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The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

MEETING OF THE LEGAL FOCUS GROUP ON INFORMATION TECHNOLOGY TOOLS TO SUPPORT THE IMPLEMENTATION OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

Rome, Italy, 27 October 2009

REPORT OF THE MEETING OF THE LEGAL FOCUS GROUP

A. BACKGROUND

1. The Second Information Technology Consultation took place in December 2008. It made a series of recommendations for the development of the information technology (IT) infrastructure for the International Treaty (see document IT/GB-3/TCIT-2/08/Report).
2. The Governing Body, at its Third Session, adopted procedures for the Third Party Beneficiary by Resolution 5/2009, and requested the Secretariat to:

“Develop, in consultation with relevant organizations, appropriate and cost-effective processes to facilitate the submission, collection and storage of [SMTA] information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures. In so doing, the Secretary shall apply adequate measures to ensure the integrity of information and, where required, confidentiality of the information so provided”.

3. The Consultation established a Legal Focus Group to consider and elaborate a checklist of legal issues prepared by the Secretariat, based on the legal issues it had identified, with inputs from The United Nations Commission on International Trade Law (UNCITRAL). Mr. Luca Castellani (UNCITRAL) prepared an informal paper with technical inputs, which is attached to this report (*Annex 1*).
4. The Secretariat therefore convened a Legal Focus Group in Rome, at FAO Headquarters, on 27 October 2009, with expertise drawn the participants in the Consultation. The list of participants in the Legal Focus Group is attached to this report (*Annex 2*).
5. An IT Tool is being developed, for the use of Providers of Materials from the Multilateral System, by which they can report SMTAs they have entered into, in accordance with its decisions in Resolution 5/2009. The purpose of this consultation was to consider legal issues relevant to the IT Tool, so that it may might be completed and put at the disposal of those who might wish to use it as soon as possible.

B. ISSUES CONSIDERED

6. The following are the matters addressed by the Legal Focus Group, and its opinions and advice.

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I. Validity of the IT Tool in facilitating reporting obligations under the SMTA

7. The IT Tool provides an electronic communication system, by which Providers can report the information required by the Governing Body of the International Treaty, as provided for in the SMTA, for the purposes of the Third Party Beneficiary. The legal question to be addressed was whether electronic communications might validly be used for this purpose.

8. The Legal Focus Group observed that Article 7 of the Standard Material Transfer Agreement stipulates that the applicable law is “General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and relevant provisions of the Treaty, and when necessary for interpretation, the decisions of the Governing Body”.

9. The SMTA makes no specific reference to any instrument in the field of electronic communications. However, United Nations Convention on the Use of Electronic Communications in International Contracts (“the Convention”), which was adopted by the General Assembly of the United Nations, represents the codification of General Principles of Law in this specific field.

10. The Legal Focus Group observed that nothing in the International Treaty, the SMTA, or a Decision of the Governing Body requires reports to be made be on paper. The Legal Focus Group also took note of the fact that, while use of the IT Tool is voluntary, many SMTAs are themselves formed electronically.

11. The Legal Focus Group observed that Article 8.1 the Convention provides that:

A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

12. The Legal Focus Group observed that Article 9 of the Convention further specifies that:

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

13. The Legal Focus Group was of the opinion that the IT Tool, as designed, is in line with of the provisions of the Convention. It is therefore a valid method by which information may be reported to the Governing Body.

14. The Legal Focus Group recommended that the Governing Body recognize the role of the Convention as a source of guiding legal principles for use of electronic communications in entering into an SMTA, and in reporting on SMTAs entered into.

II. Identification of users of the IT Tool

15. The IT Tool foresees the attribution of a Permanent Unique Identifier (PID), on request, to persons wishing to report on SMTAs entered into. This will be implemented through an on-line “PID server”.

16. The legal question addressed was what minimum standards, if any, would be required to identify users, in providing a PID.
17. The Legal Focus Group noted the principle in electronic commerce, that standards are established in accordance with the purpose of the system and the needs of the users. In this light, the Legal Focus Group observed that neither the Treaty nor the SMTA requires the prior identification of a person wishing to report on an SMTA entered into. The information to be reported contains the name and address of the Provider, who is the person obliged to report, and who, in reporting, identifies himself.
18. The Group was of the opinion that the Secretariat has no obligation (and possibly no capacity) to verify the identity of the party reporting.
19. The Legal Focus Group also considered whether any authorization to report on behalf of an entity needed to be ascertained before granting a PID. It considered that responsibility for the accuracy and completeness of information reported rests solely with the person reporting. In the case of an entity with many members (such as a commercial company or research institution) the question of who was authorized to report on its behalf is an internal matter. It does not concern the Secretariat.
20. The Legal Focus Group was therefore of the opinion that there is no requirement of prior identification of a person wishing to make a report online, in providing a PID.
21. For the purposes of the reporting to the Governing Body on SMTAs entered into, there is no need for sub-categories of users since the legal obligation to report lies with the Provider and, in certain circumstances, the Recipient of material under an SMTA.

III. Reporting through a person, who is not the Provider under an SMTA

22. It was noted that, in certain cases, entities not themselves the Provider under an SMTA— for example, a regional network or a national genebank authority— might wish to report on behalf of such Providers. The legal questions involved are:
 - (1) whether such a practice can in any way relieve the Provider of his reporting obligations under the SMTA, and
 - (2) whether the third person, in assuming this role, also assumes any liabilities.
23. The Legal Focus Group was of the opinion that the obligation to report, and the liabilities attached to this, remain with the Provider, in any circumstance. The Provider may make what arrangements he wishes — including providing information through a third person — but remains personally liable for the fulfilment of this obligation.
24. Should the third person be deficient in fulfilling this obligation, and this lead to an action by the Third Party Beneficiary, the Provider may have a claim against that third person for any ensuing losses. Such a claim would be outside the ambit of the Multilateral System, and no concern of the Third Party Beneficiary.
25. The Group noted further that no Provider can, in the absence of a law requiring it, be obliged to report through another person.
26. On the basis of these considerations, the Legal Focus Group recommended that, wherever possible, the Provider report directly to the Governing Body, in order to avoid any ambiguity.

IV. Storage of originals of an SMTA

27. The Governing Body, in Annex 2, Operations of the Third Party Beneficiary, to Resolution 5/2009, Procedures for the Third Party Beneficiary, decided that:

A. The Provider [should transmit] a copy of the completed SMTA

Or

B. In the event that the Provider does not transmit a copy of the SMTA

- i. ensur[e] that the completed SMTA is at the disposal of the Third Party Beneficiary as and when needed;
- ii. stat[e] where the SMTA in question is stored, and how it may be obtained; and
- iii. provid[e] the [information specified by the Governing Body].

28. The question to be addressed was therefore whether the Provider, in transmitting a copy of the completed SMTA (emphasis added) has the further obligation to store the original.

29. The Legal Focus Group recognized that there were two types of paper SMTAs: a “signed” SMTA, and a shrink-wrap SMTA. According to the Legal Focus Group, the presumption was that the Provider would maintain the original of such documents, as an obligation and in accordance with normal business practice, and that the intention of the formulation used by the Governing Body was not to relieve Providers of this obligation. The original document would be required in order to initiate a dispute settlement.

30. The Legal Focus Group noted that, in the terms of Article 9 of the Convention, there is no “original” of an electronically formed contract (in this case, an SMTA), and that all copies are equally authentic, if:

(4a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(4b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

31. The Legal Focus Group recognized that the Convention thereby provides criteria for storage of original electronic records. Article 8.3 of the SMTA also implies that the parties to an SMTA must keep originals.

32. It recommended that the obligation to store originals be clarified further in the terms of use of the IT Tool.

V. The Opportunity for the Provider to correct errors

33. The Legal Focus Group was requested to advise on the implementation of the legal requirement, in electronic communications, to allow for the correction of errors.

34. As a general principle, Article 14.1 of the Convention stipulates that persons entering data in electronic communications must be provided with an opportunity to correct their errors.

Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

35. Therefore, the IT Tool should make provision for the person entering information to be able to correct errors in entering this information, as part of the system design. It might be done through a “recapitulative page”, including a summary of the information introduced by the provider, placed just before the last “accept/submit” button. Through this page the Provider must be given the opportunity to correct errors.

36. The Legal Focus Group further noted that, in case of error of fact that becomes evident after the Provider has in good faith transmitted information to the Governing Body there should be an opportunity for correction of the electronic record of that transaction, and that for that purpose that record should be identifiable. Such error of fact would occur, for instance, in case of shipment of wrong Material.

VI. How inaccurate and incomplete records should be dealt with

37. The question addressed to the Legal Focus Group was how best to deal with inaccurate and incomplete submissions.

38. The Legal Focus Group recognized that the Provider is under an absolute obligation to ensure accuracy and completeness of the information, and recommended that the terms of use of the IT Tool specify this obligation.

39. The Legal Focus Group also recognized that the Secretariat also has an obligation to make its best efforts to obtain accurate and complete data. Such best efforts might include the following:

1. The IT Tool should be designed so that no obviously incomplete submission can be accepted. This will include any submission that omits any of the items of information identified by the Governing Body as necessary for the Third Party Beneficiary to carry out its roles and responsibilities.
2. Where a submission is incomplete, the Provider should be requested to complete the information.

3. Where obviously inaccurate, the Provider should be requested to rectify the error. Automated accuracy verification tools should be used (e.g., whether letters are entered into a numerical field).
 4. Incomplete submissions should be nonetheless stored, and it should be possible for the Provider to access and complete them.
40. The Legal Focus Group recognized that, even with best efforts, errors might arise, for example, in the Secretariat interpreting handwriting. The terms of use of the IT Tool should therefore state the limited liability of the Secretariat in inputting information not supplied digitally.

VII. Security and confidentiality of information

41. The Legal Focus Group recognized that standards for security and confidentiality of information are provided by the decision of the Governing Body, in *Annex 2*, Part III, B (iv) of Resolution 5/2009.

VIII. Use of data from the Datastore

42. The Legal Focus Group was requested to advise on whether security and confidentiality provisions allowed for aggregated, non-confidential data that does not identify individuals to be generated for the use of the Governing Body in managing the Multilateral System.

43. It noted the terms of the relevant decision of the Governing Body:

Access to the datastore shall be strictly restricted to the Third Party Beneficiary, in the context of the possible initiation of dispute settlement. The Third Party Beneficiary shall not provide any data to any other person, except to the persons who need to know in the context of dispute settlement.

44. It also noted that information provided under conditions of confidentiality/data protection was nonetheless frequently used, for example, for the generation of general statistics, without this breaching confidentiality/purpose specification principle, as foreseen in paragraph 55 of the Explanatory Memorandum accompanying the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

45. It therefore recommended that the Secretariat inform the Governing Body of the various types of information of this nature that could be generated from the datastore. The Governing Body might be invited to indicate which, if any, of such information it wished to receive, taking into account the need to ensure adequate levels of confidentiality and privacy.

IX. Identification of accessions in reporting

46. There was a general discussion concerning how the provision of the Governing Body that a Provider must report “the identification of each accession in *Annex I* to the SMTA and of the crop to which it belongs” could be implemented.

47. It noted that there is no obligation to use any specific means of identifying accessions. It, however, noted the increasing use of standardized identifiers, and of the Multi-crop Passport Descriptors, and recognized the usefulness of such standardization. The Governing Body might, at some time in the future, recommend their use.

48. It further noted the obligation in the SMTA, in the context of the transmission of Material under Development, in Article 6.5b, that the Provider shall:

identify ... the Material received from the Multilateral System, and specify that the Plant Genetic Resource for Food and Agriculture under Development are derived from that Material.

49. For this purpose, the original identifiers of the Material from which the Material under Development was developed should be given unchanged.

X. Conclusion

50. The Group adopted the Report of the meeting and agreed that the Secretariat make the views and recommendations contained therein available to the relevant bodies of the Treaty.

ANNEX I

**Technical Inputs provided by UNCITRAL following the Second IT consultation
March 2009**

This paper aims at advising the Secretary on certain matters regarding e-commerce of relevance to the implementation of the SMTA of the IT/PGRFA that have arisen during the First Meeting of the Ad Hoc Third Part Beneficiary Committee and the Second Technical Consultation on Information Technology Support for the Implementation of the Multilateral System of Access and Benefit Sharing. The information will be used in the further development of the Multilateral System of Access and Benefit-sharing, and to assist technical experts, users of the Multilateral System, and Contracting Parties.

Background

The Standard Material Transfer Agreements (SMTA) is the key tool in the implementation of the Multilateral System envisaged by the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA). Due to the number of data that needs to be managed by the Multilateral System, from the onset it was decided that SMTAs would be managed, at least in part, electronically. In particular, while the information system delivering information on PGRFA need necessarily to be in electronic form, SMTAs may have different forms, i.e. paper or electronic.

The nature of the Multilateral System raises issues with respect to the legal consequences of the use of electronic means. A number of States have not yet adopted legislation on the legal value of electronic transactions. Moreover, where such legislation exists, it is not advisable that SMTAs should be subject to national legislation with respect to electronic transactions. Indeed, in line with art. 7 SMTA, which chooses the “General Principles of Law” as the law applicable to the SMTA and, more specifically, the UNIDROIT Principles of International Commercial Contracts, 2004 (the UNIDROIT Principles), another transnational legal source should be identified to address issues relating to electronic transactions.

It is submitted that a number of legal texts and recommendation emanating from the work of international organizations may provide an adequate legislative framework to the use of electronic means in connection with SMTAs. In particular, a number of the contractual aspects may find an appropriate answer in the texts prepared by the United Nations Commission on International Trade Law (UNCITRAL), and, in particular, the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (the Electronic Communications Convention), as complemented by the UNCITRAL Model Law on Electronic Signatures, 2001, and the UNCITRAL Model Law on Electronic Commerce, 1996.

The Second Technical Consultation on Information Technology Support for the Implementation of the Multilateral System (MLS) of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA), held in Rome on 2-3 December 2008, identified a number of points to be addressed. Those points are hereby discussed.

A) General issues: recognition of the validity of electronic means in contractual relations.

In those jurisdictions still lacking legislation on electronic transactions, the legal recognition of electronic communications may be challenged in court. The same could happen in a litigation taking place in a third country, including arbitral proceedings, if the law of a country lacking legislation is to be applied. It is therefore submitted that the general principle that a communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication should be formally adopted. Such principle of “non discrimination” is contained in article 8 of the Electronic Communications Convention.

Complementary to the above, the principle of functional equivalence establishes the parameters for the validity of form requirements when electronic transactions are used. It is contained in article 9 of the Electronic Communications Convention.¹

B) Contractual issues relating to the use of electronic means in the SMTA

1) Conclusion of contract.

SMTAs may, under their own terms (article 10), be concluded in different manners, i.e. by signature of paper copies, by shrink wrap of a package containing the material and by click wrap, i.e. on-line in electronic form. This variety of methods leads to several options with respect to the moment and place of conclusion of the SMTA as a contractual agreement.

¹ *Article 9. Form requirements*

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:

(a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication;

and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

1.a) SMTAs concluded in paper form.

SMTAs concluded in paper form are subject to the relevant provisions of the UNIDROIT Principles of International Commercial Contracts, 2004, and, in particular, its Chapter 2, Section 1, on Formation of Contracts.

1.b) SMTAs concluded with “shrink wrap” agreements.

“Shrink wrap” agreements are agreements where the acceptance of the terms is expressed by opening the package wrapping the product subject to the agreement. Therefore, they are not agreements concluded with electronic means. Their conclusion could fall under Article 2.1.6 (3) of the UNIDROIT Principles.²

Nevertheless, it should be noted that click-wrap agreements present certain peculiarities compared to paper form agreements. In particular, the offeree should have an opportunity to inspect the contractual terms before acceptance and should be able to return the package in a non-burdensome manner in case of non-acceptance of the terms.

1.b) SMTAs concluded with “click wrap” agreements.

“Click wrap” agreements are agreements where the acceptance of the terms is expressed by clicking an "ok" or "agree" button on a dialog box or pop-up window, or otherwise expressing consent in an electronic form. Therefore, “click wrap” agreements need a specific regulation relating to the use of the electronic form.

