

Commission Services 2003 Progress Report
on the
EU-Japan Business Dialogue Round Table Recommendations
of
Tokyo, 7 - 9 July 2002

Brussels, March 2003

Table of contents

	<i>Page(s):</i>
Table of contents.....	2
 <u>GENERAL OVERVIEW</u>	
1. Exchange/training programmes.....	3
 <u>TRADE & INVESTMENT</u>	
2. Standards & Conformity Assessment.....	5
3. Harmonisation of rules and regulations.....	6-8
4. European Company Statute (SE).....	9
5. Merger Directive.....	10
6. Consolidated tax system.....	11-12
7. Pension costs.....	13
8. Visas and work permits.....	14
9. Tariffs and tariff classifications.....	15-16
10. Anti-dumping.....	17-18
 <u>ACCOUNTING & TAXATION</u>	
11. International Accounting Standards (IAS).....	19
12. Fiscal harmonisation.....	20-22
13. Transfer pricing taxation.....	23
14. E-commerce taxation.....	24
 <u>STANDARDISATION</u>	
15. ICT Industry: IMT2000 standardisation.....	25-26
16. Harmonisation of voluntary standards.....	27
17. First-to-file vs. first-to-invent.....	28
 <u>MRA</u>	
18. Mutual Recognition Agreement (MRA).....	29
19. Mutual Recognition Agreement (MRA) on medical devices.....	30
 <u>E-COMMERCE</u>	
20. IT Industry: Broadband and multimedia.....	31-34
21. Unbundling the local loop and time based interconnection rates.....	35-38
22. Support the GBDe.....	39
23. GBDe: Notice and take-down procedures.....	40
24. GBDe: Trustmark schemes.....	41
25. GBDe: The Advocacy Group.....	42
26. GBDe: IPR Protection.....	43-44
27. Electronic signatures.....	45
28. Business model patent.....	46
 <u>WTO</u>	
29. New WTO Round.....	47-48

Exchange/Training Programmes

1. Summary of Recommendations

Tokyo, July 2000: Encourage expansion of the exchange/training programmes for EU-Japan businessmen in order to provide them with a better understanding of market conditions and ways of doing business.

2. Action Taken and State of Play

In addition to activities carried out at Member State level, the Commission has been actively promoting exchange/training programmes designed for European companies wishing to enter the Japanese market.

The External Relations DG equally successfully operates two complementary Japan programmes: (1) the Executive Training Programme in Japan (ETP), (2) the “EU Gateway to Japan” export promotion campaign. Since its inception in 1979, more than 800 executives have participated in the ETP, and two separate Gateway to Japan campaigns have introduced a total of more than 1500 European SMEs to the Japanese market.

The EU/Japan Centre for Industrial Cooperation continues to offer training programmes for EU Managers in Japan, as well as the ‘Vulcanus’ training programme for EU and Japanese students to Japan and Europe respectively. Since its creation in 1987 as a joint venture with the Government of Japan, the Centre has trained more than 1300 managers, student and energy experts as well as providing services to promote cooperation between EU and Japanese companies.

3. Prospects for Implementation

The Commission remains committed to the activities of the EU-Japan Centre for Industrial Co-operation in the longer term.

After 20 years of operation (the 20th ETP intake was graduated in November 2002) the ETP programme has succeeded in enhancing the development of a pool of European executives with intimate knowledge of the Japanese market, business culture and language. A survey of ETP participants has been launched in order to obtain a clear picture of programme results in terms of long-term commitment to EU/Japan business relations from some of its participants. Furthermore, an ETP conference is planned in 2003 to take stock of the business achievements of companies and executives having taken part in ETP and learn from their experience. Thus, this conference will also be an opportunity to highlight business and investment prospects for the EU industry on the Japanese market.

As regards Gateway to Japan, a new Campaign, the third one, has been launched at the end of 2002. The first trade missions will take place during the second quarter of 2003. This new Campaign covers 8 sectors and intends to introduce more than 800 EU companies to the Japanese market over a four-year period.

Standards & Conformity Assessment

1. Summary of Recommendations

Tokyo, July 2002. Further promote the alignment of national standards & conformity assessment procedures with international standards and guides in order to eliminate the unnecessary duplication of product testing and approval.

2. Action Taken and State of Play

9th Meeting of the EU/Japan Standards & Conformity Assessment Working Group (within the framework of the ENTR/METI Industrial Policy Dialogue) was held in Brussels on February 5/6 2003.

3. Prospects for Implementation

Both sides agreed to hold the next meeting of the EU/Japan Standards & Conformity Assessment Working Group in Tokyo in one year's time.

Harmonisation of rules and regulations

1. Summary of Recommendations

Tokyo July 2000: The principles of transparency, neutrality, accountability, consistency, predictability, efficiency and independence should guide the regulatory process.

Brussels July 2001: Increase transparency and efficiency. Promote deregulation and establish the principle of non-discriminatory treatment for foreign and local corporations.

Tokyo July 2002: Rules and regulations governing economic activity within the EU should be further harmonised to reduce the burden companies face doing business in the Single European Market.

2. Action Taken and State of Play

Better Regulation

Since the last progress report, the Commission has come forward with a number of initiatives in the field of "better regulation". They follow up on the Lisbon European Council conclusions of March 2000 on simplifying the regulatory environment as well as the action points set out in the White Paper on European Governance of July 2001. First of all, a Better Regulation Package was adopted in June 2002, including an Action Plan setting out a number of measures to be taken to simplify and improve the regulatory environment. Since then, the Commission has advanced in the implementation of several of the actions.

- *For example, a new impact assessment procedure has been launched this year, which streamlines and reinforces the Commission's previous practices. It will provide policy-makers, as well as the public, with more accurate and better-structured information about the likely impacts of the Commission's proposals and will help to improve their quality. In line with the EU Sustainable Development Strategy, the new impact assessment procedure will also help to ensure policy coherence by considering impacts in their economic, environmental and social dimensions.*
- *Another example is the establishment of general principles and minimum standards for public consultation, as of this year. Their aim is to streamline and improve the Commission's current practices and to make them more transparent towards the outside world. For example, they will help ensure that the Commission's consultations have a clear content and that all relevant parties - including non-EU countries - have an opportunity to express their opinion. The consultation procedure shall be clear and widely known (e.g. through a "single access point" on the web) and that sufficient time shall be provided for responding (minimum 8 weeks), with appropriate feed-back provided to the responding parties.*

A final example is the recent adoption by the Commission of a Communication on "Updating & simplifying the Community *acquis*". It aims at launching a simplification programme based on a 3-phase action plan, to be completed by the end of the term of this Commission. It includes actions to consolidate, codify, simplify and recast the existing *acquis*, with set timetables. The overall objective is to reduce the existing volume of legal texts by 25% and to make the texts simpler and user-friendlier. However, actions are also included to review the substance of a number of EU policies to make them more efficient, flexible and proportionate.

In December 2002, the Commission adopted a second Governance / Better Regulation package, which focussed on "better implementation" of EU policies. For example, it covered actions to be taken in the fields of comitology, regulatory agencies and infringement proceedings.

With the aim to address the whole legislative life cycle, the Commission has also proposed initiatives for the European Parliament, the Council and the Member States. These are currently under discussion in view of an inter-institutional agreement on better regulation, which is foreseen for this spring.

Internal Market

Since the last progress report, the Commission has undertaken a number of important initiatives to improve the environment in which companies operate with a view to facilitating trade and investments within the EU.

First, the Commission prepares a comprehensive new medium-term (2003-2006) Strategy for the Internal Market (adoption foreseen for end of April) intended to tackle the remaining gaps and weaknesses, which undermine the Internal Market's effectiveness. The new Strategy will, amongst other, provide for regulatory and non-regulatory measures to facilitate the intra-community trade in goods and services and to improve the business environment

Second, on the basis of the results of the report on the state of the Internal Market in services (July 2002), and further consultations with other EU institutions, Member States and stakeholders, the Commission is preparing a comprehensive strategy to tackle the relevant legal and other barriers identified in the report, which businesses find throughout the business process, preventing them to take full advantage of the Internal Market. The Commission intends to tackle the legal barriers as far as possible by a framework directive covering all sectors.

