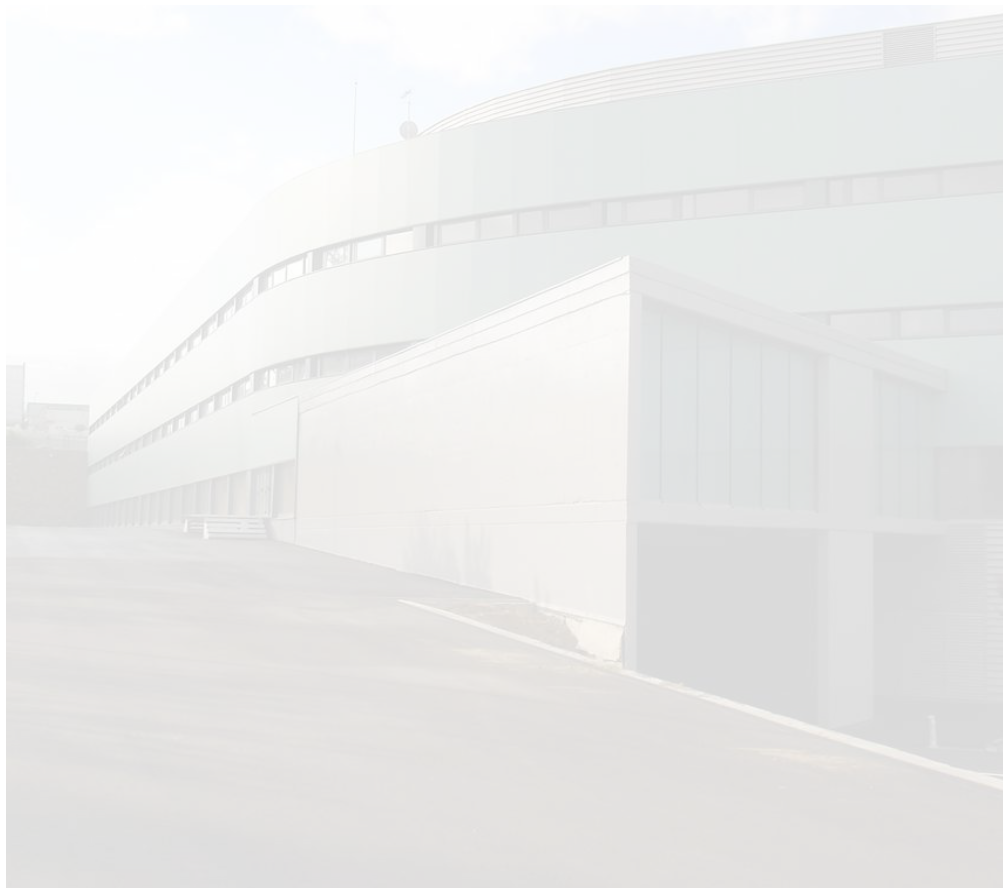


# NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA

ACTIVITIES 2014





# **NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA**

**ACTIVITIES 2014**

**CNUFADN Secretariat**

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**Edita:**

Ministerio de Justicia. Secretaría General Técnica.

**Maquetación:**

Subdirección General de Documentación y Publicaciones

**NIPO:**

051-15-043-3

**ISSN:**

2444-7021

## FOREWORD

Without doubt, the forensic use of DNA is now firmly established in the area of criminal law as a means of identification in the pursuit of criminals by the police and the courts, although its use can also be decisive in cases of missing persons or fatalities in major disasters, especially where the bodies cannot easily be identified by other means.

That is why databases containing DNA profiles are separated for the two cases, the purpose in each situation being very different: while in cases of missing persons or fatalities in a disaster, investigations are aimed at finding the missing person or establishing the identity of the deceased, in the pursuit of criminals, the record of their DNA on the police database is not just regarded as a piece of expert evidence, as it is also associated with the concept of a criminal record. So, in the first case, once the missing person or deceased has been identified, the DNA profile is no longer useful, while in the second it accompanies the sentence imposed and a record of it remains for a considerable length of time.

The enormous potential of DNA for forensic use, combined with its rapid scientific development, increases its possible applications in different areas of justice. And although DNA is gradually being introduced into legislation, at times legal vacuums occur and the need arises to regulate situations in which determining DNA profiles is advisable and appropriate.

For example, to comply with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened in Lanzarote on 25 October 2007, signed by Spain on 12 March 2009 and ratified in July 2010, in the opinion of the Commission's experts, it would be necessary to make legal changes which, with regard to individuals convicted of the abuse of minors, allowed the registration of genetic profiles to be regarded as a disqualification.

And since the National Commission for the Forensic Use of DNA is assigned the function of formulating 'proposals to the justice and interior ministries considered necessary for the effective investigation and prosecution of crimes and the identification of corpses', in accordance with section 3.f) of Royal Decree 1977/2008, of 28 November, which regulates its composition and functions, the working groups, during the course of this year, have carried out studies on this and other possible regulatory changes with that aim in mind.

With that and other material, the result of a long year of work and study, it is my pleasure to present once again the activities of the National Commission for the Forensic Use of DNA, though not without first thanking its members for their invaluable contribution and the experts who have provided their enthusiasm and selfless assistance to take another step forwards in the forensic use of DNA.

Madrid, 28 September 2015

THE CHAIRMAN OF THE COMMISSION

Ricardo Conde Díez

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## 1. NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA

### 1.1 INTRODUCTION

This year, once again, the Standing Technical Committee, with the approval of the Plenary Meeting, has carried out the timely accreditation of laboratories which comply with the stipulated requirements for carrying out DNA analysis in the field of forensics, a record of which may be found on the Commission's Internet portal, which can be accessed from the Internet portal of the Justice Administration (<https://www.administraciondejusticia.gob.es>).

Also, the Legal and Bioethics Group has continued to work on various regulatory proposals, such as the registration of the genetic profiles of individuals convicted of the abuse of minors, on the situation in the case of minors when they reach the age of majority and changes to the composition of the Commission itself to include other members.

