

DRAFT FOR DISCUSSION ONLY

**From the Secure Electronic Commerce
Working Group**

To EURIM MPs

25 November 1999

Electronic Communications Bill

We are pleased to provide our draft comments on the Electronic Communications Bill published on 18 November and also attach for reference Briefing 28 which contains our detailed response to the consultation on the draft Bill.

Overall Impressions

EURIM fully supports the Government's desire to make the UK the best place in which to do electronic business. We have worked closely with the DTI and others over past months to encourage an open exchange of views as the best way of achieving this goal. The Bill as published has taken account of many of the views and concerns expressed, and is a good basis on which to build. In particular EURIM welcomes the removal of the section dealing with Law Enforcement Access to the proposed Regulation of Investigative Powers Bill, the inclusion of a clause explicitly limiting the ability to include key escrow in regulations and the "sunset" clause on the ability to invoke Part I.

As EURIM has previously stated, in order to make the UK competitive against other trading nations as a place from which to do electronic business, it is essential that a predictable legal and regulatory environment is established. EURIM regrets that Part I is still written in such a way that, should the Secretary of State choose to invoke the reserve powers for regulation, there is little constraint on the regulatory criteria that can be imposed. EURIM looks forward to positive statements from government that the AEB *tscheme* does meet the required criteria for an industry regulatory scheme and that Part I is indefinitely deferred.

EURIM notes that many of the detailed comments made on the draft Bill included in the consultation paper on promoting Electronic Commerce have not been included. These detailed comments are still largely valid and have not been repeated here. Presented below are the key changes that we consider should be incorporated into the Bill as published.

Part I - Cryptography Service Providers

Clause 15 allows Part I to be invoked by Statutory Instrument. While the government currently intends to allow self-regulation by industry, any decision to impose a statutory regulatory scheme could have a major adverse effect on the competitive position of UK Plc as a place to do business electronically. Invoking Part I should, therefore, explicitly require at least the relevant statutory instrument to be laid before Parliament and approved by a resolution of each House following consultation with all interested parties. However, EURIM welcomes the inclusion of the "sunset" clause for Part I and looks forward to positive statements by Ministers that industry schemes such as the AEB *tscheme* are acceptable.

EURIM is disappointed that the focus is still on cryptography as the service provision. The commercial need is to create confidence in trust services associated with electronic commerce. However, trust services may, or may not, use cryptography. The Title, definitions and wording (especially Clause 6(1)) should be altered to reflect this.

The detail in Clauses 1-6 is largely unchanged from the draft Bill. In particular, Clause 5 still allows the Secretary of State to make regulations by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. Although this may be common practice, in this case the introduction of regulations can have a significant international impact should Part I be invoked. It would improve confidence in the UK environment if the process for making regulations explicitly included a requirement to consult with all interested parties and required approval by a resolution of each House.

Part II - Facilitation of Electronic Commerce, Data Storage, Etc.

Overall the approach taken by this Part is encouraging. EURIM welcomes the changes to Clause 7 to include any information in electronic form.

EURIM notes that the definition of “electronic signature” in Clause 7(2) is still different from those commonly recognised. We still recommend that a commonly accepted definition be used to avoid confusion - along the lines suggested in our original comments.

EURIM is disappointed that the opportunity has still not been taken to include in this Bill changes to those few Acts that affect commercial contracts and dealings. Examples are the point of acceptance of electronic contracts, or of the passing of title for intangible goods. A more complete list was included as an Annex to our original comments. Such provisions would make UK law as attractive to companies doing electronic business as the equivalent laws are for financial services - where the UK has a leading international position.

EURIM notes that Clauses 8 and 9 on the means to allow electronic government are largely unchanged from the draft Bill. EURIM remains concerned that there is no explicit mechanism to ensure departments allow electronic information exchange and transactions in a manner that is consistent and practical. Industry and citizens alike will have to communicate with a number of government agencies, and inconsistent or, worse, conflicting, technologies, processes or other regulations will increase costs and discourage use of electronic services. There are already signs of this happening in the way the provisions in the Finance Act for electronic access are being interpreted by the Inland Revenue and Customs & Excise (which are explicitly excluded from this Bill).

Part III - Miscellaneous and Supplemental

EURIM welcomes the constrain on key escrow introduced in Clause 13.