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NOTE

from:	French delegation
to:	Ad hoc Working Party on Information Exchange
No. prev. doc.:	9022/10 JAI 359 ENFOPOL 110 CRIMORG 83 ENFOCUSTOM 29
Subject:	Definition of interoperability (Action No 6 on the action list for implementation of the Information Management Strategy (IMS))

Further to the Austrian delegation's note (9022/10 JAI 359 ENFOPOL 110 CRIMORG 83 ENFOCUSTOM 29) on Action No 6 for implementation of the Information Management Strategy (IMS), which deals with interoperability, the French delegation is grateful to Austria for launching the debate on the action and for setting out all the aspects which could be covered by a definition of interoperability in the field of law enforcement data exchange.

The French delegation shares the view that there are definite operational advantages to interoperability, in that it would make for economies of scale when linking up national information systems with similar systems at Community level as part of a European data exchange model.

However, France cannot go along with the approach taken in the Commission communication of 24 November 2005, which states that "*Interoperability is a technical rather than a legal or political concept [...] disconnected from the question of whether the data exchange is legally or politically possible or required.*"

Moreover, the Stockholm Programme states that the Information Management Programme (IMS) should be based on "*interoperability of IT systems ensuring full conformity with data protection and data security principles when developing such systems*".

The French delegation also attaches particular importance to the opinion of the European Data Protection Supervisor (EDPS), who holds that "*interoperability is not a purely technical issue but also has consequences for the protection of the citizen, in particular data protection. [...] interoperability has particular risks of interconnection between databases having different purposes.*"

The European Data Protection Supervisor's opinion uses the term "interconnection". The French delegation takes that view that a distinction should be drawn: interconnection is the actual interconnection of two databases or two technical systems, whereas interoperability is the possibility of interconnection in all areas. Interoperability should always be the goal to be pursued, so that the systems which are developed can potentially communicate with one another easily.

It should also be pointed out that interconnection is not defined by law in France. The definition comes from the rulings of the administrative authority responsible for data protection issues (the *Commission nationale de l'informatique et des libertés*), to the effect that interconnection is the linking of two or more data processing operations with exchange of data, either to feed into a third file, or to enhance either of the data processing operations.

Hence, interconnection is not the same thing as being able to consult two or more applications on the same terminal, either simultaneously or in succession. Access to two or more data processing operations at the same time does not constitute interconnection, as none of the files consulted are enriched, even if access is computerised.

Although the law of 6 January 1978 on data processing, data files and individual liberties (Articles 6, 7, 25, 26 and 30) does not impose a general ban on interconnections between filing systems, it does lay down certain rules : interconnections are considered to be data processing operations, which require a statement setting out their purpose, the recipients, how data subjects are informed of the existence of the processing and their rights of access and rectification. In other words, an interconnection can be established only in a higher interest, usually a public interest based on legislative provisions.

CNIL, the French data protection agency, has always opposed any project for the interconnection of two filing systems whose purposes are incompatible (for example, data matching between a bank file and a file on social security recipients) or which would give the controller of one of the systems access to data he would not normally have access to (for example, sending judicial or police information to a private operator).

To conclude, the French delegation hopes that future discussions on the definition of interoperability will take into account both the operational interest expressed at political level and the fundamental legal principles of personal data protection.

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