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LEGAL RAPPORTEURS' REPORT

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

Legal Rapporteurs Report

1. Recent meeting of the Legal Working Group

The Legal Working Group held a meeting at the Singapore JRT meeting on 21-25 April 1997.

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 meeting. The work programme of the Legal Working Group was reviewed in consideration of the migration and empowerment process and is outlined below.

2. Empowerment of the CEFACT Legal Working Group.

In consideration of the migration from WP4 to CEFACT, the Legal Working Group finalised the draft mandate to be submitted to the CEFACT Steering Group in view of its approval by the CEFACT Plenary at the September session.

3. Work Programme on the Legal aspects

The participants to the last meeting determined that specific work items should receive priority with a view to achieve substantial progress in the shortest period of time possible. They also recognized that the use of technologies in particular email should be used more extensively to carry work in between sessions and meetings.

In the future, meetings should be organised in consideration of work to be progressed and could mean that they would not necessarily meet at each of the JRT meetings.

The Legal Working Group reviewed its work programme with the aim mentioned above and in preparation of the next step towards the preparation of the Legal Working Group's Terms of Reference.

It should be emphasized that this review has been done in the perspective of electronic commerce, including both structured and unstructured message formats, and in consideration of the impact of major new developments such as the rapid growth of the Internet and its interface with EDI processes.

The following items were considered for inclusion in the CEFACT Legal Working Group work programme :

1. Model Interchange Agreement

Consideration will be given to extend the relevance of the current Model Interchange Agreement as published in Recommendation n°26 in order to cover electronic commerce, digital signatures and a model technical annex. This item of work should result in an update of Recommendation n°26.

In preparation of this work to be undertaken participants to the Legal Working Group have already started reviewing the actual requirements of users.

2. National legal and commercial barriers to international trade

The analysis of the answers received on the questionnaire is still in progress, but is highly dependant on available resources at UNCITRAL at this stage. The review of the responses received in the light of current developments in electronic commerce, the extrapolation of answers and the submission of proposals to resolve any issues identified to CEFACT could provide useful guidelines to users.

3. Electronic Authentication

The inventory of international trade and transport conventions and agreements making references to "signature", "writing" and "document", as developed in document WP4/TRADE/R.1096, has been updated by SITPRO. The revised document outlines where revision to allow for electronic equivalents is required.

An explanatory document setting out the problem areas and highlighting the need for users to consider the possible implications for domestic purpose is necessary.

4. Data Protection

The potential impact of data protection legislation, and in particular of the EU directive requires a briefing note to raise awareness and possible guidelines.

5. Private International Law

Research in this area is required in conjunction with the work on the revision of the Model Interchange Agreement.

6. Model Intermediary Agreement.

The drafting of a Model Agreement will be considered for a proposal of UN Recommendation.

7. ICC E-terms Repository

The progress of the work on the ICC E-terms repository will be monitored in view of providing, where necessary, guidance to users as to the possible implications of the use of the Repository.

8. Educational tools

Educational tools to assist in the understanding of legal issues in electronic commerce generally and EDI specifically are considered to be required.

9. Legal review of UN/EDIFACT messages.

Under guidance of the ESG, work will be considered in relation with the analysis of legal implications of the use of EDI messages which have been outlined in a EU report.

The work items listed above were recognised to be each of significant importance but a number of items should be progressed as a matter of priority. At this stage the priority to be given at the next meeting of the Legal Working Group will include the review of the Model Interchange Agreement, Electronic authentication and other items according to progress.

Work items which have been included in the previous work programme of the Legal Rapporteurs Team were considered to be either no longer required, being under consideration of other bodies or organisations or requiring further support and availability of resources before being considered any priority. These items include : the issue of negotiability, electronic invoicing and self-billing, the requirement for certification authorities.

Monitoring of significant national developments and co-ordination with other bodies

In order to ensure an updating of the Legal Working Group on the most significant legal issues arising at national level or in organisations involved in specific tasks relating to legal issues of electronic commerce, the participants will ensure a regular review of these developments and report on these at their meetings. The information will be made available together with the reports of the meetings.

Annex 1

TEDIC PROJECT (TRADE/WP4/R.1219)

Further to the request of WP4 to the Legal Working Group to examine the TEDIC project, a presentation of the project was made by the promoters of the project to the Legal Working Group at the Helsinki JRT meeting (1996). A fruitful discussion took place, at which general comments and views of the participants to the Legal Working Group were expressed. It was observed that a meeting between the lawyers involved in the TEDIC project and the Legal Working Group would provide an opportunity for further discussion. However such a meeting with the TEDIC project could not be arranged despite the efforts which were provided.

Further to the review of the workprogramme and the decision not to include some items of work unless further support and resources would be available, the Legal Working Group decided that resources to review the TEDIC report were not available. Moreover it was emphasised by the participants to the last meeting of the Legal Working Group that it would not be appropriate for the Legal Working Group to provide an evaluation of a specific commercial project, the relevance of which would be better tested by the market.

In July 1997, an new intermediary report of the TEDIC project was submitted to the Legal Rapporteurs with a request to receive their comments. In view of the demonstration of the project which will be made during the CEFACT September session and in view of the relevance of the TEDIC project to the Model Interchange Agreement process and the UN/EDIFACT developments, the following comments can be provided :

- as to the relevance of the project for the UN/EDIFACT process, a critical factor of success will be in the global dimension of the scenario proposed against a national legal approach;
- in view of the quantitative and qualitative amount of work which may be associated to the development of the scenarios, an assessment of users needs and requirements would be necessary before an operational phase is started; it would also be advisable to evaluate with the project promoters the amount of development that will be required and the method to use within the UN/EDIFACT process to support such an initiative;
- in view of the rapid development of the Internet and electronic commerce tools, it may be advisable to examine whether new alternatives or complementary tools are available to perform the same objectives;

- only a strong market analysis and assessment of users requirements could provide an indication of the value added that the TEDIC Project could bring to the EDI users community.
 - the success of the project may depend upon services provided by certification authorities such as the ICC E-terms Repository. Dependancies of such certification authorities may required examination before an operational phase is envisaged.
 - a pilot phase including users could be very useful to demonstrate the added value of the project;
 - as the Legal Working Group engages in a revision of the Model Interchange Agreement, they may want to monitor how the TEDIC project will implement concretely the interchange agreement into the scenarios.
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