden with a view to adopting a JHA Council Decision on the transmission of samples of illegal narcotic substances

(2001/C 10/02)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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

Article 1

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

Establishment of a system for the transmission of samples

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

1. This Decision establishes a system for the legal transmission between Member States of samples of illegal narcotic substances.

Whereas:

(1) The possibility of legally transmitting samples of seized illegal narcotic substances between the authorities of the Member States for the purposes of prevention, detection, investigation and prosecution of criminal offences would increase the effectiveness of the fight against drugs.

2. Transmission of samples of illegal narcotic substances (hereinafter 'samples') shall be considered lawful in all Member States when it is conducted in accordance with this Decision.

Article 2

(2) The fight against drugs is a matter of common concern for law enforcement and justice authorities in the Member States.

Definitions

(3) At present no legally binding rules exist regulating the legal transmission of seized illegal narcotic substance samples between the authorities of the Member States. A system should therefore be created at European Union level to allow for the legal transmission of such samples.

For the purposes of this Decision, 'narcotic substances' means:

(4) That system should apply to all forms of transmission of samples of seized illegal narcotic substances between Member States. Transmission should be based on agreement between the sending and the receiving Member State, together with information to other Member States whose territory is involved.

(a) any substance, natural or synthetic, mentioned in Schedules I or II of the United Nations Single Convention on Narcotic Drugs 1961, and that Convention as amended by the 1972 Protocol;

(5) Agreement between the Member States involved should be entered into by centralised contact points on the basis of a standard sample transmission form. Following due completion of this form, transport should be deemed to take place legally.

(b) any substance mentioned in the revised Schedules I, II, III and IV of the United Nations Convention on Psychotropic Substances 1971;

(c) any substance coming under the scope of the decisions taken or to be taken on the basis of Article 5 of Council Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange, risk assessment and the control of new synthetic drugs⁽³⁾.

Article 3

(6) Transmission should take place in a manner that is sufficiently secure and guarantees that the transported samples cannot be abused,

National contact points

1. Each Member State shall designate a national contact point for the purposes of implementing this Decision.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ OJ L 167, 25.6.1997, p. 1.

2. Information concerning the designated national contact points, including subsequent modifications, shall be transmitted to the General Secretariat of the Council which shall publish the information in the Official Journal.

3. The national contact points shall be the sole bodies competent for authorising the transmission of samples under this Decision.

Article 4

Agreement to transmit samples

1. The national contact point of the Member State intending to send a sample and the national contact point of the Member State intended to receive a sample shall agree on the method of transport. For this purpose they shall make use of the sample transmission form set out in the Annex.

2. Where transmission of a sample involves transportation through the territory of another Member State ('involved Member State'), the national contact point of such involved Member State shall be informed of the planned transport by the national contact point of the sending Member State. To that end, each involved Member State shall receive a copy of the duly completed sample transmission form.

Article 5

Means of transport

1. The Member States sending and receiving the sample shall decide on the means of transport. Transport of samples shall take place in a sufficiently secure way.

2. The following means of transport shall be regarded, *inter alia*, as sufficiently secure:

- (a) transport by an official of the sending or receiving Member State;
- (b) transport by courier;
- (c) transport by diplomatic bag;
- (d) transport by registered (express) mail.

3. The duly completed sample transmission form referred to in Article 4 shall accompany the sample during the entire transport.

4. The authorities of Member States shall not hinder or detain any transport accompanied by a duly completed sample transmission form unless they have doubts as to whether the sample transmission form has been issued lawfully. In case of doubts as to the legal status of the sample transmission form, the national contact point of the Member State detaining the transport shall, as soon as possible, contact the national contact points of the Member States responsible for the completion of the sample transmission form in order to clarify the issue.

5. If the means of transport chosen is transport by an official of the sending or receiving Member State, that official shall not be permitted to wear a uniform. Further, he or she shall not have any operational powers and shall not be permitted to carry out any other missions during the transport.

Article 6

Nature of the sample and its use

1. A sample shall not exceed the quantity necessary for the work of law enforcement or judicial authorities.

2. The use of the sample within the receiving Member State shall be agreed between the sending and receiving Member States, it being understood that samples can only be used for prevention, detection, investigation and prosecution of criminal offences.

Article 7

Evaluation

1. This Decision shall be subject to evaluation before ... (*).

2. For the purpose of the said evaluation the national contact point of each sending Member State shall hold in archive a copy of every sample transmission form issued during at least the previous five years.

Article 8

Entry into force

This Decision shall take effect on [1 September 2001].

Done at ...

For the Council

The President

(*) Five years after the date of entry into effect of this Decision.

ANNEX

SAMPLE TRANSMISSION FORM**A. National contact point responsible for sending the sample**

- A.1. Name:
- A.2. Address:
- A.3. Stamp:
- A.4. Signature and date:

B. Sending authority, receiving authority and intended use of sample in receiving Member State

- B.1. The sample originates from:
- B.1.1. Name:
- B.1.2. Address:
- B.2. The sample is intended for:
- B.2.1. Name:
- B.2.2. Address:
- B.3. The sample is intended to be used for:
- (a) prevention of criminal offences;
 - (b) detection of criminal offences;
 - (c) investigation of criminal offences;
 - (d) prosecution of criminal offences;
 - (e) other use.

C. Nature and quantity of sample

- C.1. The sample is of the following nature (indicate exact composition):
- C.2. The sample is of the following quantity (indicate exact quantity, i.e. the grams, number of pills, etc.):

D. Means of transport and route to be used

- D.1. The following means of transport will be used:
- (a) transport by an official of the sending or receiving Member State;
 - (b) transport by courier;
 - (c) transport by diplomatic bag;

(d) transport by registered (express) mail;

(e) other means of transport (specify).

D.2. The following route will be used (indicate starting point, destination and general route to be used between those two points):

D.3. Where transport is to be by an official of the sending or receiving Member State, indicate the intended means of transport (train, car, etc.):

D.4. National contact points of Member States to be informed pursuant to Article 4(2):

E. National contact point receiving the sample

E.1. Name:

E.2. Address:

E.3. Stamp:

E.4. Signature and date: