

Commission Services Progress Report on the EU-Japan Business Dialogue Round Table Recommendations of Tokyo, 16-18 July 2000

Table of contents

Exchange/Training Programmes
Harmonisation of Rules and Regulations
Company Statute
Merger Directive
Consolidated Tax System
Pension Costs
Visas and Work Permits
Tariffs and Tariff Classifications
Anti-Dumping
International Accounting Standards (IAS)
Fiscal Harmonisation
Transfer Pricing Taxation
e-Commerce Taxation
IMT2000 Standardisation
Harmonisation of Voluntary Standards
First-to-File vs. First-to-Invent
Mutual Recognition Agreement (MRA)
Mutual Recognition Agreement (MRA) on Medical Devices
Unbundling the Local Loop and Time Based Interconnection Rates
Support the GBDe
GBDe: Notice and Take-Down Procedures
GBDe: Trustmark Schemes
GBDe: the Advocacy Group
GBDe: IPR Protection
Electronic Signatures and Seals
Business Model Patent
New WTO Round

Exchange/Training Programmes

1. Summary of Tokyo Recommendations

Encourage expansion of the exchange/training programmes for EU-Japan businessmen in order to provide them with a better understanding of market conditions and mentalities 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 EU-Japan Centre for Industrial Co-operation is a successful joint-venture between the Enterprise DG and the Japanese Ministry for Economy, Trade and Industry (METI) since its establishment in 1987. It i.a. organises seminars and training programmes in Japan for EU industry managers, as well as acts as secretariat for the EU-Japan Business Dialogue Round Table. In its 13 years of activities, the Centre has trained more than a thousand European industry managers, researchers and engineering students. Through a special scholarship scheme, the Enterprise DG awards grants to European SMEs, who wish to participate in one of these programmes (H RTP).

The External Relations DG equally successfully operates three complementary Japan programmes: (1) the Executive Training Programme in Japan (ETP), (2) the "EU Gateway to Japan" export promotion campaign, and (3) the "Ad-hoc projects" scheme. Since its inception in 1979, more than 700 executives have participated in the ETP, and two the second separate Gateway to Japan campaigns (1997-2000) have introduced a total of more than 900 1200 European companies, mostly SMEs, to the Japanese market.

3. Prospects for Implementation

The Commission remains committed to the activities of the EU-Japan Centre for Industrial Co-operation in the longer term, and a political agreement in principle within the EU has been reached to continue the activities of the ETP and the Gateway to Japan in 2001 until 2005 has been reached (Council Regulation No. 382/2001 of 26 February 2001).

The value of these activities to industry will be enhanced after the enlargement of the EU, since companies from the present candidate countries will benefit greatly from participation in the activities of the Centre and the other exchange/training programmes.

Harmonisation of Rules and Regulations

1. Summary of Tokyo Recommendations

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

2. Action Taken and State of Play

In May 2000, the Lisbon European Council provided three inter-linking conclusions in the area of regulatory environment, addressing both new and old activities within the Commission. The Lisbon conclusions provide one straightforward request for an overall coordinated strategy for regulatory reform, as well as two particular priority considerations in the field of regulation, where the conclusions points to the importance to consider alternative tools to *pure* legislation, and the potential burdens caused by new and old legislation, on all levels, for the competitiveness of the European enterprises.

The current debate leading up to the intended *White Paper on European Governance* includes measures to improve the quality of legislation, the use of alternatives to traditional forms of regulation (e.g. co-regulation, self-regulation) and to stimulate new forms partnership between public authorities and civil society.

The *Business Impact Assessment* system is a way for regulators, in pursuing policy goals, to assess the consequences of their regulations for business. It can be used on proposals for new and revision of old Community legislation, and is currently under revision.

The continuing *SLIM* initiative looks upon legislative simplification of existing legislation in a particular sector.

3. Prospects for Implementation

An interim report from the Commission on "Improving and simplyfying the regulatory environment (COM(2001)130 final) was presented to the Special European Council in Stockholm, Sweden, on 23-24 March 2001, as a follow-up to the Lisbon requests for "better regulation".

Further work will be presented in the "White paper on European Governance" due to be released in July 2001.

Company Statute

1. Summary of Tokyo Recommendations

Adopt the European Company Statute promptly.

2. Action Taken and State of Play

On December 20, 2000, political agreement was reached between all the Member States on the Regulation governing the company law aspects of the European Company and on the Directive concerning workers involvement in such European Companies.

3. Prospects for Implementation

The following time-table is foreseen for the adoption of the proposed texts:

- Parliament opinion: 4 July
- Internal market Council: end of September
- Adoption by the Council: in October 2001.

The texts should then enter into force 3 years after their adoption (by 2004).

Merger Directive

1. Summary of Tokyo Recommendations

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

In general, the Commission services are not satisfied with the limited scope and the concrete implementation of the merger directive on cross-border mergers. Among others, this point will be examined in the study on company taxation that the Commission is currently preparing for the Council. The study is due to be released before September 2001.

It is too early to indicate to the precise actions that might be taken on the basis of the study and the conclusions. A tentative review of the current situation in the EU is available in the Commission Communication on "Tax policy in the European Union-priorities for the years ahead" (COM(2001)260 final).

Concerning the restructuring operation that has been identified as problematic, however, the situation is more complex, involving general transfer taxes and capital gains taxation on the transfer of assets. The above-mentioned study will consider these issues which go beyond the current remit of the merger-directive in some detail.

An underlying problem is that EU company law currently does not allow for cross-border mergers within the EU, thus effectively reducing the application of the merger

directive to transfer of assets and exchanges of shares. The recent agreement of principle on the European Company Statute will help to tackle this problem.

3. Prospects for Implementation

Subject to a further analysis of the implications of the European Company Statute, the implementation of the recommendation might not make it necessary to change the rules applicable to taxation.

With regard to the rules applicable to taxation, the future strategy of the Commission will be determined on the basis of the company tax study.

Consolidated Tax System

1. Summary of Tokyo Recommendations

Improving the tax system to allow tax neutral mergers and local corporate restructuring.

2. Action Taken and State of Play

This point, amongst others as is mentioned above under the heading of the *Merger Directive*, will be examined in the study on company taxation that the Commission is currently preparing for the Council. The study is due to be released before September 2001.

A tentative review of the current situation in the EU is available in the Commission Communication on "Tax policy in the European Union- priorities for the years ahead" (COM(2001)260 final).

3. Prospects for Implementation

It is too early to indicate which precise actions might be taken on the basis of the study and the conclusions.

Pension Costs

1. Summary of Tokyo Recommendations

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 the 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.

3. 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, which would extend the application of this Regulation also to Japanese nationals (OJ C 006 of 10.01.98, p. 15). The proposal is currently being examined by the Council.

Visas and Work Permits

1. Summary of Tokyo Recommendations

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

As regards EU nationals, Community law on the free movement of workers defines time limits for the granting of residence permits. Directive 64/221/EEC provides that a decision to grant or to refuse a first residence permit shall be taken as soon as possible and in any event not later than six months from the date of application for the permit. Directive 68/360/EEC requires that the formalities for obtaining a residence permit shall not hinder the immediate beginning of employment under a contract concluded by the applicants.

3. Prospects for Implementation

As regards third country nationals, it is currently and for the foreseeable future for Member States to decide upon rules and conditions of entry, residence and employment.

Tariffs and Tariff Classification

1. Summary of Tokyo Recommendations

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:** The recommendation from the Tokyo meeting gives a selective and imbalanced 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. 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:** 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.

3. Prospects for Implementation

The launch of multilateral market access negotiations for non-agricultural products within the new Round will provide 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.

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 Tokyo Recommendations

Anti-dumping regulations should be prudently applied as the application of anti-dumping regulations 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 this issue should be dealt with in more detail by the WTO Working Group.

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 provisions 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 for 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.

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 since several years. While not containing any explicit provisions on circumvention measures, the Marrakech Ministerial Decision which 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.

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 which 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 this constructive spirit by all Members.

International Accounting Standards

1. Summary of Tokyo Recommendations

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.

2. Action Taken and State of Play

The EU observes the core international accounting standards. These standards consist in recommendations and offer some flexibility. The EU uses the opportunity that is being offered to adjust these international principles to its specific situation and objectives.

3. Prospects for Implementation

A directive on fair value accounting for financial instruments was adopted on 31 May 2001. The Directive amends the EU's Accounting Directives to take account of developments in markets (e.g. widespread use of derivatives), business and international accounting standards. The main objective of the Directive is to enable companies to fully apply International Accounting Standards (IAS), including IAS 39 on the valuation of financial instruments.

The Commission shares the conclusion according to which IAS should be accepted soon for cross-border listings in capital markets. It presented a proposal for a Regulation, COM (2001) 80 final of 13.2.2001, that would require all EU companies listed on a regulated market, including banks and insurance companies, to prepare consolidated accounts in accordance with International Accounting Standards (IAS). This requirement would enter into force at the latest in 2005. Member States would have the option to extend this requirement to unlisted companies and to the production of individual accounts. The Regulation would help eliminate barriers to cross-border trading in securities by ensuring that company accounts throughout the EU are more transparent and can be more easily compared.

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 has made several proposals for directives that are designed to facilitate the cross border investment and operation of businesses. Few have been adopted by the Council such as the on dividend payments between related companies and the directive on a taxation system applicable to mergers, divisions and transfer of assets. The proposals on the application of withholding tax to interests and royalties as well as the proposal concerning the taking into account of losses are still pending.

The Commission currently undertakes a comprehensive study of company taxation in the European Community. This study addresses the issue of harmful tax competition and should highlight the remaining tax obstacles to cross-border economic activity in the Internal Market.

The study is due to be released before September 2001.

A tentative review of the current situation in the EU is available in the Commission Communication on "Tax policy in the European Union- priorities for the years ahead" (COM(2001)260 final).

3. Prospects for Implementation

The future strategy of the Commission will be determined on the basis of this study.

Transfer Pricing Taxation

1. Summary of Tokyo Recommendations

The EU and Japan should agree on uniform rules for standardising an advanced price approval system that will base the method for calculating the transfer prices on information available to the tax payer and should have priority over a subsequent tax audit.

2. Action Taken and State of Play

The Member States of the European Union and Japan are working together on the transfer pricing issue at the level of the OECD. The applicable rules to transfer prices are usually determined by bilateral double taxation conventions and the internal law of the country. At European level the only existing instrument is the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

3. Prospects for Implementation

The Commission currently undertakes a comprehensive study of company taxation in the European Community. This study is designed to measure the effective level of company taxation in the EU and to highlight the remaining tax obstacles to cross-border economic activity in the Internal Market. The study should also consider the policy issues involved and elaborate possible remedial measures for the obstacles. In the context of this study, general transfer pricing issues (within the EU) and notably the functioning of the Arbitration Convention are closely looked at.

The study is due to be released before September 2001.

A tentative review of the current situation in the EU is available in the Commission Communication on "Tax policy in the European Union- priorities for the years ahead" (COM(2001)260 final).

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

Based on a broad consultation with industry the Commission has submitted to the Council a proposal for a directive as regards the value added tax arrangements

applicable to certain services supplied by electronic means. This proposal implements the OECD Taxation Framework Conditions on electronic commerce, which represent the internationally agreed guideline for this area.

The Economic and Social Committee and the European Parliament have delivered their opinion. The proposal is still under review in the Council.

3. Prospects for Implementation

It is unlikely that the European Community will follow the recommendation as it was apparently based on an incomplete analysis of the actual taxation of e-commerce.

For the countries that belong to the OECD an agreement on the framework conditions for the application of consumption taxes (indirect taxes) on supplies that are provided by electronic means (i.e. e-commerce) has been reached. It is the aim of the Commission proposal to apply the principle of taxation in the country of consumption on all variations of e-commerce equally and without the currently existing distortions.

Concerning the situation in the United States it is incorrect to state that interstate supplies would be exempted from taxation. While it is true that the seller might – in most circumstances – not be obliged to register in another State and to collect the applicable sales tax on behalf of the recipient, the recipient remains nevertheless liable for paying the equivalent amount as use tax.

The changes proposed by the Commission are designed to modernise the existing European VAT rules to accommodate the emerging electronic business environment and to provide a clear and consistent regulatory environment for EU and non-EU based suppliers.

IMT2000 Standardisation

1. Summary of Tokyo Recommendations

Possible cooperation between Europe and Japan in 3GPP Release 2000 standardization as well as IMT-2000 commercialization is expected. It is also important that companies from both regions will encourage 3GPP to effectively cooperate with other standardization bodies such as ITU, 3GPP2, IETF and WAP Forum so that Release 2000 specifications shall finally meet the real customer and market needs in a cost-effective way.

2. Action Taken and State of Play

The ITU has published release 99 of the specifications, which will be applied in a harmonised way in Europe in the autumn 2001. There will be a first test network in Spain.

The IMT2000 UMTS is defined (in terms of specifications which are required to launch a network) and is now being continuously upgraded. This is known outside Europe as 3GPP compliant specifications. It should be noted that the specifications are not backward compatible with GSM until next year, which from a European perspective is essential as the two technologies will need to coexist.

3. Prospects for Implementation

Progress on the IMT2000 standards within the ITU is supported by the Commission and there is excellent co-operation between European and Japanese interests to obtain a coherent standard which reflects the needs of the market in a timely and coherent way.

Harmonisation of Voluntary Standards

1. Summary of Tokyo Recommendations

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. Action Taken and State of Play

The European Communities, submitted a number of contributions to the triennial review of the TBT Agreement, notably on the conditions for acceptance and use of international standards and on the principles of coherence and singularity that should be observed by international standards bodies. On 10 November 2000, WTO members adopted a set of principles comprising transparency, openness, impartiality and consensus, effectiveness and relevance, coherence and consideration of the development dimension. It was agreed to disseminate such principles as widely as possible and to have an information exchange with the relevant standardisation bodies.

3. Prospects for Implementation

It would be of value, if the EUJBDRT could, from an enterprise perspective, establish a common understanding on the content of the WTO TBT principles for trade in goods as suggested by Working Group 3. In doing so the EUJBDRT may want to focus on how these principles are implemented in international standardisation bodies. Also, the alignment of national standards on international standards can play a significant role in facilitating trade and market access. To this end, the group may want to build on the alignment work of the ASEM Trade Facilitation Action Programme in which both Japan and the EU participate.

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 apply the principle of "first-to-file" under which the patent is granted to the applicant who first filed the application. The EU and Japan also apply the principle of "first-to-file".

3. Prospects for Implementation

The Commission is looking forward to the launch of the Working Group and subsequent Recommendations to be issued on this matter.

Mutual Recognition Agreement (MRA)

1. Summary of Tokyo Recommendations

Sign the current MRA as quickly as possible.

2. Action Taken and State of Play

After more than five years of complex negotiations, EU and Japan signed the text of the Agreement on 04/04/2000. In its current format, the MRA is composed of a Framework text and four sectoral Annexes on Electrical safety, Telecommunication equipment, Chemicals GLP and Pharmaceutical products GMP.

The procedures for adoption of the Agreement are complex, but have been launched.

3. Prospects for Implementation

The goal of the EU is to enter into implementation of the MRA by the end of 2001, although a number of points still have to be fine-tuned, including detailed confidence building activities.

Relevant respective domestic procedures, including in certain cases necessary regulatory or administrative changes, have been identified, but implementation will demand heavy input of resources and complex procedures need to be put in place.

The European Commission looks forward to a consistent MRA implementation that will directly facilitate market access for the relevant sectors and - indirectly - improve regulatory dialogue on conformity assessment and standardisation issues leading to further trade liberalisation between EU and Japan.

Mutual Recognition Agreement (MRA) on Medical Devices

1. Summary of Tokyo Recommendations

Strive for the MRA to be applied to more categories of product, notably medical devices, and more countries.

2. Action Taken and State of Play

There is a declaration attached to the text of the EU-Japan MRA signed on 04/04/2001, which states that:

"to build on this Agreement, the GOJ and the EC will commence the negotiations on the further extension of the sectoral coverage of the Agreement two years from the date that the Agreement enters into force. In particular, the GOJ and the EC express their intention to commence negotiations on Medical Devices and on Pressure Equipment within that period."

3. Prospects for Implementation

The important thing for now is to secure implementation of the MRA signed on 04/04/2001, and ensure that it becomes fully operational.

An extension of this Agreement will be looked at an appropriate early time thereafter.

Unbundling the Local Loop and Time-Based Interconnection Rates

1. Summary of Tokyo Recommendations

" Access by competitive and alternative service providers to incumbent' local '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

Regulation on Local loop Unbundling EC N°/2000

- Commission proposal for a Council and a European Parliament Regulation: July 12.2000
- Adoption by Industry –Energy Council December 5, 2000
- Entry into force December 31, 2000

Recommendation on unbundled Access to the Local Loop C(2000) 1059

- Recommendation: April, 26, 2000

Commission Communication on the application of competition rules to the provision of access to the local loop C (2000) 237

- Communication: April 26, 2000

3. Prospects for Implementation

- **Reference offers** have been published in eleven Member States
- **Full unbundled access** is available in nine Member States, and prices have been determined by the NRAs, or their cost orientation verified, in ten
- **Shared access**, while available in only two Member States, is likely to come on-stream in most Member States between now and the Autumn, and prices have already been approved in four. The most recent data collected by the Commission on the state of play in the implementation of local loop unbundling are available at:

<http://forum.europa.eu.int/public/irc/info/home/main>

In **summary**, EC's strategy now is:

- To continue to urge regulators to act resolutely to resolve problems related to **collocation, pricing and provisioning**

- To pursue the **intensive follow-up** already begun
- To **report extensively**, not least in the annual implementation report due towards the end of the year
- To bring **infringement proceedings** if the preparations for the Seventh Implementation Report in **October** show failure on the part of the national regulatory authorities to give effect to the Regulation.

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

The Commission was represented by Commissioner Liikanen at the Miami Conference, 26th September 2000, who 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 Commission generally welcomed the GBDe's guidelines and recommendations – especially in the field of consumer confidence, though there were reservations regarding the GBDe's data protection principles because they fell short of even the OECD guidelines, let alone the EU directives.

The Commission services have prepared a working document responding to the GBDe's Miami guidelines and recommendations. The working document, which has been transmitted to the GBDe, built on the views expressed by the Commission at the conference by calling on the GBDe to encourage its members to abide by the guidelines agreed in Miami and to ensure their effective implementation, as well as to adopt a horizontal approach to the liability issue.

The Commission is closely following and actively participating in the work of the GBDe. Thus, the Commission participated in the mid-term meeting of the GBDe's Business Steering Committee in Madrid in April 2001, which was successful. The Commission encourages

- the progress made on "consumer confidence issues" and "privacy", and hopes that some concrete deliverables in these areas will be ready for the Tokyo meeting.

- the discussion on new issues, such as "cultural diversity" and "cyber ethics", where the possibility exist for declarations on these topics to be agreed during the Tokyo meeting.

- the re-focusing on fewer, key issues.

- the efforts to reach out to other stake-holders, particularly consumer groups and the "Global Cities Dialogue", which covers topics such a e-Government and the Digital Divide.

3. Prospects for Implementation

The Commission continues to insist that the guidelines adopted at the Miami conference should be implemented by GBDe Members, and that several important initiatives can be launched in Tokyo on 13-14 September.

GBDe: Notice and Take-Down Procedures

1. Summary of Tokyo Recommendations

The EUJBDRT members support the GBDe work on notice and take-down 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 take-down procedures in relation to copyright infringements.

Work within the GBDe continues in order to refine the details of a Notice and Take Down regime for copyright violations, and a Task Force is being created to examine the issue horizontally across the full range of illegal content as envisaged by the EU's E-Commerce Directive. It is important that codes of practice in this area are reasonably uniform around the world.

EU Directive 2000/31/EC was adopted on 8 June 2000 and entered into force on 17 July 2000 and should be transposed by the Member States before 17 January 2002.

Articles 12 to 15 provide for the conditions under which limitations to the liability of intermediaries apply, including notice and takedown procedures, which are to be

implemented through codes of conduct drawn up by the private sector as encouraged in Article 16.

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 copy-right issues but also other IPR infringements.

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

Following a commitment at its Paris conference, the GBDe is exploring the possibility of developing a GBDe "trustmark", or endorsing one or more existing marks. These marks would be awarded to commercial e-commerce sites around the world which meet the codes of conduct and standards set by the GBDe and its member companies, in the Trustmark Guidelines agreed at the Miami Conference in September 2000. The European WG participants understand that there are already a large number of trustmarks under development. Thus, the approach of endorsing existing marks by developing a framework of necessary characteristics, approved by the GBDe, could be pursued.

A consumer confidence building initiative will probably be presented during the Tokyo meeting on 13-14 September.

In May 2000, Commissioner Byrne, in association with Commissioner Liikanen, launched a consensus-building exercise involving business and consumer representatives in a "core group" aimed at drawing up guidelines for codes of conduct and trustmark programmes. Commissioner Byrne met with the stake-holders on 23 April 2001 to discuss the different options for principles for codes of conduct as well as approval and monitoring of trustmarks. This has resulted in an agreement between UNICE (European employers association) and BEUC (European consumers association) to work together on these issues, and deliver first results by the end of June 2001.

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

The GBDe and the European Commission are encouraging efforts to strengthen the dialogue between GBDe members and government representatives.

3. Prospects for Implementation

On 24th-25th April, a mid-term meeting of the GBDe's business steering committee (BSC) took place in Madrid. Government representatives and the Commission participated and discussed the mid-term reports of the GBDe's working groups and priorities for the Tokyo conference on 13th-14th September.

The Commission may organise a second meeting between GBDe and EU experts from the Parliament, Member States and Commission in June 2001 to provide an advance response to GBDe papers in preparation for the Tokyo Conference. A similar expert meeting last year was very successful.

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

INDECS (<http://www.indecs.org>) contributes to the IPR protection of contents distributed on digital networks and to lawful reuse of contents. The INDECS project is a private sector initiative, supported under the EU INFO2000 programme, which addressed the issue of multimedia rights clearance. It received a positive final project review in September 2000.

INDECS global and cross-sector partnership includes creators and publishers (ALCS, MCOS, VG BILD-KUNST, SACD), producers (IFPI, EDItEUR), multimedia and reprographic rights (KOPIOSTO, CEDAR, CAL), a database compiler/provider (MUZE) as well as seventeen affiliate organisations (ALPSP, APRA, BBC, CISAC, cIDf, Dentsu Communications, FEP, IFLA, IPA, IPDA, ISBN Agency, ISSN Agency, RIAA and the U.S. Copyright Office).

INDECS was designed as a fast track, infrastructure project aimed at finding practical solutions to interoperability affecting all types of rights-holders in a network, e-commerce environment. The project focused on the practical interoperability of digital content identification systems and related rights metadata within multi-media e-commerce. It was an international effort intended to generate a formal structure for describing and uniquely identifying intellectual property (IP), the people and businesses involved in trading IP on the Internet, and the agreements people make about those online sales.

INDECS project objectives were to deliver a series of proposals for technical standards, whether formal or *de facto*; the most significant of which was to be derived from the data model itself, along with guides to its implementation. To promote adoption of such standards, the project aimed to build an international consensus supporting implementation of the <indecs> schema and related tools. The end result sought was widely accepted technical standards to manage intellectual property commerce in the network environment. Technical work undertaken in the project was interspersed with evaluation and dissemination activities (Conferences of London in

July 1999, Washington in October 1999 and Sydney in March 2000) designed to solicit feedback and promote awareness of the initiative.

The INDECS initiative succeeded in raising awareness about metadata and interoperability in e-commerce, developing a comprehensive metadata framework, developing relevant cross-sectoral tools/products, establishing an Indecs Framework organisation to carry on project work, and moving towards commercial implementations.

There is wide-spread knowledge and interest in the INDECS initiative internationally within the creative industries across all major sectors. Several INDECS participants are currently working on developing specific INDECS-based multimedia XML data interchange formats or schemas using the INDECS model as its basis, including MUZE Inc (through its MerchEnt service), EDItEUR (through the EPICS data dictionary) and the ONIX International interchange specification, and the International DOI Foundation (IDF).

3. Prospects for Implementation

At the close of the project, INDECS partners established a not-for-profit, membership Indecs Framework Limited organisation. The Framework organisation holds the INDECS IPR rights and has the goal of working with partners to move forward the work of the INDECS initiative.

The Commission introduced on 24.5.2000 a proposal for a Council Decision [COM(2000)323, OJ C 337E, 28.11.2000, p.31] on a follow on programme to INFO2000, which was approved by Council Decision of 22.12.2000, adopting the eContent programme [2001/48/EC, OJ L 14/32, 18.1.2001]. Action line 3.2 of the eContent programme addresses rights trading between digital content market players and recognises that further support is needed to arrive at a unified European rights clearance approach. The focus of future actions will be on extending multimedia rights clearance pilots, on supporting the creation of multimedia rights clearance centres in Europe and on specific measures to support candidate countries, less advanced sectors and specific public sector applications. The eContent workprogramme is likely to be adopted before end February 2001 and a first call for proposals on action line 3.2 is scheduled for October 2001.

In addition to the further implementation prospects under the eContent programme, RTD projects and calls under the IST 5FP programme (Key action 2 'New methods of work and electronic commerce' / Area 'Trust & Security') as well as the adoption and implementation of the European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (9512/1/2000 – C5-0520/2000 – 1997/0359(COD)) need to be considered.

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 such 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 seven Member States (Austria, Belgium, Denmark, France, Ireland, Luxembourg and Sweden) 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 Commission conducted consultations on the patentability of computer-implemented inventions in the fourth quarter of 2000. The consultations also addressed the issue of business methods. Under the current practice of the European Patent Office, a patent for a computer-implemented business method can be granted only if the respective invention makes a technical contribution to the state of the art. The Commission intends to define its position in autumn 2001.

3. Prospects for Implementation

The approaches between Europe, Japan and the U.S. continue to be divergent. Once the Commission has defined its position on the issue, it would appear to be useful to explore together with Japan whether a common strategy towards the U.S. can be developed. The goal should be to incite the U.S. to adopt a more restrictive approach towards business method patenting.

New WTO Round

1. Summary of Tokyo Recommendations

Launch at the earliest opportunity of a comprehensive WTO trade round. Joint action by EU and Japan in achieving this common objective.

2. Action Taken and State of Play

Japan and EU continue to work in close alliance to launch a Round: The EU's revised strategy has been generally supported by Japan. Common efforts are especially made to integrate development issues into a Round by giving a clear signal for a movement in the direction of the development countries which should help them to better cope with the impacts of globalisation. The productive meeting of capital based officials end of March in Geneva, jointly hosted by the EC and Japan, helped creating a constructive climate and building up confidence amongst members with view to launching a New Round. The EU and Japan both recognise the importance of giving a clear political signal in this critical phase in the consensus building process.

3. Prospects for Implementation

The aim is to launch a new round at the 4th WTO Ministerial Conference to be held in November 2001. This requires continued alliance building work. Certainly we expect Japan and the EU to work together fruitfully in the future, and look to the business communities to support our joint aims.