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NOTE

from :	French Presidency
to :	Police cooperation Working Party/Mixed Committee
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Subject :	Amendment of Article 40 of the Schengen Convention concerning the right of cross-border surveillance

The shortcomings noted in the implementation of Article 40 of the Schengen Convention governing the conduct of cross-border surveillance result essentially from the excessively restrictive wording of paragraphs 1 and 7 of that Article.

Paragraph 1 confines its use to criminal investigations in which the offender is already under surveillance at national level and provides for surveillance only.

The practitioners consider that the list given in paragraph 7 is too restrictive.

At the previous meeting the discussions revealed a consensus on this approach which nevertheless requires some concrete illustrations.

- As to the usefulness of extending the scope of cross-border surveillance to persons other than "a person who is presumed to have participated in a criminal offence", those working in the field voiced this requirement in the light of their experience at national level in combating crime. It must be possible to continue surveillance of an individual, which has been carried out at national level and is required for the purposes of the investigation, beyond the borders in the same way. As a result of the international and in particular European environment, those involved in crime: the perpetrator, accessories or family and friends and acquaintances know no bounds.

There is strict monitoring at national level of all surveillance and tailing involved in judicial proceedings. If it proves necessary at national level, it must also be allowed in the European area by the partner countries, as is currently the case with regard to a presumed offender.

In certain type of investigations (murder, manslaughter, rape, arson ...), surveillance of family and friends may reveal the premises used by the perpetrator, the instruments used in the crime, various kinds of evidence... or even the identity of the accessories or accomplices insofar as that affects the legal classification of the offence or harsher sentencing.

With regard to investigations into forgery of money, it is essential to locate all the accessories and especially the printing press which produces the counterfeit notes.

As in the case of traffic in human beings, it is important to be able to identify the entire network and to locate the persons behind the crime.

With regard to trafficking in narcotic drugs, it is just as necessary to identify the network extending from the dealer to the supplier and to discover where the illicit products are stored.

Kidnappings with ransom demands are a special case because it is surveillance of the bearer of the ransom (a person close to the family or a policeman playing that role) which will probably lead to the kidnapper and the person held prisoner.

Finally, police experience shows clearly that very often surveillance of the spouse or companion of an escaped criminal leads to him.

It is therefore suggested that paragraph 1 be amended as follows:

*"keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence **or any person the surveillance of whom is necessary for the investigation ...**".*

This new wording is designed to meet several criteria: simplicity of wording, exclusion of any wording introducing an ambiguous conditional form while being broad enough to cover both associates, family, friends and victims.

- As to whether to extend the urgent procedure to offences other than those currently authorised by paragraph 7, police experience in combating organised crime has shown the need to extend the urgent procedure to offences in this field. The surveillance of individuals participating in organised crime has in fact proved particularly difficult and unpredictable. As their area of activity knows no bounds, it is suggested that paragraph 7 be amended by adding the four following offences corresponding to current trends in international crime:
 - Counterfeiting of means of payment;
 - Laundering of monies obtained from the offences listed;
 - Organised fraud;
 - Aggravated assaults.