

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/905/JHA

of 30 November 2009

on Accreditation of forensic service providers carrying out laboratory activities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (c) and Article 34(2)(b) thereof,

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

Having regard to the opinion of the European Parliament,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice; a high level of safety is to be provided by common action among the Member States in the field of police and judicial cooperation in criminal matters.

(2) That objective is to be achieved by preventing and combating crime through closer cooperation between law enforcement authorities in the Member States, while respecting the principles and rules relating to human rights, fundamental freedoms and the rule of law on which the Union is founded and which are common to the Member States.

(3) Exchange of information and intelligence on crime and criminal activities is crucial for the possibility for law enforcement authorities to successfully prevent, detect and investigate crime or criminal activities. Common action in the field of police cooperation under Article 30(1)(a) of the Treaty entails the need to process relevant information which should be subject to appropriate provisions on the protection of personal data.

(4) The intensified exchange of information regarding forensic evidence and the increased use of evidence from one Member State in the judicial processes of another, highlights the need to establish common standards for forensic service providers.

(5) Information originating from forensic processes in one Member State may currently be associated with a level of uncertainty in another Member State regarding the way in which an item has been handled, what methods have been used and how the results have been interpreted.

(6) In point 3.4 (h) of the Council and Commission Action Plan implementing The Hague Programme on strengthening freedom, security and justice in the European Union ⁽²⁾ Member States stressed the need for a definition of the quality standards of forensic laboratories by 2008.

(7) It is particularly important to introduce common standards for forensic service providers relating to such sensitive personal data as DNA profiles and dactyloscopic data.

(8) Pursuant to Article 7(4) of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ⁽³⁾, Member States shall take the necessary measures to guarantee the integrity of DNA profiles made available or sent for comparison to other Member States and to ensure that these measures comply with international standards, such as EN ISO/IEC 17025 'General requirements for the competence of testing and calibration laboratories' (hereinafter 'EN ISO/IEC 17025').

⁽¹⁾ OJ C 174, 28.7.2009, p. 7.

⁽²⁾ OJ C 198, 12.8.2005, p. 1.

⁽³⁾ OJ L 210, 6.8.2008, p. 12.

- (9) DNA profiles and dactyloscopic data are not only used in criminal proceedings but are also crucial for the identification of victims, particularly after disasters.
- (10) The accreditation of forensic service providers carrying out laboratory activities is an important step towards a safer and more effective exchange of forensic information within the Union.
- (11) Accreditation is granted by the national accreditation body which has exclusive competence to assess if a laboratory meets the requirements set by harmonised standards. An accreditation body derives its authority from the State. Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products⁽¹⁾ contains detailed provisions on the competence of such national accreditation bodies. Inter alia, Article 7 of that Regulation regulates cross-border accreditation in cases where accreditation may be requested from another national accreditation body.
- (12) The absence of an agreement to apply a common accreditation standard for the analysis of scientific evidence is a deficiency that should be remedied; it is, therefore, necessary to adopt a legally binding instrument on the accreditation of all forensic service providers carrying out laboratory activities. Accreditation offers the necessary guarantees that laboratory activities are performed in accordance with relevant international standards, in particular EN ISO/IEC 17025, as well as relevant applicable guidelines.
- (13) An accreditation standard allows any Member State to require, if it wishes, complementary standards in laboratory activities within its national jurisdiction.
- (14) Accreditation will help establish mutual trust in the validity of the basic analytic methods used. However, accreditation does not state which method to use, only that the method used has to be suitable for its purpose.
- (15) Any measure taken outside a laboratory is beyond the scope of this Framework Decision. For example, the taking of dactyloscopic data or measures taken at the scene of incident, the scene of crime or forensic analyses carried out outside laboratories are not included in its scope.
- (16) This Framework Decision does not aim to harmonise national rules regarding the judicial assessment of forensic evidence.

- (17) This Decision does not affect the validity, established in accordance with national applicable rules, of the results of laboratory activities carried out prior to its implementation, even if the forensic service provider was not accredited to comply with EN ISO/IEC 17025,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

1. The purpose of this Framework Decision is to ensure that the results of laboratory activities carried out by accredited forensic service providers in one Member State are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences as being equally reliable as the results of laboratory activities carried out by forensic service providers accredited to EN ISO/IEC 17025 within any other Member State.
2. This purpose is achieved by ensuring that forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.

Article 2

Scope

This Framework Decision shall apply to laboratory activities resulting in:

- (a) DNA-profile; and
- (b) dactyloscopic data.

Article 3

Definitions

For the purposes of this Framework Decision:

- (a) 'laboratory activity' means any measure taken in a laboratory when locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence;
- (b) 'results of laboratory activities' means any analytical outputs and directly associated interpretation;
- (c) 'forensic service provider' means any organisation, public or private, that carries out forensic laboratory activities at the request of competent law enforcement or judicial authorities;

⁽¹⁾ OJ L 218, 13.8.2008, p. 30.

- (d) 'national accreditation body' means the sole body in a Member State that performs accreditation with authority derived from the State as referred to in Regulation (EC) No 765/2008;
- (e) 'DNA-profile' means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various DNA locations (loci);
- (f) 'dactyloscopic data' means fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae).

Article 4

Accreditation

Member States shall ensure that their forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.

Article 5

Recognition of results

1. Each Member State shall ensure that the results of accredited forensic service providers carrying out laboratory activities in other Member States are recognised by its authorities responsible for the prevention, detection, and investigation of criminal offences as being equally reliable as the results of domestic forensic service providers carrying out laboratory activities accredited to EN ISO/IEC 17025.
2. This Framework Decision does not affect national rules on the judicial assessment of evidence.

Article 6

Costs

1. Each Member State shall bear any public costs resulting from this Framework Decision in accordance with national arrangements.
2. The Commission shall examine the means to provide financial support from the general budget of the European Union for national and transnational projects intended to

contribute to the implementation of this Framework Decision, inter alia for the exchange of experience, dissemination of know-how and proficiency testing.

Article 7

Implementation

1. Member States shall take the necessary steps to comply with the provisions of this Framework Decision in relation to DNA-profiles by 30 November 2013.
2. Member States shall take the necessary steps to comply with the provisions of this Framework Decision in relation to dactyloscopic data by 30 November 2015.
3. Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national laws the obligations imposed on them under this Framework Decision by 30 May 2016 at the latest.
4. On the basis of the information referred to in paragraph 3 and other information provided by the Member States on request, the Commission shall, before 1 July 2018, submit a report to the Council on the implementation and application of this Framework Decision.
5. The Council shall, by the end of 2018, assess the extent to which Member States have complied with this Framework Decision.

Article 8

Entry into force

This Framework Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK