



General Assembly

Distr.: Limited
11 August 2026

Original: English

**United Nations Commission on
International Trade Law**
Working Group IV (Electronic Commerce)
Seventy-first session
Vienna, 5–9 October 2026

Draft model legislative provisions on contracts for the provision of data

Note by the Secretariat

Contents

	<i>Page</i>
I. Introduction	2
II. Revised draft model legislative provisions	2
Article 1. Definitions	3
Article 2. Scope of application	3
Article 3. Party autonomy	4
Article 4. Interpretation	4
Article 5. Obligation to provide the data	4
Article 6. Mode of provision of the data	4
Article 7. Timing of provision of the data	4
Article 8. Conformity of the data	5
Article 9. Use of the data	6
Article 10. Derived data	6
Article 11. Common obligations of the data provider and data recipient	7
Article 12. Non-performance	7
Article 13. Passive provision of data	8
III. Revisions to the explanatory note	9
A. Article 2. Scope of application	9
B. Article 10. Derived data	9
C. Article 11. Common obligations of the data provider and data recipient	10
D. Article 12. Non-performance	10



I. Introduction

1. At its seventieth session (New York, 23–27 March 2026), the Working Group completed a read-through of the default rules on data provision contracts ([A/CN.9/1242](#), paras. 12–73), focusing on the final four articles (articles 10 to 13) as set out in [A/CN.9/WG.IV/WP.192](#) (the “fifth revision”).
2. Chapter II of this note sets out a revised version of the default rules reflecting the deliberations of the Working Group and identifies issues that the Working Group may wish to consider in finalizing the text. Consistent with the request of the Working Group, the default rules are drafted as legislative provisions ([A/CN.9/1241](#), para. 77). Unless otherwise indicated, articles 1 to 9 remain unchanged apart from editorial changes. Chapter III of this note outlines suggested revisions to the draft explanatory note.
3. This note is supplemented by a separate note ([A/CN.9/WG.IV/WP.196](#)), which presents a summary of informal intersessional consultations, which were hosted by the secretariat on 17–18 June 2026 on the types of transactions involving the “passive” provision of data. The note identifies some additional issues arising from the consultations that the Working Group may wish to consider in finalizing the text.
4. In addition to the issues identified in both notes, the Working Group may wish to pick up its earlier discussions on the form of the default rules, whether model law or legislative guide ([A/CN.9/1241](#), paras. 74–77), so as to be able to submit a final work product for finalization and adoption by the Commission at its next session to be held in Vienna from 5 to 23 July 2027. At its fifty-ninth session, the Commission was informed that the consultations had suggested an inclination towards a model law.

II. Revised draft model legislative provisions

5. The Working Group may wish to consider the following issues when reviewing the revised provisions:
 - (a) Article 2(1) – whether to delete or substitute the words “for the provision of data” (see note 1);
 - (b) Article 2(3) – whether to retain the paragraph (see note 2);
 - (c) Article 2(4) – whether to include the first sentence in square brackets (see note 3);
 - (d) Article 5(2) – whether to insert the words in square brackets and whether to substitute “use” for “access” (see note 4);
 - (e) Article 8(2)(b) – whether to delete the words “or impliedly” (see note 6);
 - (f) Article 8(2)(c) – whether to insert the words in square brackets (see note 7);
 - (g) Article 8(4)(a) – whether to delete the words “availability” and “origin” (see note 9);
 - (h) Article 8(5) – whether to insert the paragraph (see note 10);
 - (i) Article 9(2) – whether to retain the paragraph (see note 11);
 - (j) Article 9(3) – whether to insert the paragraph (see note 12);
 - (k) Article 10(3), chapeau – whether to replace “for the purposes of paragraph 2(b)” with “without limiting paragraph 2(b)” (see note 16);
 - (l) Article 11(1) – whether to delete the words “the contract and” (see note 18);
 - (m) Article 11(2) – whether to insert the words “affecting the provision of the data” after “data breach” or to insert the words “in respect of the data” after “third party” (see note 19);

(n) Article 12(2) – whether to insert the words in the second set of square brackets (see note 22);

(o) Article 13(1) – whether to delete subparagraph (b) and revise subparagraph (c) (see notes 27 and 28, respectively);

(p) Article 13(2)(b) – whether to expand the obligation beyond “not impeding” (see note 29);

(q) Article 13, generally – whether to reintegrate the substance of article 13 into the other provisions of the text, thus replacing the provision entirely (see note 24).

Chapter I. General

Article 1. Definitions

For the purpose of these provisions, “data” means a representation of information in electronic form or other form suitable for processing in an information system.

Article 2. Scope of application

1. These provisions apply to contracts [for the provision of data]¹ under which one party (the “data provider”) provides data to another party (the “data recipient”), whether or not with the involvement of a third party.

2. Without prejudice to paragraph 1, these provisions do not apply where the primary purpose of the data is:

(a) To deliver particular functionalities when processed, including data in the form of computer code;

(b) To represent a particular asset or particular rights and obligations assigned to a person associated with the data.

[3. These provisions do not apply to contracts concluded for personal, family or household purposes.]²

4. [These provisions govern only the rights and obligations of the data provider and the data recipient arising from the contract.]³ Nothing in these provisions affects

¹ *Scope of application – contracts “for the provision of data”*: The Working Group may wish to consider deleting or substituting the words “for the provision of data”; see paras. 41 and 42 of [A/CN.9/WG.IV/WP.196](#).

² *Scope of application – contracts with consumers*: The Working Group may wish to take a position on whether contracts with consumers should be excluded from the scope of the model legislative provisions, and thus whether to retain paragraph 3. At the sixty-ninth session, the Working Group agreed to defer its consideration of paragraph 3 until after the contents of the default rules and their application to the “passive” provision of data was more settled ([A/CN.9/1241](#), para. 36). Paragraph 3 needs to be viewed in the context of the primacy (or “give way”) clause in paragraph 4. It is inspired by article 2(a) of the United Nations Convention on Contracts for the International Sale of Goods (CISG), although the latter does not contain a “give way” clause preserving mandatory laws. As noted in the fifth revision ([A/CN.9/WG.IV/WP.192](#), para. 10), a “give way” clause was proposed for the CISG, but it was ultimately felt that consumer contracts should be excluded altogether because “in the usual case, a sale to a consumer was not regarded as an important aspect of international trade” ([A/CN.9/52](#), para. 57).

³ *Scope of application – contract formation and extracontractual data rights*: The Working Group may wish to consider including the first sentence of paragraph 4, which appears in square brackets. The sentence was proposed in the fifth revision but was not considered by the Working Group at its seventieth session, although it was affirmed at the session that the default rules were not concerned with contract formation ([A/CN.9/1242](#), para. 63). The sentence is based on the first sentence of article 4 of the CISG ([A/CN.9/WG.IV/WP.192](#), para. 12). It emphasizes the limited focus of the provisions and thus the limited range of matters where the provisions may come into conflict with mandatory law, which in turn delimits the circumstances in which the remainder of paragraph 4 would be engaged. By implication, other matters related to the contract, including the validity of the contract or any of its terms, or the effect of the contract on

the application of any rule of law that may govern transactions in data or the provision of data, including on matters related to data privacy and protection, the protection of consumers, trade secrets or intellectual property.

Article 3. Party autonomy

1. Subject to article 2, paragraph 4, the parties may derogate from or vary by agreement any of these provisions.
2. Such an agreement does not affect the rights of any person that is not a party to that agreement.

Article 4. Interpretation

1. In the interpretation of these provisions, regard is to be had to their international origin and to the need to promote uniformity in their application and the observance of good faith.
2. Questions concerning matters governed by these provisions which are not expressly settled therein are to be settled in conformity with the general principles on which they are based.

Chapter II. Rights and obligations of the parties

Article 5. Obligation to provide the data

1. The data provider shall provide the data to the data recipient as required by the contract and according to these provisions.
2. The obligation of the data provider in paragraph 1 consists of making the data available to the data recipient [and providing any information necessary to access the data].⁴

Article 6. Mode of provision of the data

1. The data provider shall make the data available to the data recipient by the mode agreed by the parties.
2. In the absence of a mode of provision agreed by the parties, the data provider shall make the data available to the data recipient by:
 - (a) Delivering the data to the data recipient, including by enabling the data recipient to export the data from a particular information system; or
 - (b) Giving the data recipient access to the data in a particular information system.
3. The data provider shall provide the means to access the data so as to put the data recipient in a position to use the data.

Article 7. Timing of provision of the data

1. The data provider shall provide the data according to the time frame fixed by or determinable from the contract.

any rights in the data outside the contract (e.g. rights of a proprietary nature), are left to other law, regardless of the mandatory nature of that law.

⁴ *Obligation to provide – information needed to access the data:* The Working Group may wish to consider inserting the words in square brackets, as proposed at the sixty-ninth session (A/CN.9/1241, para. 44(b)). The Working Group may wish to also consider whether, having regard to the scope of the requirement as outlined in the fifth revision (A/CN.9/WG.IV/WP.192, para. 18), it is more appropriate to refer to information necessary to “use” the data (rather than “access” the data).

2. In the absence of a time frame fixed by or determinable from the contract, the data provider shall provide the data without undue delay.

Article 8. Conformity of the data

1. The data provider shall provide the data that is of the quantity, quality and description agreed by the parties.⁵
2. In addition, and unless otherwise agreed by the parties, the data provider shall provide the data that:
 - (a) Possesses the characteristics that may reasonably be expected of data provided by the data provider in the circumstances;
 - (b) Is fit for any particular purpose expressly [or impliedly]⁶ made known to the data provider at the time of the conclusion of the contract, except where the circumstances show that the data recipient did not rely, or that it was unreasonable for the data recipient to rely, on the data provider's skill and judgment; and
 - (c) Possesses the characteristics which the data provider has held out to the data recipient as a sample or model [or in accordance with representations made by the data provider with respect to the data before the conclusion of the contract].⁷
3. The data provider shall provide the data:
 - (a) In compliance with applicable law; and
 - (b) Free from any right or claim of a third party which impedes the use of the data under the contract or these provisions and of which, at the time of the conclusion of the contract, the data provider knew or could not have been unaware.⁸
4. In assessing whether the requirements under this article are met, regard is to be had to:
 - (a) All relevant characteristics of the data, including its authenticity, integrity, completeness, [availability, origin,]⁹ coherence, accuracy and currency, as well as the format and structure of the data; and
 - (b) Any agreement between the parties or applicable industry standards.

⁵ *Data conformity – general*: Paragraph 1 has been rephrased as an obligation that is imposed on the data provider rather than a requirement of the data, as suggested in the fifth revision (A/CN.9/WG.IV/WP.192, para. 23). Similar wording is found in article 35(1) of the CISG.

⁶ *Data conformity – fitness for particular purposes*: The Working Group may wish to consider whether to delete “or impliedly”, as proposed at the sixty-ninth session (A/CN.9/1241, para. 61(c)). As explained in the fifth revision (A/CN.9/WG.IV/WP.192, para. 24), the current wording of article 8(2)(b) (including the reference to purposes that are “impliedly” made known) corresponds with article 32(2)(b) of the CISG.

⁷ *Data conformity – conformity with public statements*: The Working Group may wish to consider whether the words in square brackets should be inserted, as proposed at the sixty-ninth session (A/CN.9/1241, para. 61(d)). The words would reinstate a standard that was inserted in the first revision but with additional text to address some of the concerns raised at the sixty-eighth session, when the Working Group agreed to delete the standard (A/CN.9/1202, para. 37). As explained in the fifth revision (A/CN.9/WG.IV/WP.192, paras. 25 and 26), there is no corresponding standard in the CISG, and conformity with public statements may already be covered in part by other rules in article 8.

⁸ *Data conformity – freedom from third-party rights and claims*: As discussed in the fifth revision (A/CN.9/WG.IV/WP.192, paras. 28 and 29), proposals have been made to amend article 8(3)(b) so that it requires the data provider to “respect” third-party rights or claims to the extent that they “limit or specify” how the data is to be used.

⁹ *Data conformity – assessment criteria*: Following the discussion at the sixty-ninth session, “availability”, “origin” and “coherence” were inserted as additional characteristics of data for the purposes of data conformity assessment (A/CN.9/1241, para. 64). For the reasons given in the fifth revision (A/CN.9/WG.IV/WP.192, para. 31), the Working Group may wish to retain “coherence” (which is understood to refer to the logical connections and completeness within a data set or across data sets) but delete “availability” (to avoid possible confusion with articles 5, 6 and 7) and “origin” (to avoid overlap with “authenticity”).

[5. As between the parties, the data provider shall not bear the legal consequences of any lack of conformity of the data under paragraphs 2 or 3 if, at the time of the conclusion of the contract, the data recipient knew or could not have been unaware of such lack of conformity.]¹⁰

Article 9. Use of the data

1. Unless otherwise agreed by the parties:
 - (a) The data recipient is entitled to use the data for any lawful purpose and by any lawful means;
 - (b) The data recipient is entitled to use the data for an unlimited period of time;
 - (c) The data recipient is not entitled to provide the data to a third party;
 - (d) The data provider is entitled to continue to use the data; and
 - (e) The data provider is entitled to provide the data to a third party.
- [2. The data recipient shall ensure that the data is not used in a manner that infringes the rights of the data provider or of a third party with respect to the use of the data.]¹¹
- [3. If the data provider provides the means to use the data under the contract, the data recipient shall use the data by those means.]¹²
4. For the purposes of this article, “using” data includes performing any one or more operations on the data.

*Article 10. Derived data*¹³

1. As between the parties, the data recipient is entitled to use derived data and to provide derived data to a third party.¹⁴
2. For the purposes of paragraph 1, “derived data” means data that:
 - (a) The data recipient generated by processing the data provided under the contract (“provided data”), including by combining that data with other data; and

¹⁰ *Data conformity – legal consequences of lack of conformity*: The Working Group may wish to consider inserting paragraph 5, as proposed at the sixty-ninth session (A/CN.9/1241, para. 64). As noted in the fifth revision (A/CN.9/WG.IV/WP.192, para. 32), paragraph 5 is based on articles 35(3) and 42(2)(a) of the CISG.

¹¹ *Use of the data – obligation to respect third-party rights*: A rule imposing an obligation on the data recipient with respect to the use of the data was included in the first revision (A/CN.9/WG.IV/WP.183, para. 8(3)(c)) but subsequently removed (A/CN.9/1162, para. 85). At its sixty-ninth session, the Working Group requested that the rule be reinstated in square brackets for further consideration (A/CN.9/1241, para. 72). In considering whether to retain the rule, the Working Group may wish to consider (i) how it integrates with other provisions, notably article 8(3)(b) (which requires the data to be provided free from third-party rights and claims) and article 9(1)(a) (which entitles the data provider to use the data for any lawful purpose and by any lawful means), and (ii) whether it is necessary to specify that it applies only “as between the parties” (i.e. it does not affect third-party claims arising under other law).

¹² *Use of the data – obligation to apply means to use the data*: The Working Group may wish to consider whether to include an obligation regarding the means to use the data, as suggested at the sixty-ninth session (A/CN.9/1241, para. 73). As explained in the fifth revision (A/CN.9/WG.IV/WP.192, para. 36), paragraph 3 is drafted to impose an obligation on the data recipient where the means to use the data are provided by the data provider (e.g. where data is provided on a “data-as-a-service” basis) and reflects a distinction between the means to access the data (referred to in articles 6(3) and 13(1)(a)) and the means to use the data (referred to in article 9(1)(a)) (A/CN.9/1202, para. 62; A/CN.9/1241, para. 44(b)).

¹³ *Derived data – general*: Article 10 has been revised to reflect the deliberations of the Working Group at the seventieth session (A/CN.9/1242, paras. 12–23). The term “provided data” has been introduced as shorthand for “data provided under the contract”.

¹⁴ *Derived data – right to use*: Paragraph 1 of article 10 has been revised to expressly recognize an entitlement of the data recipient to use the derived data (A/CN.9/1242, para. 22(a)).

(b) Is sufficiently distinct from the provided data in terms of its content, having regard to all relevant circumstances, including the outcome of investment by the data recipient in the generation of the derived data.¹⁵

3. For the purposes of paragraph 2(b), data is not sufficiently distinct if:

(a) That data can be processed to generate data that is essentially identical to the provided data, including by way of reverse engineering; or

(b) That data can be used as a substitute for the provided data.¹⁶

*Article 11. Common obligations of the data provider and data recipient*¹⁷

1. Each party shall cooperate with the other party when such cooperation may reasonably be expected for the performance of that party's obligations under the contract and these provisions.¹⁸

2. If a party becomes aware of a data breach that creates significant risks for the rights of that party, the other party or a third party, that party shall notify the other party of the data breach without undue delay.¹⁹

*Article 12. Non-performance*²⁰

1. If a party fails to perform its obligations under the contract or these provisions, the other party is entitled to exercise any of the remedies as provided by applicable law.²¹

2. Without limiting paragraph 1, when applying a remedy for a failure to perform an obligation with respect to the provision or use of data, including [...]*, regard is to be had to the particular qualities of data, including its intangibility and non-rivalrousness[, and to the consequences of the remedy for the rights of the parties with respect to the data].²²

* Enacting jurisdictions may wish to list specific remedies.

¹⁵ *Derived data – role of investment*: Paragraph 2(b) of article 10 has been revised to clarify that the distinctness test is to be applied to the content of the data and that the investment made by the data recipient may be a relevant factor in applying the test (A/CN.9/1242, paras. 14 and 22(b)).

¹⁶ *Derived data – disqualifying factors*: Paragraph 3 of article 10 has been reformulated as a list of grounds for disqualifying data as “derived data” (A/CN.9/1242, para. 22(c)). To clarify that the list is not exhaustive, the Working Group may wish to consider whether to replace “for the purposes of paragraph 2(b)” with “without limiting paragraph 2(b)”.

¹⁷ *Common obligations – general*: Article 11 has been revised to reflect the deliberations of the Working Group at the seventieth session (A/CN.9/1242, paras. 24–29).

¹⁸ *Common obligations – duty to cooperate*: At its seventieth session, the Working Group agreed to retain paragraph 1 without further amendment (A/CN.9/1242, para. 24). An issue raised during the informal intersessional consultations (A/CN.9/WG.IV/WP.196, para. 21) was whether the duty to cooperate should apply only to obligations regarding the provision of data under the default rules. The Working Group may wish to consider, and therefore whether the words “the contract and” should be deleted in paragraph 1.

¹⁹ *Common obligations – duty to notify data breaches*: At its seventieth session, the Working Group agreed to retain paragraph 2 but with revisions to address concerns about the concept of “serious data breach” (A/CN.9/1242, para. 26). The wording of the revised provision, which was agreed by the Working Group (ibid., para. 29), has been rephrased to clarify that it imposes an obligation on the parties and to align with other provisions that impose obligations to act “without undue delay” (see article 7(2)). The Working Group may wish to consider whether additional wording is needed to establish a link between the data breach and the provision of data under the contract, for example, by referring to a data breach “affecting the provision of the data” or to significant risks for rights “in respect of the data”.

²⁰ *Non-performance – general*: Article 12 has been revised to reflect the deliberations of the Working Group at the seventieth session (A/CN.9/1242, paras. 30–58).

²¹ *Non-performance – preservation of domestic remedies*: Paragraph 1 has been recast in affirmative terms, as agreed by the Working Group (A/CN.9/1242, paras. 33–36).

²² *Non-performance – guidance on applying remedies*: Paragraph 2 reproduces the recast provision agreed by the Working Group (A/CN.9/1242, paras. 41 and 44) with minor editorial changes. The Working Group may wish to consider whether to include the additional text in the second set of square brackets, which was suggested at the seventieth session (ibid., para. 44).

3. For the purposes of paragraph 2, if the data provider is entitled by law to require the data recipient to return or surrender the data, that requirement may be met by the data recipient erasing the data from any information system under its control, or by other equivalent means, provided that the data provider remains in a position to use the data.²³

Chapter III. Passive provision of data

*Article 13. Passive provision of data*²⁴

1. This article applies to the contract if:²⁵

(a) The data recipient provides the means to access the data under the contract;²⁶

[(b) The object of the transaction is the data recipient obtaining access to data generated by a product, service or activity performed by the data provider [in exchange for the data provider obtaining access to a product, service, or other value supplied by the data recipient];]²⁷ and

(c) The data provider does not have control over the quantity or quality of the data.²⁸

2. The data provider shall:

(a) Allow the data recipient to access the data by the means provided by the data recipient; and

²³ *Non-performance – return or surrender of data*: Paragraph 3 reproduces the revised provision agreed by the Working Group (A/CN.9/1242, para. 56). The reference to data being “provided under the contract” has been removed as redundant.

²⁴ *Passive provision – general*: Article 13 has been revised to reflect the deliberations of the Working Group at the seventieth session (A/CN.9/1242, paras. 59–73). A proposal to reintegrate the substance of article 13 into the other provisions of the text is put forward in A/CN.9/WG.IV/WP.196 (paras. 43–47) for the consideration of the Working Group.

²⁵ *Passive provision – definition – general*: The Working Group has deleted the words “as agreed by the parties” from the chapeau of paragraph 1 (A/CN.9/1242, para. 64), as well as the requirement that the data provider have no meaningful influence on the terms of the transaction, which was contained in paragraph 1(d) of the fifth revision (ibid., para. 69). To address a concern expressed within the Working Group (ibid., para. 72), the chapeau of paragraph 1 has been further amended to avoid references to the “passive” provision of data, with consequential amendments made to the chapeau of paragraph 2 and paragraph 3.

²⁶ *Passive provision – definition – means to access the data*: Following on from the deletion of the words “as agreed by the parties” in the chapeau of paragraph 1, the words “under the contract” have been inserted at the end of paragraph 1(a) to clarify that the task of providing the means is allocated to the data recipient under the contract. These words have been inserted in acknowledgment of the fact that (i) under article 6(3), the default setting is for the data provider to provide the means to access the data, and (ii) under article 3, the parties may derogate from this default setting by agreement.

²⁷ *Passive provision – definition – object of the transaction*: Paragraph 1(b) remains in square brackets to indicate its possible deletion, as suggested at the sixty-ninth session (A/CN.9/1241, para. 18). Additional justification for deleting the subparagraph is set out in A/CN.9/WG.IV/WP.196 (para. 33). Support was expressed at the sixty-ninth and seventieth sessions for deleting only the second part of the subparagraph (A/CN.9/1241, para. 18; A/CN.9/1242, para. 67), which has been placed in a separate set of square brackets accordingly. A suggestion was also put forward at the seventieth session to replace the second part of the subparagraph with the words “in exchange for the data provider obtaining payment or other separate value supplied by the data recipient” with a view to present a more balanced transaction while also narrowing down the types of transactions to be covered by article 13, particularly for data generated by a connected device (ibid., paras. 70–71).

²⁸ *Passive provision – definition – control over the data*: Paragraph 1(c) remains unchanged. A proposal to refocus the subparagraph on the exercise of control (rather than the existence of control) is put forward in A/CN.9/WG.IV/WP.196 (paras. 34–36) for the consideration of the Working Group.

- (b) Not impede that access.²⁹
3. Articles 6, 7 and 8 shall not apply to the contract.³⁰

III. Revisions to the explanatory note

6. A draft explanatory note accompanying the fifth revision was before the Working Group at its seventieth session ([A/CN.9/WG.IV/WP.193](#)). The draft explanatory note contained remarks on articles 1–10 and indicated that remarks on articles 11 to 13 would be inserted based on the Working Group’s consideration of those provisions. It also provided a summary of the introduction section of the explanatory note.

7. The secretariat has prepared revisions to reflect the deliberations of the Working Group at its seventieth session, which are summarized below. Revisions to reflect the deliberations of the Working Group at its seventy-first session will be made before the draft explanatory note is submitted to the Commission together with the default rules (in the agreed final form) for finalization and adoption by the Commission.

8. The Working Group may wish to share feedback on the draft explanatory note as a whole, including the revisions summarized below. If the default rules are to take the form of a model law, the explanatory note will be prepared as a guide to enactment.

A. Article 2. Scope of application

9. Remarks in the explanatory note on the concept of “contracts for the provision of data” in article 2, paragraph 2 ([A/CN.9/WG.IV/WP.193](#), paras. 8–14), will develop the observation (*ibid.*, para. 11(e)) that contracts may be multi-party. The note will mention that, for such contracts, references to “another party” in article 2 and to “the other party” in articles 11 and 12 include references to more than one other party. Similar interpretative statements are made in other UNCITRAL texts.³¹

10. If the Working Group agrees to retain the first sentence of paragraph 4, remarks on the paragraph will be supplemented with an explanation of the origin and intent of the sentence (see note 3 above).

B. Article 10. Derived data

11. Remarks in the explanatory note on article 10 ([A/CN.9/WG.IV/WP.193](#), paras. 8–14) will be revised. Guidance on applying the distinctness test will be included, drawing on the deliberations of the Working Group regarding the meaning of the terms “investment”, “substantially identical” and “substitute” ([A/CN.9/1242](#), paras. 15–18 and 20–21).

²⁹ *Passive provision – special default rule*: Paragraph 2 was not deliberated in detail at the seventieth session. Editorial changes have been made to simplify the text and to align it with paragraph 1. As discussed in the fifth revision ([A/CN.9/WG.IV/WP.192](#), paras. 55–56), the Working Group may wish to consider whether the obligation not to impede access should be expanded to cover additional actions that may reasonably be required to maintain the means of access.

³⁰ *Passive provision – disapplying other default rules*: Paragraph 3 of the fifth revision was also not deliberated in detail at the seventieth session. In the fifth revision, a question was raised as to whether articles 11 and 12 should be disappplied to contracts for the “passive” provision of data, in addition to articles 6 to 8. In view of the deliberations on articles 11 and 12 at the seventieth session, it is suggested that both provisions should be applied, and therefore that they need not be referenced in paragraph 3.

³¹ See, for example, *UNCITRAL Legislative Guide on Secured Transactions*, United Nations publication, Sales No. E.09.V.12, Introduction, para. 17.

C. Article 11. Common obligations of the data provider and data recipient

12. Remarks in the explanatory note on article 11 will be inserted, drawing on the deliberations of the Working Group (A/CN.9/1093, para. 91; A/CN.9/1132, paras. 37, 43 and 45; A/CN.9/1162, paras. 80 and 85; A/CN.9/1197, para. 71; A/CN.9/1202, paras. 72–77; A/CN.9/1242, paras. 24–29). In particular, they will:

(a) Recall the origins of article 11 in a desire to maintain a mutuality of obligations between the parties;

(b) Acknowledge that paragraph 1 is modelled on article 5.1.3 of the Principles of International Commercial Contracts of the International Institute for the Unification of Private Law (UNIDROIT), albeit limited in scope to cooperation with regard to obligations under the contract and the default rules;

(c) Elaborate on the concept of a “data breach” in paragraph 2, highlighting links to the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (MLIT) and the particular relevance of the “confidentiality” component in the context of data provision contracts;

(d) Clarify that paragraph 2 does not affect duties to notify data breaches under applicable law or remedies for lack of conformity.

D. Article 12. Non-performance

13. Remarks in the explanatory note on article 12 will be inserted, drawing on the deliberations of the Working Group (A/CN.9/1132, para. 51; A/CN.9/1162, para. 87; A/CN.9/1197, paras. 68–70; A/CN.9/WG.IV/WP.190, paras. 4–5 and 20; A/CN.9/1242, paras. 30–58). In particular, they will:

(a) Explain that article 12 does not seek to codify remedies for breach of contract but rather confirms the availability of existing remedies under national law while providing guidance on how those remedies may be applied to data provision contracts;

(b) Clarify that article 12 is intended to apply to breaches occasioned by a lack of conformity and recall the practice of remedying lack of conformity under agreements referred to in article 8(4)(b) (A/CN.9/WG.IV/WP.193, para. 59);

(c) Explain that paragraph 1 applies to judicial and extrajudicial remedies, that the reference to “applicable law” is intended to cover statutory, regulatory and judicially created laws, as well as rights under a contract, and that the reference to “applying” remedies in paragraph 2 should be understood accordingly;

(d) Clarify the concepts of “intangibility” and “non-rivalrousness” in paragraph 2, drawing on the descriptions in the *Taxonomy of Legal Issues Related to the Digital Economy*.³² It will also elaborate on remedies to which paragraph 2 applies, including remedies for lack of conformity;

(e) Explain that paragraph 3 provides an example of the application of paragraph 2 and emphasize the limited scope of paragraph 3, highlighting that it neither establishes a remedy or prescribes its availability, nor limits the rights of the data provider under applicable law, including any right under the contract to require the data recipient to deliver up the data;

(f) Explain the concepts of “erasure” and “equivalent means”.

³² United Nations publication, Sales No. E.12.V.11.