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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 April 2002

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NOTE

From : Article 36 Committee

To : COREPER

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Subject : Initiative of the Kingdom of Belgium, the Kingdom of Spain and the French Republic with a view to the adoption by the Council of a Decision amending Article 40 of the Schengen Convention

Delegations will find attached the above draft Decision as it results from the discussions in the Article 36 Committee on 12 April 2002.

COUNCIL DECISION 2002/ /JHA ¹

of

amending Article 40(1) and (7) of the Convention implementing
the Schengen Agreement of 14 June 1985 on the gradual abolition
of checks at common borders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 32 and 34(2)(c) thereof,

Having regard to the joint initiative of the Kingdom of Belgium, the Kingdom of Spain and the
French Republic,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The provisions of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders ² which concern cross-border surveillance should be amended and their scope broadened with a view to increasing the success of criminal investigations, particularly those concerning offences connected with organised crime.
- (2) The United Kingdom is participating in this Decision, in accordance with Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis ³.

¹ Denmark, Germany, the Netherlands, Sweden and United Kingdom entered parliamentary reservations.

² OJ L 239, 22.9.2000, p. 19.

³ OJ L 131, 1.6.2000, p. 43.

- (3) This Decision is a development of the provisions of the Schengen acquis covered by Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those States with the implementation, application and development of the Schengen acquis ¹,

HAS DECIDED AS FOLLOWS:

Article 1

The provisions of Article 40 of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders are hereby amended as follows:

- 1) In paragraph 1, the first subparagraph shall be replaced by the following text:

"1. Officers of a Member State who are keeping a person under surveillance in their country as part of a criminal investigation into an extraditable criminal offence because he is suspected of involvement in an extraditable criminal offence or, as a necessary part of a criminal investigation, because there is reason to believe that he can assist in identifying or tracing such a person, may continue their surveillance in the territory of another Member State where the latter State has authorised cross-border surveillance in response to a request for assistance made in advance with supporting reasons. Conditions may be attached to the authorisation." ²

- 2) Paragraph 7 shall be amended as follows :

(a) In the third indent, "rape" shall be replaced by "serious offences of a sexual nature";

¹ OJ L 176, 10.7.1999, p. 31.

² Greece entered a scrutiny reservation.

- (b) In the fifth indent, "forgery of money" shall be replaced by "counterfeiting and forgery of means of payment";
- (c) The following indents shall be added:
- "— serious fraud
 - smuggling of aliens;
 - money laundering;
 - illicit trafficking in nuclear and radioactive substances;
 - participation in a criminal organisation as referred to in Joint Action 98/733 of 21 December 1998 ¹;
 - terrorist offences as referred to in the Council Framework Decision of ... on combating terrorism ."

Article 2

- 1) This Decision shall not be binding upon Ireland.
- 2) This Decision shall not apply to Gibraltar.
- 3) This Decision shall only apply to the Channel Islands subject to Article 5(1) of Decision 2000/365/EC.

¹ OJ L 351, 29.12.1998, p.1
Finland and Norway (OJ L 176, 10.07.1999, p.36) entered scrutiny reservations.

Article 3

With the exception of art. 1(2)(c) sixth indent this Decision shall take effect on the date of its publication in the Official Journal of the European Communities

Art. 1(2)(c) fifth indent will take effect for Norway on ...

Art. 1(2)(c) sixth indent will take effect on 1 January 2003.

Done at on

For the Council

The President

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