

WTO E-COMMERCE PROGRAMME

UNICE Preliminary Statement

Introduction

The impact on society of the new information and communication technologies is both rapid and far-reaching. However, to date, insufficient attention has been paid to the need for and potential of a user-friendly e-commerce environment. Therefore, UNICE urges governments and administrations to enhance constraint-free electronic commerce transactions. To this end action should be undertaken in several key areas to strengthen the development of an appropriate e-commerce environment, taking into account user and provider interests alike. These priority areas have to reflect consensus between the main e-commerce stakeholders.

1. Consumer Protection

Trust is the basis of commerce. Ensuring consumer confidence through the whole value-added chain of *electronic services*, is a prerequisite for building a successful e-commerce environment.

2. Applicable law

Applicable law is a highly sensitive issue for *e-commerce services*. References to *country of origin* or *country of destination* indicate priorities but are not sufficient guidelines as such without required applicable international contract law.

To avoid ambiguity, UNICE believes it necessary to specify clearly and explicitly the conditions for identifying in practice the national legal rules applicable to *e-commerce services*.

UNICE considers that the rules for exercise of the activity of service provider must be subject to the law of the country in which the provider is established¹.

3. Cryptography

Encryption is becoming an important facilitator of electronic commerce. Encryption must be possible in all countries to ensure user and provider protection. Regulatory frameworks need to be simplified. Industry welcomes recent developments in some countries regarding the use of strong encryption products. Industry encourages the harmonisation, simplification and relaxation of regulations for products containing cryptographic capabilities for export controls.

¹ MEDEF (the French UNICE member federation) does not support this last paragraph under the heading "Applicable law" referring to the "*country of origin*" principle

UNICE calls on WTO not to create new proposals in this area, but to support implementation of the OECD Guidelines on Cryptography Policy in a way that achieves world-wide availability of strong cryptography.

4. Electronic Signatures

E-commerce regulations should ensure that electronic authentications and signatures are legally recognised. Legislators should co-operate to develop international frameworks to support this goal through modification of existing rules and adoption of minimum new rules.

Electronic signatures and authentication should satisfy the legal requirements in the same way as a hand-written signature on paper. They should also be admissible as evidence in legal proceedings.

5. Disclosure and Data Protection

UNICE recommends working towards “*safe harbour*” principles that are acceptable to consumers and business alike. Industry offers additional recommendations to avoid over-regulation: flexible implementation, third-party audits, evolutionary approaches, and the use of effective codes of conduct.

6. Intellectual Property Rights and Liability

Industry supports strong intellectual property rights protection for works distributed over digital networks. For company users and consumers, the value of the electronic environment depends upon the content that moves across international digital networks. Inadequacies in the protection of intellectual property in the networked environment will distort trade in works of authorship in non-networked markets.

7. Taxation and tariffs

Development of a taxation framework is considered a priority to ensure that taxation systems are fair and predictable and do not distort or impede the development of electronic commerce. Industry supports the taxation principles of neutrality, efficiency, certainty, simplicity, effectiveness, fairness and flexibility. Any legal approach should build on existing taxation principles and reject any discriminatory tax treatment.

The WTO “*Standstill Agreement*” on duty-free treatment for electronic commerce transactions should be made permanent².

² MEDEF only supports a one-year extension when the 20 May 1998 WTO customs standstill agreement is reviewed at the Seattle WTO conference later this year (30 November – 3 December 1999)

8. E-commerce services

UNICE urges the early harmonisation of *e-commerce services* classification and definition of what constitutes a good or service, in particular for taxation purposes in the electronic marketplace.

Conclusions

Companies are aware that issues which providers and users alike face with respect to the digital market place can only be addressed, and effective solutions can only be found for the numerous problems which emerge, through joint action and dialogue.

In UNICE's view WTO is not the right platform for drafting rules on domestic regulations. However, WTO could give useful guidance on how electronic commerce should be supported within individual economies.

Problems will have to be tackled by applying analogies of existing solutions. As electronic business continues to develop, effective market-driven solutions will emerge. This is in the interests of all e-commerce stakeholders, consumers and companies alike.

E-commerce principles:

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| ◆ Confidence | Confidence is essential to e-commerce success |
| ◆ Competitiveness | E-commerce is key to companies' competitiveness |
| ◆ Co-regulation | Effective co-regulation will be instrumental for confidence |
| ◆ Minimal change | New law should only be created where unavoidable |
| ◆ Taxation | Online and offline transactions must be treated neutrally |
| ◆ Privacy | Stakeholders should have fair means to protect themselves |
| ◆ Market-driven | E-commerce should be market-driven |
| ◆ Global e-services | Constraint-free global transactions should be enhanced |
| ◆ Dialogue | E-commerce dialogue encompasses all stakeholders. |