Moreover, the Commission has launched a broad debate on the future agenda for entrepreneurship policy in the EU aimed to identify the most efficient policy options to bring down barriers to business development and growth.

Finally, the Commission has set up a new problem-solving network called SOLVIT, open for businesses from 22nd July 2002 and targeting cases of misapplication of EU law by public authorities in the Member States with the aim of making it easier for businesses to make full use of their Internal Market rights.

3. Prospects for Implementation

The Commission will continue over the next year with the implementation of its better regulation commitments. Starting in 2003, it will also make an annual assessment of the progress made, which will be included in the already existing annual Better Lawmaking Report.

As regards the Internal Market initiatives, the Commission will continue with their development and implementation.

European Company Statute (SE)

1. Summary of Recommendations

Tokyo July 2000: Adopt the European Company Statute promptly

Brussels July 2001: Improvement of corporate law system and regulatory environment. Early implementation of Council Regulations on the statute for a European Company and participation of private limited liability companies in the establishment SE through merger. Review of the procedure of the investigations into associations of undertakings based on a Council Regulation on the control of concentrations between undertakings.

Tokyo, July 2002: The smooth implementation and further improvement of the European Company Statute are required to enable EU-wide unification of management and business restructuring.

2. Action Taken and State of Play

On 8th October 2001 the Council reached final adoption of the Regulation on company law aspects and of the Directive on the involvement of the workers of the SE.

3. Prospects for Implementation

The texts of the Regulation (No 2157/2001) and of the Directive (2001/86/CE) will enter into force 3 years after their adoption on 8th October 2004.

Merger directive

1. Summary of Recommendations

Tokyo, July 2000: The scope of application of the merger directive should be expanded so that intra group reorganisations such as changing a local corporation structure to a branch structure under a European headquarter will be covered. Also the issue of capital gains taxes should be addressed.

2. Action Taken and State of Play

As indicated in the 2002 Progress Report, the Commission services are not satisfied with the current scope and the practical implementation of the Merger Directive (90/434/EEC). In line with its commitment in its Communication on company taxation "Towards an Internal Market without tax obstacles" (COM (2001) 582), the Commission intends to broaden the scope of the Merger Directive with regard to the types of companies and the types of transactions covered. It also intends to extend the scope of the Directive to companies formed under the European Company Statute as from 2004.

Technical consultations with Member States with a view to amending the Directive commenced in 2002.

3. Prospects for Implementation

The Commission intends to present its proposal for amendments to the Directive in summer 2003.

Consolidated tax system

1. Summary of Recommendations

Tokyo July 2001: Improving the tax system to allow tax neutral mergers and local corporate restructuring.

Brussels, July 2001: Early realisation of a Council Directive concerning arrangements for taking into account by enterprises of the losses of their permanent establishments and subsidiaries situated in other Member States.

Tokyo, July 2002: An EU-wide consolidated tax system should be introduced to reflect the expansion of EU-wide business activities and the introduction of an EU-wide company structure.

In the context of the current tax policy discussions in the EU, careful consideration should be given to avoiding any measure that could hamper foreign investment.

2. Action Taken and State of Play

The Commission in its October 2001 Communication on company taxation “Towards an Internal Market without tax obstacles” (COM (2001) 582) identified several steps which could be taken to remove individual tax obstacles to cross-border trade in the Internal Market. These included amendments to both the Parent-Subsidiary Directive, as well as to the Merger Directive as noted above, and a provision to allow enterprises to take into account the losses incurred by their permanent establishments and subsidiaries situated in other Member States.

However, the Commission also concluded in that Communication that in the longer term Member States should agree to allow EU companies to use a single consolidated base for computing tax on their EU-wide profits. The Commission considers that the existence of fifteen separate sets of tax rules for calculating the taxable base in the Internal Market, in addition to creating compliance costs, causes numerous problems such as the absence of relief for losses in cross-border situations, transfer pricing and double taxation.

The Commission is currently working with Member States on the targeted solutions it proposed to address individual tax obstacles hindering cross-border economic activity in the EU. Furthermore, it has withdrawn its outstanding proposal for a Directive on cross-border loss relief with the objective of replacing it by a more comprehensive proposal.

The Commission has also launched a wider debate on more general measures to eliminate tax obstacles such as a consolidated tax base. On 29-30 April 2002 it held a European Company Tax Conference, where the issue of a EU-consolidated tax base was discussed in depth by business representatives, tax authorities and tax experts,

and where the Commission strategy received considerable support from several parties, notably the business operators.

The following activities have been initiated since the conference:

- research (since 2002) with a view to considering the potential of the International Accounting Standards as a starting point for developing a common EU tax base; an appropriate consultation paper has been made available on the DG TAXUD web-site;
- research on Formula Apportionment (for dividing the tax base between the Member States concerned); advice by external consultant sought;
- research on the basis of both above activities into a possible pilot scheme allowing a "common consolidated tax base" as an experimental tax regime for the European Company (the Societas Europaea or SE);
- in 2002 major advances were made in developing the idea of "Home State Taxation" into a pilot project for small and medium-sized enterprises (the consultation paper is available at DG TAXUD's web-site; a very supportive 'workshop' with all relevant federations and other interested parties took place on 17 December 2002. Consultations with Member States are planned for spring 2003).

3. Prospects for Implementation

The Commission intends this year to present the two proposals noted above amending two existing Directives on the tax treatment of mergers and of dividend payments between parent and subsidiary companies, so as to broaden their scope with regard to both the types of companies and the types of transactions covered. It also intends to extend the scope of the two Directives to companies formed under the European Company (SE) Statute as from 2004.

With regard to cross-border losses relief, the Commission intends, following its withdrawal of its existing proposal, to start consultations with Member States on the technical possibilities for taking this issue forward. The Commission intends to report on its legislative intentions in this field in 2004.

It is too early to indicate the prospects for the possible realisation of the Commission strategy regarding the creation of a consolidated tax base. The Commission will, following the process of consultation of all stakeholders, publish a Communication on its policy conclusions on this idea in around October 2003.

It should be noted that any legislative proposals presented by the Commission must be approved unanimously by the Member States.

Pension costs

1. Summary of Recommendations

Tokyo, July 2000: In anticipation of the creation of a single EU social security system in the future, negotiations between Japan and certain EU Members States should in the meantime reduce the costs resulting from double payment of pension costs.

2. Action Taken and State of Play

Community provisions in the field of social security, in particular Regulation (EEC) 1408/71, co-ordinate but do not harmonise national security systems.

Therefore, Member States are free to determine details of their own social security systems, including which benefits shall be provided, the conditions for eligibility and the value of these benefits, as long as they adhere to the basic principle of equality of treatment and non-discrimination as laid down in the Regulation.

It should also be noted that the Commission has presented a Communication on "The elimination of tax obstacles to the cross-border provision of occupational pensions" (COM(2001)214 final) on 19 April 2001.

Prospects for Implementation

The Community provisions referred to above in point 2 currently apply only to nationals of Member States of the European Union or of the European Economic Area. The Commission has therefore proposed a Council Regulation amending Regulation 1408/71 as regard its extension to nationals of third countries, who legally reside and pay social security contributions under the legislation of a Member State.

On 3 December 2002 the Social Affairs Council agreed on this Regulation extending the current Community provisions to third country nationals and their family members legally residing in the EU. This means that after the entry into force of this Regulation, which is foreseen for spring 2003, Japanese nationals and their families can rely on the Community provisions in the field of co-ordination of social security systems when moving within the EU.

Visas and work permits

1. Summary of Recommendations

Tokyo, July 2000: Discriminatory and unclear rules for visas and/or work permits at Members States' level should be solved promptly.

2. Action Taken and State of Play

On residence permits and work permits:

On 11 July 2001 a proposal for a *Council Directive dealing with "the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities"* (COM 2001(386)) was adopted by the European Commission. It is now under discussion in the Council.

The proposed Directive determines common definitions, criteria and procedures regarding the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and pursues the following aims:

- laying down common criteria for admitting third country nationals to employed activities and self-employed economic activities ("*economic needs test*" and "*beneficial effects test*") and opening different options for demonstrating compliance with these criteria (e.g. "green card programs", income thresholds, "employers contribution" for recruiting third country nationals; ...).
- providing procedural and transparency safeguards, in order to assure a high level of legal certainty and information for all interested actors.
- providing a single national application procedure leading to one combined title, encompassing both residence and work permit within one administrative act ("*one stop shop*"), in order to simplify and harmonise the diverging rules currently applicable in Member States;
- providing for a harmonised minimum set of rights for third country nationals whilst respecting Member States discretion to limit economic migration.

3. Prospects for Implementation

On residence permits and work permits:

The proposal (COM 2001(386)) is currently under negotiation in Council and it is not yet possible to give a clear forecast for adoption.

Tariffs and tariff classification

1. Summary of Recommendations

Tokyo, July 2000:

1. **Tariffs**: High tariff rates prevent the introduction of innovative Japanese products at competitive prices. Ultimately, this harms the European consumer. Tariffs on manufactured goods including consumer electronics products (14% for EU and 0% for most of the goods for Japan) and passenger vehicles (10% for EU, 0% for Japan, and 2.5% for USA) are very high in the EU compared to other advanced nations. Proposal: Tariff rates should be lowered.
2. **Tariff classification**: The intentional and arbitrary changing of tariff classifications with a view to raising tariff rates is also a problem. This kind of treatment is seen particularly often in the case of the products related to digital and multi-media technologies. Proposal: Tariff rate classifications should not be intentionally or arbitrarily changed.

All remaining tariffs, quotas and investment restrictions between Europe and Japan should be removed.

2. Action Taken and State of Play

1. **Tariffs**: As already stated in the previous report, the recommendation gives a selective and unbalanced picture of the tariff situation. The EU has an open market for imports of non-agricultural products, with a simple average bound tariff of 4%, comparable to the level of protection in other advanced industrial countries. EU tariffs on consumer electronics and passenger vehicles reflect the sensitivity of those sectors and do not give a fair representation of the EU tariff structure generally. Still, these percentages are below the levels of recognised international peaks (i.e. 15%). Although Japan has low average tariffs on non-agricultural products, it also has significant tariff peaks in sectors of export interest to the EU such as beverages, textiles and clothing, footwear, certain chemical and scientific equipment.
2. **Tariff classification**: As already stated in the previous report, the statement on classification of products in the EU tariff seems to reflect an incorrect understanding of the purpose of classification. Classification in the EU is not based on the duty rates associated with the Community subdivisions to HS nomenclature. The purpose of classification is not to undermine tariff concessions or to make new tariff concessions without proper trade negotiations. Rather, classification is made in accordance with the HS rules and has as its objective to

find the correct heading in the nomenclature used in the EU tariff. To that respect, it has to be said that the EU fully respects the WCO classification rules and does implement all its decisions. Furthermore, whenever in doubt, an importer may obtain from the customs administration “binding tariff information” on the tariff classifications of a good (which only expire after 6 years).

3. Prospects for Implementation

The launch of multilateral market access negotiations for non-agricultural products within the new Round provides an opportunity for both the EU and Japan to reduce overall tariff levels and tariff peaks as well as to seek harmonised and simpler tariff structures for all WTO Members. Under the Doha Development Agenda negotiations, the Community is committed to removing quotas and reducing or, where appropriate, eliminating tariffs.

The evolution of technology and the convergence of industries have led to challenges in the classification of many products. Perhaps a modernisation of the HS nomenclature is required. Certainly, the EU is in favour of including chapters 84, 85 and 90 (which covers the bulk of digital products) in the current HS review cycle (HS 2007).

Anti-dumping

1. Summary of Recommendations

Tokyo, July 2000: Anti-dumping regulations should be prudently applied as their application is very energy consuming and costly to the companies in question, even at the initial stages of an investigation. It also inhibits the flow of trade and investment and has a serious effect on the companies affected including eventually harming European consumers.

In anti-dumping investigations the scope of the goods in question should be strictly limited.

Anti-circumvention measures should be withdrawn and the WTO Working Group should deal with this issue in more detail.

2. Action Taken and State of Play

Anti-dumping investigations are carried out by the EU in full conformity with the WTO Agreement which condemns dumping practices as unfair and allows Members to act against such practices provided a number of conditions are fulfilled. The unfair trading practice of dumping can be countered by appropriate measures where it causes injury to a domestic industry. The purpose of such measures is to restore a level playing field between competitors. In anti-dumping investigations the EU takes full account of the position of consumers and users.

Regarding the scope of the product in investigations, as already stated, the EU applies the anti-dumping instrument in full conformity with international obligations.

In terms of the use of the anti-dumping instrument it is worth noting that where there is significant trade there is the potential of friction. Since the EU is the greatest trading block in the world it is normal that a number of anti-dumping investigations are carried out. However, in relative terms the EU is a moderate user of the Anti-dumping instrument. This is also reflected in two recent WTO panel reports that have largely confirmed EC anti-dumping measures.

Regarding the issue of anti-circumvention, the EU and some of its major trading partners, in particular the US, have specific anti-circumvention provisions in their legislation for several years. While not containing any explicit provisions on circumvention measures, the Marrakesh Ministerial Decision that referred the problem of circumvention to the WTO Anti-Dumping Committee for resolution, refers to *'the desirability of the applicability of uniform rules in this area as soon as*

possible'. This was agreed in full knowledge of the then existing anti-circumvention provisions and practices of WTO Members. Circumvention is also on the agenda of negotiations on anti-dumping in the framework of the Doha Development Agenda. Some WTO Members, including the EC, have identified circumvention as an issue to be addressed in the Negotiating Group on Rules.

3. Prospects for Implementation

Anti-dumping Regulations are already, and will continue to be, prudently applied. Within that context the scope of goods in question is already strictly defined and limited.

Anti-circumvention measures should not be withdrawn. Problems that arise in this context have to be solved. The EU is committed to continue the work in the specialised group in the WTO. It is fair to say that the work of this group has not always been pursued in a constructive spirit by all Members.

International Accounting Standards

1. Summary of Recommendations

Tokyo, July 2000: Adoption of world wide core standards with local applications drawn from an agreed range, in order to ensure fair market valuation.

International accounting standards (IAS) should be accepted soon for cross-border listings in capital markets.

Tokyo, July 2002: BDRT warmly welcomed the decision by the EU that listed companies may use the International Accounting Standards (IAS) from 2005. Necessary to continue carefully examining IAS so as to make it a truly useful international standard. For this to be achieved, IAS must reflect the actual needs of investors and corporate managers worldwide.

2. Action Taken and State of Play

Regulation 1606/2002 on the application of international accounting standards was adopted on 19 July and entered into force on 11 September 2002. The next step towards implementation of IAS for EU listed companies in 2005 is the endorsement of existing IAS by the Commission, in accordance with Article 6 of the Recommendation.

3. Prospects for Implementation

The Commission is currently considering the endorsement of existing IAS. It is expected that a decision in this respect will be taken before the end of this summer.

Fiscal harmonisation

1. Summary of Tokyo Recommendations

The BDRT calls on the Commission to make further efforts in the direction of fiscal harmonisation in the area of direct taxation.

2. Action Taken and State of Play

The Commission does not believe that tax harmonisation should be the goal for all aspects of Member States' tax systems.

A high degree of harmonisation is certainly necessary in the field of indirect taxes, as such taxes may create an immediate obstacle to the free movement of goods and the free supply of services within the Internal Market. Indeed, a significant degree of harmonisation of indirect taxes has already taken place.

On the other hand, direct tax systems require only limited harmonisation. There is, for example, no need to harmonise personal income taxes unless they entail discrimination, double taxation or unintended non-taxation. Such taxes can generally be left to Member States even when the EU achieves a higher level of integration than at present.

But there is an intermediate zone of direct taxation of mobile tax bases, in particular the taxation of companies and the taxation of financial capital, where the situation is less clear-cut and which may have direct effects on the Internal Market. In this area, Member States have become more favourable to the idea of increased co-ordination.

It was on the basis of this philosophy that the Commission presented a Communication "Towards an Internal Market without tax obstacles" on 23rd October 2001. On the one hand, the Commission plans targeted measures aimed at removing tax obstacles to cross-border economic activity (such as extending the scope of the Merger and Parent-Subsidiary Directives). On the other hand, the Commission believes that in the longer term companies should be allowed a consolidated tax base for their EU-wide activities, so to avoid the costly inefficiencies of fifteen separate sets of tax rules, and to significantly reduce compliance costs.

But the Commission has made clear that, even in the longer term, tax harmonisation is not a goal for EU tax policy. In particular, the Commission stressed in the Communication that statutory rates of company taxes should be left to the competence of Member States.

Since the publication of the Communication, the Commission has made good progress with the implementation of its strategy, notably as regards the targeted measures but

also on the comprehensive approaches (see “consolidated tax system”), Details can be found in the following table:

Follow-up to the Company Tax Study and Communication (state of play: January 2003)

Original timetable of actions/initiatives	Up-date / follow-up
<u>2001</u>	
Start: develop guidance on ECJ jurisprudence (“soft law”)	<ul style="list-style-type: none"> – <i>internal work has started in 2001</i> – <i>Communication on the elimination of tax obstacles to the cross-border provision of occupational pensions presented in 2001</i> – <i>Communication on the tax treatment of cross-border dividend payments planned for 2003</i>
Start: monitoring of implementation of EU tax law	<ul style="list-style-type: none"> – <i>more proactive infringement strategy launched</i>
<u>2002</u>	
“European Conference on Company Taxation”	<ul style="list-style-type: none"> – <i>Conference was successfully held 29 & 30 April 2002</i>
“EU Joint Forum on Transfer Pricing”	<ul style="list-style-type: none"> – <i>Forum has been successfully created, two meetings so far, work plan fixed until 2004; generally considered very promising development</i>
Technical consultations with Member States on loss-offset	<ul style="list-style-type: none"> – <i>Consultations currently being postponed (ECOFIN was sceptical),</i> – <i>Commission initiative provisionally planned for 2004</i>
And necessary amendments to merger- and parent/subsidiary directive	<ul style="list-style-type: none"> – <i>intense consultations with MS in working party held throughout 2002</i>
Work on tax aspects of European Company Statute	<ul style="list-style-type: none"> – <i>intense internal work throughout 2002</i> – <i>discussion with MS in context of consultation on revision of merger directive in late 2002 and planned for spring 2003</i>
<u>2003</u>	
Proposals: merger directive; parent/subsidiary directive	<ul style="list-style-type: none"> – <i>Commission proposal planned for June 2003</i>
Proposals: arbitration	<ul style="list-style-type: none"> – <i>concrete initiative postponed in order to allow the Joint Transfer Pricing Forum to consider the issue</i>

directive	<i>in depth first</i>
Take work on common consolidated tax base further	<ul style="list-style-type: none"> – <i>research (since 2002) going on with a view to the potential the International Accounting Standards as starting point for developing a common EU tax base; an appropriate consultation paper is available at the DG TAXUD web-site</i> – <i>research on Formula Apportionment (for dividing the tax base between the MS concerned); advice by external consultant sought</i> – <i>both above could contribute to the possible pilot scheme of a "common consolidated tax base" as an experimental tax regime for the European Company, the Societas Europaea</i> – <i>in 2002 already major advances have been made with developing the idea of "Home State Taxation" into a pilot project for small and medium-sized enterprises (an appropriate consultation paper is available at the DG TAXUD web-site)</i> – <i>a very supportive 'workshop' with all relevant federations and other interested parties has taken place on 17 December 2002. Appropriate consultations with Member States are planned for spring 2003)</i> – <i>Communication on these initiatives (planned for around October 2003)</i>
<u>2004</u>	
Communication on double taxation conventions	<ul style="list-style-type: none"> – <i>the very first internal work has started</i> – <i>the initiative can be expected to win momentum by pending jurisprudence of the ECJ</i>
Proposal on cross-border loss offset	<ul style="list-style-type: none"> - <i>The Commission intends, following withdrawal of its existing proposal, to start consultations with Member States on the technical possibilities for taking this issue forward and to report on its legislative intentions in this field in 2004.</i>

3. Prospects for Implementation

The Commission will, following the process of consultation of all stakeholders, publish a report on its policy conclusions on this idea by the end of 2003.

It should be noted that any legislative proposals presented by the Commission must be approved unanimously by the Member States.

Transfer pricing taxation

1. Summary of Tokyo Recommendations

The EU and Japan should agree on uniform rules for standardised APAs that will base the method for calculating transfer prices on information available to the taxpayer and should make a subsequent transfer pricing audit

2. Action Taken and State of Play

It should be noted that neither the OECD nor EU Member States accept the comparable profits method as a suitable means of calculating transfer prices.

It is assumed that the phrase “should take positive actions to promote an APA agreement between Japan and the EU” is intended to read “should take positive actions to establish common EU-Japan guidelines for concluding APAs”.

In its October 2001 Communication on company tax “Towards an Internal Market without tax obstacles”, the Commission outlined a twofold strategy to tackle the transfer pricing problems, notably in the form of high compliance costs and potential double taxation, that companies face when doing business across borders. On the one hand, the Commission intends to encourage Member States to expand Advance Pricing Agreements and, on the other hand, it will seek to favour better co-ordination of policies within the EU, notably through the “Joint Forum on Transfer Pricing” (JFTP) that it established in July 2002. The JFTP is comprised of experts from all Member States, as well as a Chairman and 10 business representatives, with representatives from applicant countries and the OECD attending as observers.

The JFTP held two meetings in 2002. It will have two or three meetings a year in Brussels

3. Prospects for Implementation

The outcome will be **pragmatic, non-legislative solutions** within the framework of the OECD Transfer Pricing Guidelines to the practical problems posed by transfer pricing practices in the EU. The issue of documentation requirements and APAs will also be addressed. The result of the work undertaken by the JTPF will be transmitted on a regular basis to the Council, which will assess the need for appropriate action.

It should be stressed, however, that the JTPF is not scheduled to address any possible co-operation between the EU and Japan in the field of transfer pricing.

E-commerce taxation

1. Summary of Tokyo Recommendations

It has been recommended to the European Community not to pursue further the modification of the VAT directives that would enable an effective taxation of services provided through the Internet.

2. Action Taken and State of Play

The EU Directive 2002/38/EC laying down rules for applying VAT to certain services supplied by electronic means was adopted by Member States in May 2002. The new rules will eliminate the serious competitive handicap which EU firms currently face in comparison with non-EU suppliers of digital services both when exporting to world markets and when selling to European consumers.

A moratorium on taxation of electronic commerce in the EU, as some critics have suggested, would be unworkable and would discriminate unjustifiably against traders selling tangible goods. Furthermore, EU suppliers are already required to levy VAT on the provision of digital products. The new rules extend equivalent taxation to non-EU providers of electronic services to EU customers thus levelling the playing field.

The EU Directive is fully in line with the principles for consumption taxes on e-commerce agreed within the framework of the Organisation for Economic Co-operation and Development (OECD). The Directive therefore complements the international process at the OECD. The OECD principles on the taxation of e-commerce, agreed at a 1998 conference in Ottawa, establish that the rules for consumption taxes (such as VAT) should result in taxation in the jurisdiction where consumption takes place. The OECD also agreed that a simplified online registration scheme, as now adopted within the EU, is the only viable option today for applying taxes to e-commerce sales by non-resident traders.

3. Prospects for Implementation

The provisions of this Directive have to be transposed by Member States at the latest from 1 July 2003.

ICT Industry: IMT2000 standardisation

1. Summary of Recommendations

Development of services based on IMT2000 (third generation mobile technologies). It is extremely important that services will start both in Europe and Japan as soon as possible. Therefore, it is expected that both European and Japanese Governments take necessary steps to make this happen. Co-operation among the private sector in the field of international roaming is also expected. Furthermore, confirmation of basic common principles for the development of future generation mobile network by Europe and Japan is deemed important.

Development of the information society and e-commerce. Despite the continued difficulties in the world economy and particularly the problems faced by the telecoms sector, Japanese and European Industry should take the lead in further establishing globally harmonised standards which should lead to value added services needed by the user/consumer.

One of the most significant tools to boost e-commerce and the information society at global level is broadband access technology for use both in fixed and mobile domains. This must be a priority area for developing and implementing global standards. Alternatives should also be considered for developing globally applicable technical standards using existing regional mechanisms where possible.

2. Action Taken and State of Play

Several new specifications have been announced and plans have been confirmed that considerably enhance mobile communications worldwide.

Regarding the development of services based on global third generation mobile standards; specifications for location services (LCS) are about to be completed. They provide the communications industry with the means of offering a wide range of location-based services to customers on all advanced mobile communications systems. The Commission has elaborated a new regulatory framework for the Community and is particularly concerned to see that services are offered in a harmonised way according to agreements in the World Radio Conference and ERC.

Regarding the development of the information society and e-commerce, specifications for high-speed access are about to be completed by the 3GPP group (3rd Generation Partnership Project) where ETSI is a member. As the name implies, they bring high-speed data delivery to terminals, ensuring that users requiring effective multimedia capabilities benefit from data rates previously unavailable.

In the same vein, the global third generation partnership projects are integrating Internet capabilities into third generation standards. The Internet protocol Multimedia System (IMS) will offer users, operators and service providers the sorts of service capabilities that Internet is designed to provide. These include access to Internet and multimedia content.

Test events have been organised by European Standards Organisations with the participation of several manufacturers. The Commission will increasingly support interoperability test beds as a means of developing the necessary harmonised applications.

3. Prospects for Implementation

Pilot projects have been carried out in several places (e.g. Isle of Man). Operators are intensively working on the planning of their network infrastructure. The Commission supports the standards development on European and international level, but does not expect a wider roll out and take up of technologies, including the third generation broadband services, until there is a clear improvement in the global economy.

Harmonisation of voluntary standards

1. Summary of Recommendations

Tokyo, July 2000: Industry is faced, at least in some sectors, with a certain proliferation of “international” standards: standards from international bodies and standards that are widely used, irrespective of their originating body. Such confusion is irritating to the market and hampers trade. The WTO Agreement on Technical Barriers to Trade (TBT) promotes the use of international standards as a means to harmonise voluntary standards and to avoid unnecessary technical barriers to trade. WTO members reviewed the agreement in 2000 and adopted a set of principles for the development of international standards. These principles were adopted in full consensus of all members and reflect the positions of both Europe and Japan concerning international standards used under the Agreement.

WG3 proposed to start a reflection aimed at specifying the content of the WTO TBT principles relating to international standards in order to single out their profound signification and their possible operational consequences. Such action is suggested to reduce the complexity of the problem and pave the way for organisational and procedural changes in international standards bodies.

2. State of Play

In the light of its restructuring the BDRT decided to suspend discussions on standards which are of a general and horizontal nature.

We understand that the business community prefers to discuss issues of a specific nature for their business rather than the vastly cross-cutting issue of voluntary standardisation that poses different challenges from sector to sector.

However, we note that in the context of the Industrial Policy Dialogue between DG Enterprise and METI, there is a fruitful dialogue on standards policy issues. The Commission can share the results of this dialogue with the BDRT for information. If the information provided raises comments or questions on the side of the BDRT, we are happy to deal with them. The most recent meeting of the respective Working Group took place on 5 and 6 February 2003 and focused on the promotion of voluntary standards in relation to technical regulation, standards and the environment, standards that benefit consumers, the elderly and disabled persons, and the issue of international standardisation.

First-to-file vs. first-to-invent

1. Summary of Tokyo Recommendations

The Recommendation has not been finalised by *Working Group 3: Standards*. It, however, suggested to set up a new, specific Group to elaborate a Recommendation.

2. Action Taken and State of Play

With the exception of the US, almost all countries in the world, including the EU and Japan, apply the principle of “first-to-file” under which the patent is granted to the applicant who first filed the application.

This question is closely linked to the negotiations on the SPLT (Substantive Patent Law Treaty) which are on-going under the auspices of WIPO, even if no specific provision of the draft treaty is devoted to this specific issue.

3. Prospects for Implementation

The Commission is looking forward to the setting up of a specific group in order to elaborate a Recommendation on this matter.

Mutual Recognition Agreement (MRA)

1. Summary of Brussels Recommendations

Early implementation of the MRA and expansion of its sectors (ex. Medical devices)

2. Action Taken and State of Play

The 2nd MRA Joint Committee meeting took place in Brussels on 15 October 2002. Three of the four sectoral annexes covered by the MRA are operational: Good Laboratory Practice (GLP) for chemicals, electrical products, telecommunications and radio equipment. The transitional period to implement the sectoral annex on Good Manufacturing Practice (GMP) for medicinal products is expected to be completed by the end of June 2003.

3. Prospects for Implementation

The 3rd MRA Joint Committee Meeting will be held in Tokyo around mid-2003. In the coming months several activities (expert visits, etc) will take place in order to tackle the remaining issues linked to the transitional phase of the sectoral annex on GMP.

Mutual Recognition Agreement (MRA) on Medical Devices

1. Summary of Brussels Recommendations

Expand MRA to include medical devices.

2. Action Taken and State of Play

The EC-Japan MRA contains a joint declaration on future negotiations on the further extension of the sectoral coverage of the Agreement. The Parties expressed their intention to commence negotiations on medical devices and on pressure equipment two years from the date of the entry into force of the MRA.

3. Prospects for Implementation

The Parties have not yet commenced any discussion on the further extension of the sectoral coverage of the Agreement.

IT Industry: Broadband & Multimedia

1. July 2002 Recommendations

In order to enhance the importance of broadband and multimedia for the general growth of the economies, the Round Table urges European and Japanese policy makers to ensure a regulatory and competitive environment which has the following objectives:

- ⇒ To increase dramatically the level of service available to enterprises and residences: higher speed, more content, greater interactivity.
- ⇒ To make the whole environment truly open and competitive at the level of the transport network, receiver equipment and conditional access
- ⇒ To ensure that the regulatory framework for traditional media is not extended to new services
- ⇒ To speed up implementation of the new internet protocol Ipv6
- ⇒ To protect Intellectual Property Rights through technological measures and DRM
- ⇒ To promote the proliferation of the Smart Card System
- ⇒ To develop New Multimedia Services

Furthermore, there is a need to launch promptly public initiatives to stimulate these new multimedia services and foster consumer demand, and to provide support for the establishment of a business environment, where there is not at present commercially sustainable business cases to deploy broad band infrastructure and content services.

European and Japanese Industry and Governments must encourage the development of an open and interoperable technology environment. Initiatives such as the Open Mobile Alliance (which aims at promoting open, global standards, protocols and interfaces) paves the way towards seamless application interoperability and allows industry to compete through innovation and differentiation.

2. Action taken and state of play

The development of the communications sector is being supported by a number of regulatory and political initiatives at both EU and national levels:

- The new regulatory framework, to be implemented by Member States by July 2003, will be more flexible than the existing one. It will provide greater regulatory stability and transparency, and will foster increased competition, consumer choice and investment
- eEurope 2005 which aims in particular to stimulate secure services, applications and content based on a widely available broadband structure.

- The current Research & Development programmes, and related initiatives demonstrate how the Commission is encouraging the deployment of broadband infrastructure, including 3G, the development of new applications, e.g. projects on multi-lingual content, innovative mobile payment schemes, and trials of innovative 2.5-3G services.

3. Prospects for Implementation

After a period of fast growth between 1998 and 2000 the electronic communications sector is currently undergoing a severe adjustment process. The adjustment was perhaps inevitable after the very fast growth of earlier years. The rapid expansion led to imbalances that will have to be worked through over the next few years. The sector invested heavily and many operators accumulated a high level of debt. When economic growth slowed, expected revenues did not materialise. This led to a decline in stock valuations and to the postponement of investment at a critical time both for the sector and the wider economy.

The high level of payments associated to third generation mobile communications (“3G”) licenses contributed to worsen the financial situation of operators, although the situation varies across the EU. The experience of 3G licensing points demonstrates the need for increased co-ordination of policy and regulatory approaches across Europe. This is possible under the new regulatory framework for electronic communications in order to avoid the risk that fragmentation and diverging conditions at the national level further delay the introduction of new wireless mobile services.

The effects are large-scale layoffs and reductions in investment. Already a significant number of jobs have been lost and the trend is still downward. There are huge write-offs of assets. R&D effort has been reduced undermining Europe’s competitive position.

Uncertainty and slow-down of investment also delays the introduction of new services in e-government, e-health and e-learning that are needed in order to modernise our economy and society, in line with the Lisbon objectives.

The way forward is to stimulate demand and increase certainty for investment. EU’s analysis of the situation shows that the measures that we have taken so far are appropriate. In this context, **the EU adopted on February 11, 2003, a Communication on Electronic Communications: The road to the Knowledge Economy.** It reminds Member States of the need to complete the implementation of the actions already planned, and to complement them where necessary.

It has become clear that the Commission and Member States urgently need to look together at what can be done. Any action must take account of two factors: first the need to ensure both that the new regulatory framework is fully implemented on time, and that it remains stable; second, that the integrity of the internal market and the principles of competition policy must be respected. The following areas deserve specific attention:

1. First, **the Regulatory Framework must be implemented on time.** Regulators have a three-fold objective: to promote competition, to protect the citizen, and to work to consolidate the single-market. Regulators must also take into account the need both to encourage efficient investment in infrastructure and to promote innovation.

The new regulatory framework offers the mechanism to avoid fragmented approaches resulting from decisions by individual Member States and to work towards coherent action.

2. Second, **in relation to the roll-out of advanced mobile services,** there are three measures that are currently being considered:

- a) **Network infrastructure sharing can result in significant cost savings for operators and lead to quicker 3G roll-out,** greater network coverage and offset some of the potential environmental problems of mobile antennas. Of course we should avoid any distortion of competition. The Commission intends to work with Member States in the appropriate fora to clarify issues related to network infrastructure sharing.

- b) **The Commission has opened a discussion with Member States and their competent authorities on greater coherence in the obligations for 3G deployment,** taking into account technological and administrative obstacles, such as non-availability of equipment and delays in issuing permits for base stations. Consideration will also have to be given to the relevant economic factors.

Deployment obligations vary widely throughout the Union. Changes to licence conditions can be envisaged when circumstances have changed unpredictably, but Member States should now work out a common approach, on the basis of the new regulatory framework.

- c) **The Commission considers that a more flexible approach to spectrum trading and spectrum usage will contribute to a more efficient mobile market.** The new regulatory framework provides the option for Member States to implement spectrum trading schemes. Today mobile service licences - with the right to use radio spectrum - cannot be traded in most EU Countries, and this is hampering moves towards a more efficient market.

3. Thirdly, **the eEurope2005 Action Plan** needs to be implemented without delay. eEurope 2005 applies a number of measures to address both sides of the equation simultaneously. On the demand side, actions on e-government, e-health, e-learning and e-business are designed to foster the development of new services. In addition to providing both better and cheaper services to citizens, public authorities can use their purchasing power to aggregate demand and provide a crucial pull for new networks. On the supply side, actions on broadband and security should advance the roll-out of infrastructure. The eEurope action plan is based on two groups of actions that reinforce each other. On the one hand, it aims to stimulate **services, applications and content**, covering both online public services and e-business. On the other hand it addresses the underlying **broadband infrastructure and security matters**. The implementation of these policy

proposals, i.e. use of Structural Funds, co-ordination of local and public initiatives could give a substantial impetus for new investments. Particular emphasis is to be given to promoting broadband access to the Internet, and multi-platform access via, for example, 3G and digital TV. These actions can only be successful as a joint initiative of Member States, the European Union, and the private sector.

Investment in broadband needs to be continued to upgrade existing facilities and to roll out new ones. To facilitate broadband deployment in thinly populated areas, **guidelines on criteria of implementation of Structural Funds** will be published before the summer.

To accelerate broadband deployment and take up throughout Europe, it is time to set clear targets. For example, **connecting all relevant public administrations to broadband, and aiming to have broadband for half of all Internet connections by 2005**. Member States are expected to put in place **national broadband strategies** by the end of 2003.

4. Finally, the EU has recently decided on the investment of **€3.6 billion in the Information Society Technologies Priority of the Sixth Framework Programme for Research and Development**. Clear emphasis will be placed on research in areas relevant to the electronic communications sector. This will include R&D support in the development of mobile, wireless, optical and broadband communication infrastructures, as well as software and computing technologies. These activities will help to build on Europe's strengths both in communication technologies and in embedded software and systems, and will contribute to the development of the next generation of products and services.

Unbundling the Local Loop and time-based interconnection rates

1. Summary of Tokyo Recommendations

Access by competitive and alternative service providers to incumbent's local network is one way to bring about service innovation, as long as it is at reasonable cost. This can take the form of unbundled access to the local loop or time-based interconnect charges at cost-oriented rates.

2. Action Taken and State of Play

- Interconnection

Under the regulatory framework, NRAs must ensure that operators designated as having significant market power (SMP) on the fixed market publish a reference interconnection offer (RIO) including a detailed description of their interconnection offering. Fixed SMP operators are also required to charge cost-oriented tariffs for interconnection and access, supported by transparent cost-accounting systems, and must comply with the principles of transparency and non-discrimination. Operators designated as having SMP in the national mobile market are also subject to transparency and non-discrimination obligations, while mobile operators with SMP in the national interconnection market must also comply with the cost orientation principle.

The effective implementation of these obligations has been a prerequisite for an open and competitive market by ensuring fair, proportionate and non-discriminatory conditions for interconnection, and is an essential precondition for the transition to the new regulatory framework. In practice, interconnection regimes function well across Europe, with interconnection offers generally oriented to market needs, and previous reports¹ have shown large numbers of agreements in place.

- Reference interconnection offer

Fixed SMP operators in all Member States have published a reference offer (RIO), although in two Member States access to the RIO requires the consulting party to identify itself (Austria, Germany). Problems with the completeness of the RIO appear to be resolved in all Member States, and all RIOs now cover the technical and financial conditions for origination and termination of voice telephony traffic at all levels of interconnection. However, in Finland problems with the tariff offer for interconnection at local level have been reported.

¹ <http://europa.int/information-society/topics/telecoms/implementation/index>
<http://europa.eu.int/comm/competition/liberalization/others>

Although the RIO allows competitors to conclude interconnection agreements in all Member States, delays in the approval of the RIO by the NRA must be noted in five countries (Greece, Ireland, Italy, Luxembourg, Portugal).

- Interconnection leased lines

Interconnection leased lines (i.e. 64 Kbit to 34 Mbit leased lines connecting new entrants' infrastructure to customer premises) enable new entrants to provide end-to-end services to their customers in cases where their own networks are not yet sufficiently extensive to enable them to provide these services by means of their own infrastructure alone.

NRAs in all Member States have taken action to ensure the availability of interconnection leased lines and to supervise tariffs. However, with regard to Finland it is not clear whether all regional and local incumbents provide interconnection leased lines.

Annex 1 of the 8th report on implementation of the regulatory framework sets out data on the pricing of interconnection leased lines in relation to EU price ceilings.

- FRIACO

There are widely differing views as to the usefulness of providing flat rate interconnection for narrowband internet access. Some regulators consider it likely to encourage broadband take-up by accustoming users to flat-rate retail access, while others believe that it has now been overtaken by DSL (high speed digital subscriber line technology). At any event, incumbents must offer flat rate interconnection to new entrants on a non-discriminatory basis where they offer their own retail flat rate narrowband internet access to their customers. To allow market entry, it is particularly important that the FRIACO contract does not contain network architecture requirements that cannot be fulfilled by the majority of new entrants. It is also important that FRIACO is offered by the incumbent at levels of interconnection demanded by new entrants. This means that the non-discrimination principle needs to be applied not in a purely formal way but taking account of its underlying objective, which is to open up the market.

This objective has only been achieved in a fragmented way up to now. FRIACO is offered by the incumbent at the local and at higher than the local level only in two Member States (Italy, United Kingdom) and is offered at the local level in three further countries (France, the Netherlands, and Portugal). In Spain the RIO for 2001 introduced a generalised capacity-based interconnection model (applying both to voice and to data), but difficulties have emerged with its implementation. In Germany, the NRAs have taken action to impose FRIACO without having so far been able to ensure its availability due to pending court proceedings. No FRIACO offer is available in some countries, despite the fact that the incumbents offer flat rate internet access to customers (for example in Finland) or flat rate internet access within certain time periods (for example on Sundays) as part of a bundled offer (Luxembourg).

- Interconnection tariffs

All Member States have implemented the principle of cost orientation in regard to fixed networks, although there are still problems in obtaining proof of costs based on

suitable cost accounting systems. In only one country (Denmark) does the NRA still rely on best practice benchmarking to set the fixed interconnection tariff, although prices determined in accordance with an LRAIC² cost accounting system are due to take effect from 1 January 2003. Generally, interconnection tariffs appear to have moved to a level which permits market entry, although there are still complaints about high tariffs in particular in Finland.

In a number of Member States (Belgium, Greece, Spain, Luxembourg, the Netherlands, Finland), there are complaints of a price squeeze between fixed interconnection tariffs and the incumbent's retail tariffs and the discounts applied thereto. Not all NRAs have yet acted to eliminate the price-squeeze (for local level interconnection, remedial action in the Netherlands took effect recently; and will take effect in Luxembourg from January 2003).

Concerns still arise from the fact that in certain circumstances the charges which new entrants can levy for termination on their fixed networks are based on reciprocity (Denmark, Germany, Spain, Italy), despite the fact that those operators are not subject to the obligation of cost orientation and do not necessarily provide a similar interconnection service. Claims have also been made that interconnection tariffs for new entrants are discriminatory when compared to what incumbents charge between themselves (Finland). This shows the need to prevent abuse of a dominant position by incumbents also as purchasers of interconnection.

In two countries (France, Italy), the NRA is introducing a price cap procedure applicable as from 1 January 2003, to provide the market with greater predictability as to the future level of interconnection tariffs. This initiative constitutes an improvement in the stability of market conditions and has been widely appreciated by market players.

With regard to mobile termination, regulators have taken a range of measures within the margins set by the current framework to regulate tariffs. In Austria the NRA set mobile termination tariffs on the basis that prices should be "appropriate", by relying on an imposed cost accounting system (see below). In a number of Member States (the Netherlands, Portugal, United Kingdom), the NRA ordered a reduction in mobile termination tariffs on the basis that it considered those tariffs to be excessive or unreasonable, although it had not designated the mobile operators as having SMP in the national interconnection market. In Finland, mobile operators have not been designated as having SMP in the national market for interconnection, but three of them have been designated with SMP in their own relevant markets, which under national law means that their interconnection charges must be cost-oriented. The regulator has investigated the cost-orientation of the interconnection charges of two of these operators. In other Member States the NRA has ordered a reduction which they regard as moving towards the principle of cost orientation, while the mobile operator(s) had been designated as having SMP in the national interconnection market (Belgium, Spain, France, Ireland, Italy, Sweden). In the remaining countries, mobile operators have not been designated with SMP in the national interconnection market and the NRA has not intervened in relation to mobile tariffs.

² Long run average incremental cost

Most cost accounting models of mobile operators across Member States are currently at the stage of fully-distributed costing using historical costs. The two exceptions are the United Kingdom, where the NRA is the only one which has developed an LRIC model using a current cost basis, and Austria, where mobile operators are required to use a LRIC cost structure without however being subject to cost accounting verification. In Italy, the NRA has required mobile operators to move from a cost accounting system based on historical costs to a system based on LRIC from 2003 onwards. In Spain, the regulator has also recently approved the cost accounting systems of the two mobile operators designated as having SMP in the national interconnection market, although it was not in a position to approve interconnection tariffs on this basis due to lack of cost accounting data.

3. Prospects for Implementation

- **Transition to new framework**

Commission believes it **essential for a smooth transition** to new regulatory framework that Member States **adopt necessary national transposition measures in a timely manner, to ensure application from July 2003**, as required by new framework. The EC will closely monitor progress in transposition process, and take appropriate action if obligations in the new framework are not met in a timely fashion.

Commission itself is also playing an important role in the preparations for the new framework, through its **Guidelines on market analysis** and the assessment of significant market power, published in July of this year, and **Recommendation on Relevant Markets** susceptible to ex ante regulation, **published in February 2003**.

Considerable work has also been done in establishing the mechanisms **for co-ordinated and consistent approach** by NRAs when implementing a new framework, in particular through the European Regulators' Group.

New **Communications Committee** already. Commission has presented papers to Committee aimed at the process of transition.

Support the GBDe

1. Summary of Tokyo Recommendations

The GBDe is performing a wide range of valuable policy developments in the area of e-commerce, which many of the EU-Japan Business Dialogue Round Table member companies are already supporting. Rather than duplicate elements of this work within the Round Table framework it would seem appropriate for members to support the GBDe activity and ensure that it fully reflects bilateral EU-Japan issues.

2. Action Taken and State of Play

Commissioner Liikanen represented the Commission at the Brussels Conference on 29th October 2002 and congratulated the GBDe on the considerable progress made. He welcomed the GBDe's ability to develop policy co-operation between business and Governments on key e-commerce issues at global level.

The achievements of the GBDe were welcomed in drawing the attention of Governments world-wide to private sector policy recommendations and guidelines agreed between businesses from different industrial sectors and different regions of the world and covering a wide range of key electronic commerce policy issues.

The GBDe was considered as a welcome response to the need for the active involvement of the private sector at the global level in contributing to the development of electronic commerce policies in a fast-moving and dynamic sector and in close collaboration with Governments.

3. Prospects for Implementation

The Commission continues to insist that the guidelines adopted at the Brussels conference should be implemented by GBDe Members.

GBDe: notice and takedown procedures

1. Summary of Tokyo Recommendations

The EUJBDRT members support the GBDe work on notice and takedown procedures.

2. Action Taken and State of Play

In 1999 and in the run-up to the Paris Conference, the GBDe reviewed the issues surrounding the liability of online intermediaries and produced a paper on the basic principles. In the year 2000, it was decided that a new IPR Group would be set up to develop model notice and take down procedures designed to facilitate the fast and efficient removal of allegedly copyright infringing content from the networks of on-line service providers. At the Miami Conference in September, the GBDe agreed on a model code of conduct for notice and takedown procedures in relation to copyright infringements.

Work within the GBDe continued in order to refine the details of a Notice and Take Down regime for copyright violations, and a Task Force was created to examine the issue horizontally across the full range of illegal content as envisaged by the EU's E-Commerce Directive. This led to the Brussels Recommendation where the GBDe Combating Harmful Internet Content Task Force proposed that Internet intermediaries consider establishing notice and take down procedures for dealing with "harmful content". The document includes recommendations for industry action.

EU Directive 2000/31/EC was adopted on 8 June 2000 and entered into force on 17 July 2000. The transposition deadline by the Member States was 17 January 2002. The e-commerce Directives constitutes the basis for the development of notice and take-down procedures. In particular, article 14 on liability for hosting providers, article 16 on codes of conduct and recital 40 set the basis for the development of self-regulation in this field.

3. Prospects for Implementation

The Commission strongly encourages the private sector to establish these codes of conduct and to treat the issue horizontally, e.g. cover not only copyright issues but also any other type of illegal information

GBDe: Trustmark schemes

1. Summary of Tokyo Recommendations

The EUBJRD recommends that the GBDe be encouraged to develop a system for endorsing trustmark schemes, which comply with the Trustmark Guidelines agreed at the Miami conference.

2. Action Taken and State of Play

On the fourth annual conference of the GBDe on 29th October 2002 in Brussels the GBDe and the private sector were encouraged at large to support the development of open and transparent technological solutions for e-commerce to enhance security, protect the critical infrastructure, and build trust and confidence in electronic commerce. This would include on-line dispute resolution mechanisms, digital rights management systems (DRMS), and network security and privacy-enhancing technologies.

3. Prospects for Implementation

As a starting point, the Commission would thus encourage the GBDe and EUJBDRT members to comply with the GBDe guidelines in their e-commerce business practices.