More specifically, the electronic environment poses issues with respect to the time and place of dispatch and receipt of electronic communications. Such issues are dealt with article 10 of the Electronic Communications Convention.³

² *Mode of acceptance*

[However,] if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.

³ *Article 10. Time and place of dispatch and receipt of electronic communications*

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time

when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

The determination of the time and place of dispatch and receipt of electronic communications enables the use of general provisions, such as those of the UNIDROIT Principles, in determining the time and place of conclusion of the contract.

2) Desirability to provide the Recipient with an opportunity to correct errors.

It is felt that online transactions may pose a higher risk of human errors than paper transactions conducted according to more traditional modes of contract negotiation. Moreover, often contract law requires a party seeking to avoid the consequences of an error to show that the other party knew or ought to have known that a mistake had been made. This requirement is also present in article 3.5.(1)(a) of the UNIDROIT Principles, applicable to SMTAs. This burden of proof may be excessively difficult to meet when there is an automated process at the other end

Accordingly, it is submitted that the module generating the SMTA should provide the Recipient with a final opportunity to review the request and correct errors. The legislative framework for this may be found in article 14 of the Electronic Communications Convention.⁴

3) Clarification of grounds for rejecting a request for PGRFA.

The issue relating to the clarification of the grounds that could be invoked for rejecting a request for PGRFA has been raised. This is a policy decision that does not touch upon the use of electronic transactions.

4) Questions of limitation of liability and standards for provision of the service.

The provision of services in electronic form, namely, for the dissemination of information relating to the SMTA as well as, in certain cases, for its conclusion, exposes the provider of the service to potential liability in case of non-performance or partial performance. For instance, liability could arise from negligent data transmission and storage. (It should be reminded that under art. 9.1 SMTA the provider makes no warranty on the material.)

Indeed, the service provider has an obligation to utilize trustworthy systems, procedures and human resources in performing its services. These best standards should be reflected in the relevant technical documents of IT-PGRFA.

⁴ *Article 14. Error in electronic communications*

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication;

and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

In light also of the purpose and nature of the IT-PGRFA MLS, it might be advisable to consider capping its liability for the provisions of the services. A possible parameter to be taken into consideration could be the compensation (fee) received for the provision of the service.

C) Issues relating to data collection and protection of privacy

1) Identification and authentication of parties to the SMTA

The use of electronic means poses peculiar issues relating to the identification and the authentication of the parties involved in the transaction. Identification is a claim or statement of identity; that claim may need to be verified through authentication.

Three basic authentication methods have been developed: something known to the individual (for example, a password, a personal identification number or PIN, an account number, favourite colour, name of first pet); something that the individual has (for example, a bankcard, token, identity card, public-key digital certificate); and

something that the individual is (for example, a biometric, such as a facial image, retina scan or voice print) or does (a signature). Those methods may be used alone or in combination.

In practice, the choice of any method depends on a number of factors, including the value of the transaction, the cost of the method, etc. Thus, for instance, the use of more expensive technologies, such as cryptography, may be advisable only in case of a large amount of transactions conducted by sophisticated parties.

The legislative framework for authentication may be provided by article 9(3) of the Electronic Communications Convention,⁵ which allows for sufficient flexibility to accommodate different needs and technologies.

Moreover, it should be noted that the entity intending to conclude the SMTA claims also having the related authority. Therefore, the authentication stage may provide a possibility to ascertain if the authority to conclude the transaction indeed exists. At the same time, a similar process should be devised for SMTAs concluded with non-electronic means.

In light of these considerations and of the legislative framework, it will be possible to consider for adoption more detailed instructions on the identification and authentication of parties to the SMTA.

2) Data and privacy protection

The collection of data relating to identification and authentication of parties to the SMTA may, in turn, raise issues with respect to the privacy rights of those parties. In line with the controlling principles that the SMTA should be applicable to transnational legal sources, it is suggested that the management of the data should comply with the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data,⁶ in their most recent version.

⁵ See above, footnote 1.

⁶ http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1.00.html

ANNEX 2

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