JOINT GE.1 AND GE.2 SESSION ON LEGAL AND COMMERCIAL ASPECTS OF TRADE FACILITATION

Legal Rapporteurs Report

1. Recent meetings of the Legal Rapporteurs

The most recent meeting of the Legal Rapporteurs Team took place in Brussels on 21-24 May 1996 and will be followed by a meeting at the Helsinki JRT in September 1996. The work which be completed at the JRT in Helsinki will be reported on orally.

The progress on the legal work programme is outlined below. The participants to the meeting reviewed the outcome of the re-engineering process and this report summarises some of the key points resulting from their discussion.

2. Work Programme on the Legal aspects.

Project 4.1.: Interchange Agreement.

Based on Recommendation n° 26 on the "Commercial use of interchange agreements for Electronic Data Interchange" and the Recommendation of the European Commission of 19 October 1994 relating to the legal aspects of electronic data interchange, a report on progress made in Norway to develop a model interchange agreement was provided at the LRT meeting.

On-going work on the development of standard communications agreement between users and services providers was also reported. At this stage, only the monitoring of these matter has been considered to be appropriate, in particular as UNCITRAL is examining this issue and the potential to develop a code of conduct. These developments will be followed-up by the Legal Rapporteurs.

Project 4.3.: Negotiable documents

A meeting of the ad hoc group on negotiability was held in addition to the LRT meeting in Brussels.

Progress on on-going initiatives are monitored. These include :

- the ICC - E100 Project on electronic credits and the SITPRO proposal on the replacement of paper based letters of credit
- the BOLERO scheme
UNCITRAL’s work on negotiable documents, in particular a new provision for the replacement of paper transport documents by electronic equivalents for both negotiable and non-negotiable transactions.

The need for greater compatibility between current paper based systems and the development of electronic equivalents for the processing of international trade transactions was highlighted.

The ad hoc group meeting agreed that its role should encompass:

- the monitoring and evaluation of projects relating to negotiability
- the assessment of the potential impact of the growth of Internet and the development of electronic purse schemes
- the consideration of the effects of I-EDI on negotiable transactions
- the reporting on negotiable document initiatives within the JRT forum in order to highlight those needs which should be reflected in EDI messages.

With respect to the issue of negotiability, liaison with other bodies is essential and includes liaison with UNCITRAL as well as with the ICC (see below).

Project 4.4. : International Trade - National Legal and commercial Practice Barriers
The analysis of the answers received on the questionnaire is in progress.

In order to help the WP.4 Secretariat to contact organisations responsible for international conventions identified as raising legal concerns in relation to their definitions of writings, signatures and documents, the LRT has re-examined the list of conventions already identified and compiled the details required to ensure these contacts.

The work already compiled in document TRADE/WP 4/R.1096 was reviewed and an update was considered to be necessary, in particular to expand the analysis to other types of conventions likely to affect international traders. Additional suggestions included the examination of arbitration conventions and intellectual property rights. This will be started through SITPRO and UNCITRAL’s Secretariat.

Project 4.6. : Co-ordination with other bodies.

Liaison with the ICC
Considering the discussions of the LRT on negotiability issues, the Legal Rapporteurs suggested that a greater level of co-operation between the LRT and the ICC-E 100 Project and in particular the Legal and Regulatory Group should be explored. This is in progress.
Liaison with UNCITRAL

With the nomination of the delegate from UNCITRAL, M. Sorieul, as Legal Rapporteur the liaison with UNCITRAL is now fully effective. Documents adopted or produced by UNCITRAL will be examined within the LRT and when appropriate commented and reported upon. The LRT will provide input to UNCITRAL according to the needs it identifies and projects in progress.

A progress report on UNCITRAL’s Model Law on the legal aspects of electronic data interchange was given by M. R. Sorieul during the LRT meeting. This proposal has now been adopted by UNCITRAL as a Model Law on electronic commerce.

Project 4.7. : Other Projects

1. Judicial Messages

The two messages for Court procedures, CASINT and CASRES, were progressed to Status 1 at the Brazil JRT in April 1996.

2. New items of work:

As decided at the last session, new items of work have been started. They include the following:

2.1. Electronic Invoicing and Self-Billing

The findings of a European Commission report on the subject of electronic invoicing and self-billing\(^1\) show differences between countries about the extent to which electronic invoicing and self-billing for cross border trade are acceptable. Tax related regulations may prohibit, in some countries, the use of such invoicing systems.

The LRT has determined that more investigations should be done in this area in order to examine in detail the legal implications of these practices, closely related to the trade transaction payment cycle.

2.2. Certification authorities

A number of legal implications are closely connected to the development and use of Certification authorities, a key element of the security scheme for EDI and for electronic transactions. The issues include: the requirement for message standards, the use of encryption techniques for security purposes and the national security, and law enforcement implications arising from cross border communications.

The LRT reviewed available information on this topic which included information (no document is publicly available) on a Action Plan on Trusted Third Parties developed by the European Commission’s DG XIII within the framework of the INFOSEC programme, as well as on guidelines on "Cryptography principles" developed by OECD.

\(^1\) A Report from Devotech, under the TEDIS programme
UNCITRAL has also carried out some initial work on the legal implications arising from the use of certification authorities and has started to give some considerations on the legal framework which may be required for their operation.

The LRT agreed that this topic should be examined more closely.

2.3. Data protection

The European Directive\textsuperscript{2} relating to personal data adopted in October 1995 is due to be implemented in European countries in 1998 and therefore will affect all exchanges of such data as from that date within the European Union, and outside, as the Directive highlights the need for non-European countries to provide adequate levels of data protection. Such legislation exists already in most European countries, however with different levels of protection, and most companies exchanging such data are already following the rules set up in their country. However, the Directive will created a harmonised framework which will reduce the differences between countries while ensuring that all are providing for similar rights and obligations.

The implications of data protection on UN/EDIFACT messages is, therefore, important to analyse and to become aware of. The LRT received an initial introduction to the principles of the Directive by an official of DG XV and considered that it may be required to prepare a set of practical guidelines for message developers and users. An open meeting on the subject will be held in the JRT in Helsinki in order to brief participants on current data protection issues and to gain feedback from the message development groups on any problems they may have experienced in this area.

Work Programme.

An update of the Work Programme on the legal questions is required to reflect the new items of work which have been adopted at the last session and it has been emphasized in this perspective that any future work items should look at all forms of electronic commerce, including both structured and unstructured message formats, and consider the impact of major new developments such as the rapid growth of the Internet and its interface with EDI processes.

The work programme should include:

- the examination of the invoicing cycle for international trade transaction, looking, in particular, at electronic invoicing and self-billing,
- the continuation of the LRT's work on "document, signature and writing" requirements,
- the promotion of UNCITRAL's Model Law on Electronic Commerce

\textsuperscript{2}Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data, OJEC L 281 of 23.1.95.
• the assessment of the legal implications of the growing number of messages being developed in the accountancy, registry and auditing fields,
• the use of certification authorities,
• the potential impact of data protection legislation on message development processes as well as message users,
• the continuation of work on negotiability.

3. WP 4 Re-engineering process

The consequences that the completion of the re-engineering process would have on the Legal Rapporteurs Team was examined during their meeting in Brussels in May 1996 together with the contribution provided to the work of Group C.

The position document TRADE/ WP 4/R. 1234 will be examined at the Helsinki JRT.

Special concern was raised about potential problems for the LRT when dealing with different reporting mechanisms in two environments and in developing a legal work programme to meet the requirements of both the new CEFACT structure and the JRT.

It has been emphasised that the JRT and the LRT needed to be two autonomous technical groups, each with its own terms of reference and remit agreed by the CEFACT organisation.