GBDe: The Advocacy Group

1. Summary of Tokyo Recommendations

EUJBDRT members support the work of the Advocacy Group and ensure that GBDe positions are reflected in their submissions to Governments and supra-national institutions. A formal link, in the form of a common working group member, could be created between the EUJBDRT and the Advocacy Group, or through their Secretariats.

2. Action Taken and State of Play

At the fourth annual conference of the GBDe on 29th October 2002 in Brussels the GBDe was asked to pursue and reinforce its activities through the continued commitment of its high-level business leadership and by expanding its membership – in particular in emerging economies and among small and medium-sized enterprises.

3. Prospects for Implementation

The GBDe was encouraged to continue seeking dialogue and co-operation with other organisations, including inter-governmental organisations, business organisations, and consumer organisations, in particular to encourage widespread diffusion and awareness and, where appropriate, practical implementation of those GBDe recommendations that have found a broad and positive response from these communities.

The GBDe was to put forward proposals for the practical implementation of its policy recommendations and guidelines, where appropriate, and include mechanisms through which implementation could be measured and companies held accountable, for example through collaboration with other stakeholder organisations.

GBDe: IPR protection

1. Summary of Tokyo Recommendations

EUJBDRT members support the GBDe IPR Protection action and would like to promote the implementation of the unique ID code (INDECS in Europe, cIDF in Japan) to be associated with any digital content distributed on digital networks, as a first concrete measure to secure IPR.

2. Action Taken and State of Play

INTELLECTUAL PROPERTY RIGHTS

- Since the last meeting of the EU-Japan Business Dialogue Round Table, the deadline for implementation of Directive 2001/29/EC on the harmonisation of copyright and related rights in the Information Society has passed (22/12/2002). This Directive is the means by which the Community and its Member States will adhere to the WIPO Treaties. Article 6 of Directive 2001/29/EC provides significant protection for technological protection measures where used by rightholders. It does not require the use of such measures;
- *In relation to the deployment of technological measures, the Commission is committed to industry driven moves towards interoperability or non-mandatory standards with the involvement of all stakeholders –rightholders, technology providers and users;*
- *Any "facilitation" towards interoperability or non-mandatory standards by Government or regional bodies (such as the EU) should be collaborative but not involve legislative intervention or mandate a type of technology at the expense of another;*
- *The Commission supports the deployment of technological measures by rightholders but the use of these remains voluntary;*
- *Only with the widespread application of DRMs to works protected by copyright and related rights that Member States would be in a position to reconsider the levy schemes currently in place and which remain within their discretion as provided for in Directive 2001/29 on the harmonisation of copyright;*
- *The Commission supports flexible arrangements between collecting societies and their members to support the introduction of DRMs as far as they are in line with Community law.*

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

- Since the last meeting of the EU-Japan Business Dialogue Round Table, the EU presented a Proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights [COM(2003) 46 final, 30.1.2003].
- *The purpose of the new directive will be to harmonise the laws of the Member States on the means of enforcing intellectual property rights in order to ensure a level playing field for rightholders and tougher measures against infringers.*
- *The draft Directive should cover infringements of industrial property rights as well as copyright and neighbouring rights which have been harmonised at EC level, and include measures based on best practice found in the Member States and relating, inter alia, to injunctions, provisional measures, evidence and damages.*
- *The proposed Directive should follow a “TRIPs plus” approach since the TRIPs Agreement, concluded in the context of the WTO, provides for minimum provisions on enforcement applied in all EU Member States. The supplementary provisions should involve: anti-circumvention of technological measures; right for trade associations to be party to legal proceedings; closing down of establishments where infringing acts are committed; information on the source and network distribution of infringing goods; publication of judgements; withdrawal, at the infringer’s expense, of infringing goods put on the marketplace; blocking of bank accounts and other assets, etc.*
- *This proposal does not prejudice and is complementary to the E-Commerce (31/2000/EC) and Copyright in the Information Society Directives (29/2001/EC) as concern liability of service providers and the circumvention of technological measures. It would also fully respect the Data Protection Directives (95/45/EC and 97/66/EC, the latter to be repealed by Directive 2002/58/EC in October 2003).*

Electronic signatures

1. Summary of Tokyo Recommendations

EUJBDRT members encourage European and Japanese Governments to encourage the definition of a commonly shared industry framework for the implementation of internationally recognised electronic signatures and seals. Furthermore, the establishment of such a framework will be a first step towards the harmonisation of global authentication services with multiple domains of application. The European and Japanese Business Community and Governments can contribute a great deal through such an initiative to the establishment of a global approach to authentication.

2. Action Taken and State of Play

The Electronic Signatures Directive (99/93/EC) entered into force on 19 January 2000.

3. Prospects for Implementation

The Directive has to be implemented at national level by 19 July 2001. So far, all Member States (except the Netherlands and Portugal) have partially implemented the Directive.

Business model patent

1. Summary of Tokyo Recommendations

Governments should try to have an accurate examination, especially on novelty and non-obviousness of the subject matter. Governments should promote international co-ordination and maintain a database of examples of Business Methods patented previously.

Business should co-operate with Governments by providing information on patented examples in business activities.

Governments and Business should consult with each other on any resolution, which would protect a right holder, without impeding the development of electronic commerce.

2. Action Taken and State of Play

The current practice of the European Patent Office is that patents cannot be granted for business methods as such. However, business methods implemented using computers or similar hardware are assessed for patentability on the same basis as any other computer-implemented invention, according to which a patent may be granted if an inventive technical contribution is made to the state of the art.

Following extensive consultations, the Commission decided that this basic situation should not be changed. In particular, no justification was found for extending patentability to business and other non-technical methods as such. However the Commission did find that there was a need for harmonisation of the law in relation to computer-implemented inventions and to this end adopted, in February 2002, a proposal for a directive. This proposal, if agreed by the Council and Parliament, would not disturb the main principles governing patentability in the EU, but would resolve certain divergences in practice which have arisen between the Member States. Patentees and technology users should benefit from the increased legal certainty that this should bring.

3. Prospects for Implementation

The proposal is currently being discussed in the Parliament and Council, but it is not possible to say at this stage what the time scale for agreement might be or whether it will be subject to significant amendment.

The Commission would be open to exploring with Japan whether a common strategy could be developed, especially towards the US, on the issue.

New WTO Round

1. Summary of Recommendations

Tokyo, July 2002: Welcomed launch of new WTO Round that should bring about further trade liberalisation and strengthening of WTO rules, and which is underpinned by commitments to substantially strengthen measures to increase capacity in developing countries. It confirmed the necessity of further cooperation between the EU and Japan in all aspects of the Doha Development Agreement.

2. Action Taken and State of Play

Given the continued economic slowdown and worsening outlook for the international economy, a successful outcome of the current Doha WTO Round is crucial for all countries. This Round will boost global economic growth by further liberalising trade and investment and by the dynamic economic gains generated by strengthened WTO rules. In addition, the significance of the Doha Development Agenda (DDA) is not confined to trade policy, but it is important for and supportive to much wider foreign policy reasons, such as sustainable development and coherence between international trade, development and aid policies.

Within this context, the EU is fully committed to maximise and accelerate the elimination of explicit barriers to trade and investment such as tariffs, quotas and other quantitative restrictions, as well as to abolish discriminatory regulations governing foreign investment.

The EU and Japan are cooperating closely with a view to achieving results within the timeframe set. A good bilateral cooperation is ongoing at the WTO in Geneva and in the capitals (e.g. for preparing WTO mini-ministerial meetings).

This issue has also extensively been discussed within the context of the EU-Japan 'Action Plan' Steering Group. DG Trade and MOFA have informed their respective technical services about the need to further strengthen dialogue and reinforce cooperation in all chapters of the DDA. Both sides are constructively working together to make progress in the negotiations in terms of substance and process.

3. Prospects for Implementation

It is too early to say now what the outcome of the new Round will be. But the EU is committed to continue to work constructively and with a result-orientated approach with its trading partners and with business in order to ensure the achievement of these

ambitious global goals: on market access issues, on rule-making issues and on issues related to development, as well as on trade related technical assistance.

Cooperation with Japan will continue and, as far as possible, be strengthened, in the light of the next WTO Ministerial Meeting (Cancun, September 2003) and beyond.