For its part, the Standing Technical Committee has carried out studies and submitted proposals and reports to the Plenary Meeting regarding various scientific and technical matters in relation to issues such as minimising sample contamination risk, storage and subsequent custody of DNA samples and profiles and assessment of the inclusion of new genetic markers, among others.

### 1.2 COMPOSITION

The National Commission for the Forensic Use of DNA acts through its Plenary Meeting or through the Standing Technical Committee.

The Plenary Meeting comprises a chairperson, who will be the head of the department for relations with the Justice Administration, two deputy chairs, who will be the director of the National Institute of Toxicology and Forensic Sciences and a representative from the State Secretariat for Security, designated by the head of that department, and, as voting members, a judge, a public prosecutor, representatives from the National Institute of Toxicology and Forensic Sciences, the forensic police service, the criminal investigation department of the Civil Guard and the police forces of the autonomous regions that have DNA laboratories integrated into the police database on identifiers obtained from DNA, as well as experts on bioethics and genetics.

The Plenary Meeting will meet at least once every three months or when carrying out its functions requires it do so.

The Standing Technical Committee is chaired by the director of the National Institute of Toxicology and Forensic Sciences and is made up of representatives from the laboratories of the security forces and a physician from the Institute, who will act as secretary.

To allow the Commission to act with greater agility and efficacy, the resolution setting out its operating rules, of 21 July 2009, provides for the creation of different working groups, according to their areas of competence, with a technical-scientific group, a DNA database organisation and management group and a legal and bioethics group having been set up.



Given the scientific and technical nature of the first two groups, as well as the interrelated nature of the two areas, these two act jointly and are integrated into the Standing Technical Committee, chaired by the director of the National Institute of Toxicology and Forensic Sciences, while the legal and bioethics group acts independently, with the support of a coordinator who holds the office of secretary and acts as liaison between the Standing Technical Committee and the Plenary Meeting.

Since the material scope of the National Commission for the Forensic Use of DNA is complex, within its scientific and technical specialisms, as well as the members referred to above, individuals attached to DNA analysis laboratories, as well as those working with DNA databases, may participate as contributors and advisers, for the purposes of investigating crimes and identifying missing persons.

## **MEMBERS OF THE PLENARY MEETING OF THE NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA**

### **CHAIRMAN**

Ricardo G Conde Díez

*Director General for Relations with the Justice Administration*

### **DEPUTY CHAIRS**

Gloria Vallejo de Torres

*Director of the National Institute of Toxicology and Forensic Sciences*

Francisco J Vidal y Delgado Roig

*Advisory Member of the State Secretariat for Security. Interior Minister*

### **SECRETARY**

Antonio Alonso Alonso

*Physician with the Biology Service of the Madrid department of the National Institute of Toxicology and Forensic Sciences*

### **MEMBERS**

#### **JUDGE**

Ignacio Acón Ortego

*Judge*

#### **SUBSTITUTE JUDGE**

Jaime Requena Juliani

*Judge*

#### **PUBLIC PROSECUTOR**

Noelia González Garrote

*Public Prosecutor*

#### **SUBSTITUTE PUBLIC PROSECUTOR**

M<sup>a</sup> Paz Ramírez Blanco

*Public Prosecutor*

**BIOETHICS EXPERT**

María Casado González

*Associate Professor of Jurisprudence, University of Barcelona*

**SUBSTITUTE BIOETHICS EXPERT**

Margarita Guillen Vázquez

*Judge*

**GENETICS EXPERT**

Pilar Madero

*Managing Director of the Centre for Genetic Analysis*

**SUBSTITUTE**

Rafael

*Spanish Foundation for Science and Technology*

**GENETICS****EXPERT**

Camacho

**EXPERT ON MEDICAL GENETICS AND MOLECULAR PATHOLOGY FROM THE NATIONAL HEALTH SYSTEM**

José Antonio Lorente Acosta

*Genetic Identification Laboratory, University of Granada*

**SUBSTITUTE EXPERT ON MEDICAL GENETICS AND MOLECULAR PATHOLOGY FROM THE NATIONAL HEALTH SYSTEM**

Ángel Carracedo Álvarez

*Director of the University Institute of Legal Medicine of Santiago de Compostela*

**FORENSIC DOCTOR**

Carmen Conejero Guillén

*Forensic doctor with the Toxicology Information Service of the National Institute of Toxicology and Forensic Sciences*

**SUBSTITUTE FORENSIC DOCTOR**

José Luis de Miguel Pedrero

*Toxicology Information Service of the Madrid department of the National Institute of Toxicology and Forensic Sciences*

**OFFICIAL ATTACHED TO THE LABORATORIES OF THE SPANISH FORENSIC POLICE SERVICE**

María Pilar Allúe Blasco

*Spanish Forensic Police Service*

Gemma Barroso Villarreal

*Head of the Central Scientific Analysis Unit of the Spanish Forensic Police Service*

**OFFICIAL FROM THE CRIMINAL INVESTIGATION DEPARTMENT OF THE CIVIL GUARD**

José Antonio Berrocal Anaya

*Head of the Criminology Service with the Spanish Forensic Police Service*

**REPRESENTATIVE OF ERTZAINZA (BASQUE REGIONAL POLICE FORCE)**

José María Yurrebaso

*Chief Superintendent of the Ertzaintza Forensic Police Service*

**REPRESENTATIVE OF THE MOSSOS D'ESQUADRA (CATALAN REGIONAL POLICE FORCE)**

M<sup>a</sup> Lourdes Puigbarraca

*Head of the Forensics Division of Mossos d'Esquadra*

Daniel Martínez Ortega

*Deputy Head of the Forensics Division of Mossos d'Esquadra*

**GUEST EXPERTS**

Alejandra Frías López

*Judge. Adviser to the Ministry of Justice*

José Miguel de la Rosa Cortina

*Deputy Public Prosecutor with the technical secretariat of the Chief Public Prosecutor's Office*

Juan Manuel Fernández Martínez

*Judge, representing the General Council of the Judiciary*

Javier Bueno Ocariz

*Head of the Forensics Division, representing the Navarre Regional Police Force*

José Andradas Herranz

*DNA Database Administrator, Secretariat for Security, Interior Ministry*

**1.3 FUNCTIONS**

The National Commission for the Forensic Use of DNA has executive and advisory functions on matters within its competence. Among the former, the most important are those associated with laboratories, as well as procedural protocols with regard to samples.

Specifically, its remit includes:

- Accreditation of laboratories that are authorised to compare genetic profiles for investigating and prosecuting crimes and identifying bodies and inquiries into missing persons, as well as establishing and assessing their compliance with the official quality controls which they must periodically undergo.
- Establishing coordination criteria for the laboratories referred to in the previous section, as well as studying all the scientific and technical, organisational and ethical and legal issues to ensure the proper functioning of the laboratories that make up the police database on identifiers obtained from DNA.
- Drawing up and approving the official technical protocols on collecting, storing and analysing samples.
- Determining the security conditions for custody and establishing all the measures needed to ensure strict confidentiality and secrecy of samples, analyses and the data obtained from them, in accordance with the law.

In its advisory functions it formulates proposals for the justice and interior ministries which are considered necessary to investigate and prosecute crimes and identify corpses effectively.

Also, insofar as many of its activities comply with international criteria and standards, another of the Commission's functions is to maintain collaborative relations with organisations from other states responsible for DNA analysis for the purposes of investigating and prosecuting crimes, identifying bodily remains and inquiries into missing persons, without prejudice to the actions of the justice and interior ministries in connection with such matters.

In this same line of collaboration, it may also propose agreements with other entities to help with carrying out accreditation procedures, as well as to collaborate with laboratories not included in the police database on identifiers obtained from DNA.

Lastly, it has to draw up an annual report on its activities, to be sent to the justice and interior ministries, to enable them to draw up and approve the internal rules and procedures for performing the functions within its remit.

#### 1.4 LOGISTICAL SUPPORT

Due to the essentially technical and scientific nature of the functions of the CNUFADN and given the experience and prestige of the National Institute of Toxicology and Forensic Sciences, which acts as a reference point on matters of forensic genetics, Royal Decree 1977/2008, of 28 November, itself places the Commission within its sphere of influence. Therefore, in its Sole Additional Provision, it provides that the Institute must provide the human and material resources for the Commission to carry out its functions. This support allows periodic meetings of the working groups to be held at the Institute's headquarters in Madrid, as has been the case periodically during the course of 2014.

The National Institute of Toxicology and Forensic Sciences Internet portal, which hosts that of the Commission, has now been integrated into the Justice Administration portal, <https://www.administraciondejusticia.gob.es/>, where the resolutions and documents prepared and approved by the Plenary Meeting are published and available, in addition to other useful information relating to the Commission.

#### 1.5 ACTIVITIES OF THE PLENARY MEETING

The Plenary Meeting of the National Commission for the Forensic Use of DNA approves the resolutions and resolves the issues presented to it by the Standing Technical Committee and the Legal and Bioethics Group.

Through its chair, it liaises with central government bodies and bodies from the autonomous regions, as well as other public and private organisations with which it maintains contact on account of their expertise.

During the course of 2014, the Plenary Meeting of the Commission held the following sessions, at which various matters, most of them prepared in advance by the working groups, were discussed and decided:

- Sixteenth session, of 30 May 2014, at which the following matters were dealt with:
  - Proposal to change the composition of the CNUFADN. Proposals for text to amend the Royal Decree were presented, providing for the addition of three new members, to represent the General Council of the Judiciary, the Chief Public Prosecutor's Office

and the Navarre regional police force. The door was also opened to including other regional police forces in cases where they contribute profiles to the DNA database.

- The need was set out for legislative change to allow the registration of the genetic profiles of individuals convicted of the abuse of minors, to comply with article 37 of the Lanzarote Convention.
  - The way to proceed regarding the genetic profiles of minors currently on the database where there is evidence that they have reached the age of majority was considered and discussed, as well as the advisability of making regulatory proposals to remedy the scant legal support for the situation.
  - Discussion regarding the latest version of the document on expert reports in forensic genetics.
  - Discussion regarding the ENFSI document: "ENFSI standard for the formulation of evaluative reports in forensic science"(ENFSI Monopoly Project 2010-M1 Draft Issue 2.7)
  - Discussion of the document ISO TC PC 272/SC N013 and the proposal by AENOR Standardisation Technical Committee CTN-197 regarding the activity of European Committee for Standardisation CEN-419 on forensic services, which includes, among other initiatives, those relating to ISO/PC272 on minimising the risk of contamination in products used for the collection and analysis of biological material for forensic purposes (future ISO 18385) and reports on the intention of Standardisation Technical Committee CTN-197, set up within the Spanish Standardisation Association (AENOR), to ask CNUFADN to monitor the ISO/PC272 committee in a new working group (G-4) of committee CTN-197. AENOR has proposed that the Standing Technical Committee (STC) should be directly established as Group 4 of CTN-197, although CNUFADN to date has not received the formal proposal from AENOR.
  - Recording and processing DNA contamination: document from ENFSI DNA WG on 'Contamination prevention guidelines' and survey by ENFSI DNA WG on contamination rates.
  - Consideration and discussion of the problem of storage and subsequent custody of DNA samples and profiles.
  - Assessment of the inclusion of new genetic markers (ancestry, phenotypic, etc.) in forensic work.
  - PRESENTATION OF THE COMSIGENI FRAMEWORK DOCUMENT.
- Seventeenth session, of 21 October 2014, at which the following matters were dealt with:
- Registration of victim DNA profiles: need to develop informed consent forms, without which such profiles must not be registered on the database. Moreover, the processing on the database must be distinct and separate from accused individuals and they may not be used in an incriminating manner. It is also necessary to establish specific time period and process for erasure.

- Review of statistical data provided by the DNA database administrator which will appear in the future CONSIGENI report.
- Offence code in CODIS: review of the offence codes used by all institutions in the identifying code of the DNA profile in CODIS.
- Presentation of the content of the report and of the UNED-CNUFADN Agreement.
- 2014 report on the assessment of laboratories to approve the annual list of accredited laboratories.
- Proposal by AENOR Standardisation Technical Committee CTN-197 to establish working group 4 of CTN-197 within the CNUFADN Standing Technical Committee, to monitor the ISO/PC272 committee on minimising the risk of contamination in products used for the collection and analysis of biological material for forensic purposes (future ISO 18385).
- Report on the completion of the IDNADEX project, which aimed to validate a comprehensive system of genetic analysis of 21 STR loci of DNA, including both the 13 STRs of the United States standard (CODIS) and the 12 STRs of the European standard (ESS).

## 2. LEGAL AND BIOETHICS GROUP

### 2.1 PLENARY CONSTITUTION RESOLUTION

At the Plenary Meeting on 27 March 2009, it was proposed that the Commission, as well as the Plenary Meeting and the Technical Committee established in Royal Decree (RD) 1977/2008, would be organised into three working groups, on technical-scientific matters, on organisational matters and matters to do with the management of the DNA database and on legal and bioethical matters. The first two groups would form part of the Technical Committee and the third would be an independent entity, being specifically regulated under the internal implementing regulations authorised by article 3.i) of RD 1977/2008.

The subsequent Plenary Meeting on 21 July 2009 approved the rules governing the Commission's internal regime and the functioning of the working groups, in article 1 of which the Commission was structured into the three working groups referred to above, incorporating the first two into the Technical Committee and establishing that the Legal and Bioethics Group would be made up of a judge, a public prosecutor and an expert on bioethics as permanent members (article 2), along with any voting members that, on their own initiative, express an interest in collaborating or whose assistance is requested by the Technical Committee or by the coordinator of the Legal and Bioethics Group, without prejudice to the collaboration and advice established in article 7 of the same Royal Decree, which refers to collaboration with individuals attached to different laboratories that analyse DNA for the purposes of criminal investigation or identifying missing persons, as well as those who work with DNA databases.

### 2.2 REGULATIONS

The internal regulations of the Legal and Bioethics Group were established in the internal rules approved at the above-mentioned Plenary Meeting on 21 July 2009, some of the most notable aspects of which are:

Section 4 of article 2 stipulates that each member may appoint external advisers for carrying out their function, without those advisers acquiring any rights in relation to the Commission; the Commission must be notified of such appointments, merely as a matter of record.

The functions of the Legal and Bioethics Group are established in article 3.2 of the internal regime, which states that the function of the legal and bioethics working group is to assess the ethical and legal criteria to be taken into account in the functions described in the preceding section, especially in connection with sample-taking, the individual and types of crimes, the use of DNA profiles on the database and data retention and erasure.

Article 4 stipulates that the legal and bioethics working group will designate a coordinator who will act as secretary to the group and will liaise with the Standing Technical Committee and the Plenary Meeting. It will also be given authority to establish preparatory relations with the leaders of organisations in other countries that are responsible for this area.

As regards the functioning of the group, article 5.1, paragraph 2, indicates that each group will meet as frequently as its members decide, according to the needs of its work. The person coordinating the group will notify its members of the meetings, including the agenda, at least ten days in advance, except when the co-ordinator thinks it is urgent, and they will keep a record of the decisions made. Resolutions will be adopted by a majority of its members. 2.

Anything that is not regulated in this resolution is subject to the provisions of Title II Chapter II of Law 30/1992, of 26 November, on the Regulation of Public Authorities and Common Administrative Procedure.

And, lastly, article 6 establishes that the groups will have the support of the National Institute of Toxicology and Forensic Sciences, which will provide the human and material resources for them to carry out their functions effectively. The resolution on the internal regime came into effect on 22 July 2009.

### 2.3 COMPONENTS (CO-ORDINATOR, MEMBERS AND CONTRIBUTORS)

In 2014, the following individuals were members of the group:

#### **COORDINATING MEMBER-GROUP SECRETARY**

Ignacio Acón Ortego

*Judge*

#### **VOTING MEMBERS**

Noelia González Garrote

*Public Prosecutor*

María Casado González

*Associate Professor of Jurisprudence, University of Barcelona*

Carmen Conejero Guillén

*Forensic doctor with the National Institute of Toxicology and Forensic Sciences*

#### **COMMISSION SECRETARY**

Antonio Alonso Alonso

*Physician with the Biology Service of the Madrid department of the National Institute of Toxicology and Forensic Sciences*

#### **ADVISERS AND CONTRIBUTORS:**

##### **FROM THE STATE SECRETARIAT FOR SECURITY AT THE MINISTRY OF THE INTERIOR**

José Andradás Heranz

*Administrator of the DNA databases*

##### **FROM THE POLICE LABORATORIES OF THE NATIONAL POLICE FORCE:**

Gemma Barroso Villareal

*Forensic Police Service*

Pedro Sogo Sánchez

*Forensic Police Service*

##### **FROM THE POLICE LABORATORIES OF THE CIVIL GUARD**

José M<sup>a</sup> de las Cuevas Carretero

*Civil Guard Judiciary Police*



**FROM THE LABORATORIES OF THE MOSSOS D'ESQUADRA**

M<sup>a</sup>. Pau Martí González

*Head of Criminal Affairs, Legal Department of the Police Department*

**FROM THE ERTZAINZA LABORATORIES**

Jokin Alfageme García

*Ertzaintza Forensic Police Force*

**PROPOSED BY VOTING MEMBER MARÍA CASADO GONZÁLEZ**

Margarita Guillén Vázquez

*Judge and Lecturer at the University of Santiago de Compostela*

**2.4 GROUP ACTIVITY: DISCUSSIONS AND CONCLUSIONS**

In 2014, two meetings of the Legal and Bioethics Group were held, which led to the following minutes being approved:

- Minutes dated 30/04/2014
- Minutes dated 19/09/2014

The most important matters dealt with by the Legal and Bioethics Group were:

1. Inclusion of profiles of individuals convicted of the abuse of minors.
2. Processing of the DNA profiles of minors.
3. Processing of victim DNA profiles.
4. Study of the COMSIGENI Framework Document. Technical Procedures Manual.
5. Composition of the CNUFADN and of the Legal and Bioethics Group.
6. CNUFADN – UNED Agreement.

**2.4.1 INCLUSION OF PROFILES OF INDIVIDUALS CONVICTED OF THE ABUSE OF MINORS.**

The Legal and Bioethics Group examined the need for legislative change to allow the registration of genetic profiles of individuals convicted of the abuse of minors, to comply with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened in Lanzarote on 25 October 2007 and ratified by Spain on 22 July 2010.

Article 37 of the above-mentioned Convention regulates the 'recording and storing of national data on convicted sexual offenders':

1. For the purposes of prevention and prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention.

2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of a single national authority in charge for the purposes of paragraph 1.

3. Each Party shall take the necessary legislative or other measures to ensure that the information referred to in paragraph 1 can be transmitted to the competent authority of another Party, in conformity with the conditions established in its internal law and the relevant international instruments.

The creation of this register is associated with disqualification from carrying out professional activities which involve contact with minors, which must be imposed on persons convicted of abuse, according to article 10 of Directive 2011/92/EU on the same matter:

Article 10. Disqualification arising from convictions.

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.

2. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 entered in the criminal record or of the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions.

3. Member States shall take the necessary measures to ensure that, for the application of paragraphs 1 and 2 of this Article, information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States when requested under Article 6 of that Framework Decision with the consent of the person concerned.

To assume these international commitments, the Legal and Bioethics Group proposed amending the Criminal Code to include a specific penalty ordering 'the collection and storage of data relating to the offender's identity and genetic profile (DNA)', which could be configured as a supplementary penalty or consequence to any sentence for any of the offences covered by the Lanzarote Convention. It also proposed creating a register of sex offenders as referred to in recital 43 of Directive 2011/93/EU.

The Group associated these proposals with the advisability of reforming Law 10/2007, of 8 October, regulating the police database of identifiers obtained from DNA, to allow access to the DNA database of genetic profiles of convicted individuals and not only of suspects. The

inclusion of genetic profiles of convicted individuals would be established for serious offences, which would include the abuse of minors. And it would make it possible to solve a large number of the problems identified in our law relating to taking samples, consent, erasure of profiles, etc.

The Group's proposals were subsequently accepted by the Plenary Meeting at its meeting of 30 May 2014.

#### 2.4.2 PROCESSING OF THE DNA PROFILES OF MINORS.

The Group studied the problems around the processing of the genetic profiles of minors. They discussed how to proceed with DNA profiles of minors currently on the database where there is evidence that they have reached the age of majority.

Initially, the Group drew the following conclusions:

- In the absence of specific regulations, the erasure of profiles of minors must be governed by the general rules laid down in article 9 of Organic Law 10/2007.
- Therefore, the erasure of minors' profiles is appropriate where a criminal investigation is permanently dropped or where the defendant is acquitted.
- Otherwise, erasure is appropriate on expiry of the limitation period (very short periods established by Organic Law 5/2000, on the criminal liability of minors) or when the erasure of their criminal record is ordered.
- In fact, in the case of minors, strictly speaking, there is no criminal record and once they reach the age of majority their criminal record cannot be used and is rendered without effect. When the minor reaches the age of majority, a de facto 'erasure' of their criminal record takes place. And for that reason as well it does not seem possible to retain their genetic profile on the database.
- In summary, the conclusion is that the age of majority must bring about the erasure of the genetic profiles of minors.

The Group was aware that this solution might not be adequate or advisable in the case of convictions for serious offences (e.g. the abuse of minors), where it may be useful for the investigation or even the prevention of offences to retain the profiles of convicted minors on the database. Therefore, it proposed to study a legislative change to that effect.

However, the opinion of the Legal Group was not accepted at the Plenary Meeting, given the absence of an express legal provision, and the police representatives stated that they will retain the DNA profiles of minors even where there is evidence that they have reached the age of majority, although they will notify the judge of any possible matches between traces and profiles belonging to minors, to allow the judicial authority to decide; and in the event that individuals are arrested once they have reached the age of majority, their genetic profiles will be obtained again to replace those recorded on the database as belong to a minor.

#### 2.4.3 PROCESSING OF VICTIM DNA PROFILES

The issue of genetic profiles of victims on the database was studied. The Group agreed to work on the forms used to obtain informed consent in those circumstances, along with a proposal based on four fundamental principles:

1. It is only appropriate to obtain victim DNA profiles and register them on the database with the informed consent of the person concerned.
2. The processing of victim DNA profiles on the database must be distinct. Comparison with traces must be carried out separately.
3. In no event may such DNA profiles be used as incriminating evidence against the victims themselves.
4. Special attention must be paid to erasing them from the database: they must always be erased when requested by the victims themselves; but also when it is no longer necessary to retain them on the database for the purposes of the investigation.

#### 2.4.4 STUDY OF THE COMSIGENI FRAMEWORK DOCUMENT. TECHNICAL PROCEDURES MANUAL

The legal emendation of the COMSIGENI Framework Document was submitted to the Group by the administrator of the DNA database and, in particular, the identifying codes used in the Technical Procedures Manual, the aim of which is to provide minimal information in CODIS regarding the type of offence the genetic profile relates to.

The Group agreed to study those identifying codes in order to introduce possible corrections or make the suggestions considered advisable.

#### 2.4.5 COMPOSITION OF THE CNUFADN AND OF THE LEGAL AND BIOETHICS GROUP

The Legal and Bioethics Group (LBG) drafted a regulatory proposal to implement the resolution of the Plenary Meeting of the CNUFADN, at its meeting on 18 November 2013: 'to submit a proposal to the Ministry of Justice and the Ministry of the Interior to amend Royal Decree 1977/2008, of 28 November, to include a representative of the Chief Public Prosecutor's Office and a representative of the General Council of the Judiciary as members of the Plenary Meeting, to include a representative of the General Council of Spanish Lawyers only as an advisory member of the LBG and rejecting the inclusion of a representative of the Spanish Data Protection Agency, without prejudice to obtaining reports from that institution where appropriate. While the possible amendment of the Royal Decree is being dealt with, the possibility of including such representatives in the Plenary Meeting and/or in the LBG as guests is considered appropriate.'

The proposal was accepted by the Ministry of Justice to be processed as a Royal Decree amending the composition of the CNUFADN, to include, as members of the Plenary Meeting and of the Legal and Bioethics Group, a representative of the Chief Public Prosecutor's Office and a representative of the General Council of the Judiciary. And while the reform was being processed, the institutions in question were asked to appoint a representative who could attend the meetings of the Plenary Meeting and the Legal Group as a guest.

Also, to give effect to the inclusion of a representative of the General Council of Spanish Lawyers, a change to the internal regime and functioning of working groups approved by the resolution of the Plenary Meeting of 21 July 2009 was proposed. Specifically, the amendment of article 2 was proposed, which would be worded as follows: '2. The legal and bioethics working group shall be made up of a judge, a public prosecutor and an expert in bioethics, as permanent members. A lawyer appointed by the General Council of Spanish Lawyers may also join as an advisor to the legal and bioethics working group.' This amendment was accepted by the Plenary Meeting and approved at its meeting of 21 October 2014.

In parallel, the General Council of Spanish Lawyers was asked to appoint a lawyer as a representative who could attend the meetings of the Legal and Bioethics Group.

#### 2.4.6 CNUFADN - UNED AGREEMENT

Spain's national distance learning university (Universidad Nacional de Educación a Distancia: UNED) proposed to the Ministry of Justice the possibility of entering into a collaboration agreement for carrying out research work within the university on legal matters which could be of use to the CNUFADN.

The Ministry of Justice sent the offer to the CNUFADN, which, through its Legal and Bioethics Group, assessed the advisability of signing it. The Group identified the legal problems of interest to the Commission and drafted a plan for preparing research projects to be carried out by UNED. Its signature was finally approved at the Plenary Meeting of 21 October 2014.

The Legal and Bioethics Group suggested to the Ministry of Justice the possibility of extending the formula to other universities or working groups which might be interested in carrying out research in collaboration with the CNUFADN.

### 3. THE STANDING TECHNICAL COMMITTEE

The Standing Technical Committee was set up within the National Commission for the Forensic Use of DNA, to propose criteria for scientific and technical research, as well as to propose criteria relating to the functions in article 3.a) to the National Commission with regard to the accreditation of laboratories and, in particular, establishing the accreditation systems and official quality controls which must be applied to laboratories that carry out DNA analyses to provide the police database on identifiers obtained from DNA with genetic profiles.

The Standing Technical Committee is chaired by the director of the National Institute of Toxicology and Forensic Sciences and is made up of representatives from the security forces laboratories and the physician designated by the National Institute of Toxicology and Forensic Sciences, who will also act as secretary.

Also, the National Commission for the Forensic Use of DNA resolution which approves the internal regime and functioning of the working groups (approved at the Plenary Meeting of 21/07/2009) provides for the creation of three working groups that correspond to the Commission's three areas of activity: a working group on scientific and technical aspects, a working group on organisational aspects and aspects to do with the management of the DNA database and a working group on legal and bioethical aspects.

With regard to the first two groups, given their scientific and technical nature, as well as the high degree of overlap between their activities, it was considered appropriate for them to work together within the scope of the Standing Technical Committee.

The functions of the scientific-technical and organisation and DNA database management working group include everything relating to taking biological samples, accrediting laboratories, genetic markers and profiles and criteria for organisation and management, security and assessing the effectiveness of the DNA database, as well as collaborating with organisations from other countries responsible for DNA analysis for the purposes of investigating and prosecuting crimes, identifying bodily remains and inquiries into missing persons, according to the provisions of article 3. a), b), c), d) and e) of the Royal Decree which regulates the composition and functioning of the National Commission for the Forensic Use of DNA.

#### 3.1 MEMBERS AND ACTIVITIES

##### **FORENSIC POLICE SERVICE**

Pedro Sogo Sánchez

*Head of the Analytical Coordination Service, Central Scientific Analysis Unit*

Emilio García Poveda

David Álvarez Revenga

Lourdes Prieto Solla

Antonio Vozmediano

*DNA Laboratory of the Forensic Police Service*

##### **CENTRAL CRIMINOLOGY LABORATORY OF THE CIVIL GUARD**

José Antonio Cano Fernández

David Parra Pecharromás

Carlos Manuel López Cubria  
Jesús Martínez Gómez  
*Biology Department - DNA Laboratory*

#### **ERTZAINZA FORENSIC POLICE UNIT**

Oscar García Fernández  
*Expert doctor with the Forensic Genetics Division, Forensic Police Unit, Ertzaintza*

#### **FORENSIC POLICE DIVISION OF THE MOSSOS D'ESQUADRA**

Josep Lluís Monasterio Moran  
Josep Carreras Carbonell  
Maria José Jiménez Pleguezuelos  
Alejandro Barros Manuel  
*Central Unit, Biology Laboratory*

#### **NATIONAL INSTITUTE OF TOXICOLOGY AND FORENSIC SCIENCES**

Gloria Vallejo de Torres (Chair)  
*Director of the National Institute of Toxicology and Forensic Sciences*

Antonio Alonso Alonso (Secretary)  
*Physician with the Biology Service of the Madrid department of the National Institute of Toxicology and Forensic Sciences*

Manuel Crespillo Márquez  
*Doctor with the Biology Service of the Barcelona department of the National Institute of Toxicology and Forensic Sciences*

The delegates of the official laboratories represented on the Standing Technical Committee (STC) held four work meetings at the headquarters of the National Institute of Toxicology in Las Rozas during the course of 2014, with the following four sets of minutes of the Standing Technical Committee being approved:

Minutes dated 21/02/2014

Minutes dated 30/06/2014

Minutes dated 22/07/2014

Minutes dated 05/12/2014

The most important matters considered by the STC in 2014 were as follows:

- Laboratory accreditation, with the fifth national assessment of the quality and accreditation of forensic genetic laboratories, involving the review of the certificates obtained in official proficiency testing (GHEP-ISFG and GEDNAP) and the scope and status of the accreditation of each laboratory in accordance with the ISO 17025 standard.
- Preparation of a recommendations document regarding the content and structure of the expert report in forensic genetics.
- Discussion and revision of the document "ENFSI standard for the formulation of evaluative reports in forensic science" (ENFSI Monopoly Project 2010-M1 Draft Issue 2.7).

- Setting-up of the AENOR Standardisation Technical Committee AEN/CTN 197 GT4 to assess the draft standard ISO 18385.
- Review of the procedures for the custody of samples after expert DNA analysis.
- Report on the completion of the IDNADEX European project at the Plenary meeting of the CNUFADN.

### **3.2 FIFTH ANNUAL ASSESSMENT OF FORENSIC GENETICS LABORATORIES TO ENSURE QUALITY AND ACCREDITATION**

In compliance with the provisions of:

- Article 8 of Royal Decree 1977/2008 regulating the procedure for assessing laboratories which analyse DNA.
- The CNUFADN resolution on the accreditation and quality control of laboratories, approved at the Plenary Meeting of the CNUFADN on 21/07/2009.
- The European Union Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities.

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009F0905&from=EN>)

In 2014, the Standing Technical Committee (STC) led the fifth annual request for documentation to ensure quality and accreditation, in which forensic genetics laboratories which provide services to the Spanish state were asked to submit their laboratory identification data, areas of application, certificates of participation in quality control processes and state of accreditation, in order to establish the laboratories' degree of compliance with the CNUFADN resolution on accreditation and quality control, approved at the Plenary Meeting of the CNUFADN on 21/07/2009.

Documentation was received from 22 laboratories (15 public laboratories and 7 private laboratories), which was studied at two dedicated meetings of the STC, at which the results obtained by the different laboratories in external quality control exercises in 2013 were examined, as well as their certifications of the state and scope of the accreditation issued by ENAC (Spanish national accreditation body).

The assessment made it possible to identify 18 laboratories which comply with the CNUFADN resolution and 4 laboratories which, while still carrying out certain quality controls, do not comply with the CNUFADN resolution, as they have not undergone the accreditation process in accordance with the ISO 17025 standard.

It was then proposed that the list of laboratories that complied with the CNUFADN resolution on accreditation and quality control in 2014 should be approved and a certificate of compliance issued to each of these 18 laboratories.

The list of accredited laboratories in 2014 is set out in APPENDIX I and on the CNUFADN website:



[https://www.administraciondejusticia.gob.es/paj/PA\\_WebApp\\_SGNTJ\\_NPAJ/descarga/Relacion%20de%20Laboratorios%20que%20cumplen%20con%20el%20Acuerdo%20de%20la%20CNUFADN%20sobre%20Acreditaci3n%20y%20Control%20de%20Calidad%20\(2014-\).pdf?idFile=a8a1a470-1bb4-418f-91ac-3331f14719fe](https://www.administraciondejusticia.gob.es/paj/PA_WebApp_SGNTJ_NPAJ/descarga/Relacion%20de%20Laboratorios%20que%20cumplen%20con%20el%20Acuerdo%20de%20la%20CNUFADN%20sobre%20Acreditaci3n%20y%20Control%20de%20Calidad%20(2014-).pdf?idFile=a8a1a470-1bb4-418f-91ac-3331f14719fe)

### **3.3 PREPARATION OF A RECOMMENDATIONS DOCUMENT REGARDING THE CONTENT AND STRUCTURE OF THE EXPERT REPORT IN FORENSIC GENETICS.**

During the course of 2014 work continued on preparing a definitive document on recommendations for preparing expert reports in forensic genetics and stating results, including the following aspects:

- Recommendations and international standards both of accreditation bodies and international forensic genetics societies
- Structure and format of the expert report
- Stating results (preliminary analyses and genetic analyses)
- Assessment of results (preliminary analyses, assessment of matches in criminal investigations, assessment of matches on the DNA database, assessment of compatibility in kinship studies)

In 2014, two drafts were revised and various changes were included, in terms of both form and content, giving rise to a definitive text which will first be sent to the LBG and subsequently submitted for consideration by the Plenary Meeting of the CNUFADN.

### **3.4 DISCUSSION AND REVISION OF THE DOCUMENT “ENFSI STANDARD FOR THE FORMULATION OF EVALUATIVE REPORTS IN FORENSIC SCIENCE” (ENFSI MONOPOLY PROJECT 2010 M1 DRAFT ISSUE 2.7)**

The secretary introduced the ENFSI document and presented the comments made by the National Toxicology Institute (INTCF) in Madrid, which are set out below:

The document defines ‘evaluative reports’ as those in which an evaluation is carried out of two contrasting propositions (normally the hypotheses of the prosecution and the defence and typically referring to the evaluation of the results of the comparative analysis of a sample of unknown origin and a reference sample) and establishes the need to carry out a probabilistic evaluation of the findings using likelihood ratios (LRs).

Although this probabilistic evaluation procedure is a standard which is implemented and validated in certain areas of forensic science (e.g. forensic genetics), there are many areas of forensic science (dermatoglyphics, traces, documents, anthropology, etc.) in which, even though experts are asked by the courts to carry out an evaluation of two contrasting propositions (‘evaluation report’), they lack adequate standards, databases and validation studies to carry out a probabilistic assessment of their findings using likelihood ratios.

In view of the above, the following was suggested:

- The proposed document should refer to this problem.

- The standards (or lack of them) in the different forensic specialisms should be identified, in order to be able to carry out a probabilistic assessment of the findings using likelihood ratios.
- The development of standards, blind validation studies, databases, inter-laboratory collaboration exercises, etc., should be recommended, along with any measures which make it possible to make progress with implementing a correct probabilistic assessment of the evidence.
- Until this problem (lack of standards) is resolved, the use of likelihood ratios only where possible (and not always) should be recommended.
- Other comments on the document:
- Sections 3.8 and 3.9: These sections refer only to methodology and staff qualifications and should be expanded to include all the established requirements in a system to ensure quality and accreditation (e. g. ISO 17025, which is mandatory in certain forensic specialisms)
- Section 3.14: The assessment of likelihood ratios using verbal predicates is subjective and, therefore, contrary to an objective assessment of the evidence. The same LR value may have different meanings depending on the circumstances (e. g. an LR of 1000 in a father-son compatibility for 15 STR markers in a specific paternity investigation has a different value from a father-son compatibility with an LR of 1000 observed on a database of 500 missing persons).

Historically, it has also been demonstrated that probability values associated in the past with predicates such as 'practically proved' (Hummel Predicates in parentage testing) today lack probative value.

### **3.5 SETTING-UP OF THE AENOR AEN/CTN 197 GT4 STANDARDISATION TECHNICAL COMMITTEE TO ASSESS DRAFT STANDARD ISO 18385**

In 2014, the AEN/CTN 197 GT4 Standardisation Technical Committee was set up within the Standing Technical Committee of the National Commission for the Forensic Use of DNA, in order to monitor the ISO/P272 committee and evaluate the draft of future standard ISO 18385 (Minimizing the risk of human DNA contamination in products used to collect, store and analyze biological material for forensic purposes) .

### **3.6 DISCUSSION OF PROCEDURES FOR CUSTODY OF SAMPLES AFTER EXPERT ANALYSIS OF DNA**

Regarding this matter, the management, chain of custody and subsequent custody procedures and documents in place in the different institutions have been gathered together.

In all of the institutions there are procedures for returning or handing over the objects and utensils on which the biological evidence is located (clothing, weapons, etc.) to the judicial or police bodies requesting the analyses.

The existence of custody procedures after DNA analyses, both of DNA extracts and of original biological samples (blood, saliva swabs, biological marks, tissues, bones, etc.) has also been established. It is precisely the custody of these biological samples in a refrigerated or frozen state which is causing space problems in the different institutions.

INTCF in Madrid has a specific procedure for determining custody periods (PNT-UGC-005: Rules for determining the custody period for samples once analysis has been completed). The criterion applied in this procedure is based on (1) the time limitation due to the perishability and condition of the sample, which makes it impossible to ensure the quality of a new analysis, (2) the space limitation on account of a large number of samples, with consequent storage problems, for which reason, wherever possible, aliquots, preparations and extracts will be separated out which make it possible to extend or repeat an analysis, and (3) sample availability on account of possible complications in the matter, requiring extensions, cross-checking, etc.

The preparation of a document to develop a common standard for determining custody periods in the different institutions has been proposed.

### **3.7 REPORT ON THE COMPLETION OF THE IDNADEX PROJECT**

The project aimed to validate a comprehensive system of genetic analysis of 21 STR loci of DNA, including both the 13 STRs of the United States standard (CODIS) and the 12 STRs of the European standard (ESS), and thereby improve the discriminatory power of genetic comparisons on the national database of DNA profiles in our country.

The two automated systems of analysis of 21 or 23 STRs which have been developed and validated in the IDNADEX project have attracted transnational interest and have become the STR analysis systems for forensic use offering the greatest genetic discrimination, as well as being the most compatible with the more than 40 million DNA profiles registered on the databases relevant to crime detection throughout the world.

The implementation of these two comprehensive systems in forensic laboratories worldwide will increase, by several orders of magnitude, the discriminatory power of DNA analyses in criminal investigations and in many other forensic applications, such as the genetic identification of missing persons, the identification of victims in major disasters, the identification of victims in mass graves and various studies of genetic kinship, considerably reducing the number of chance matches in searches of genetic profiles on criminal investigation DNA databases worldwide.

The project has also made it possible to acquire a next-generation genetic analyser, install a new expert DNA analysis system and give training to all the physicians of the Biology Service at INTCF in Madrid.

Also, within the IDNADEX project and with the collaboration of the LIMS group of Spain's new justice technologies department (SGNTJ), various automatic systems have been developed for interoperability between genetic analysers and the INTCF's information management system (LIMS system) and between the LIMS system and the Ministry of Justice's local CODIS server, connected nationwide and Europe-wide through the Ministry of the Interior's state CODIS server.

The results of the validation of these two comprehensive systems of DNA analysis have been published in the magazine *Forensic Science International Genetics* and presented at the following international scientific meetings:

- 38th ENFSI DNA WG Meeting (Tbilisi, Georgia 22-25 April 2014).
- DNA in Forensics 2014 Conference (Brussels, 14 – 16 May 2014).
- International Symposium of Human Identification (Phoenix, Arizona. 30 Sept – 2 Oct 2014).

## 4. APPENDICES: APPROVED RESOLUTIONS AND DOCUMENTS

### APPENDIX I

#### LIST OF LABORATORIES COMPLYING WITH THE CNUFADN RESOLUTION ON ACCREDITATION AND QUALITY CONTROL

- Laboratorio de ADN de la Comisaría General de Policía Científica (Madrid)
- Laboratorio Territorial de Biología / ADN de la Jefatura Superior de Policía de Andalucía Occidental (Sevilla)
- Laboratorio Territorial de Biología / ADN de la Jefatura Superior de Policía de Andalucía Oriental (Granada)
- Laboratorio Territorial de Biología / ADN de la Jefatura Superior de Policía de Cataluña (Barcelona)
- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de la Comunidad Valenciana (Valencia)
- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de Galicia (A Coruña)
- Servicio de Criminalística de la Guardia Civil. Departamento de Biología (Madrid)
- Laboratorio de Genética Forense. Unidad de Policía Científica de la Ertzaintza. (Erandio, Vizcaya)
- Laboratorio de Análisis de la División de Policía Científica. Mossos de Esquadra (Sabadell, Barcelona)
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Madrid
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Barcelona
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Sevilla.
- Instituto Nacional de Toxicología y Ciencias Forenses. . Sección de Biología. Delegación de La Laguna.
- Instituto Universitario de Medicina Legal. Servicio de Genética Forense. Universidad de Santiago de Compostela (A Coruña)
- Navarra de Servicios y Tecnologías, S.A. (NASERTIC) (Villaba, Navarra)
- Citogen S.L. (Zaragoza)
- Genomica S.A.U. (Madrid)
- Neodiagnostica S.L. (Lleida)

Approved in Madrid by the National Commission for the Forensic Use of DNA on 21 October 2014.

