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Report of Working Group IV (Electronic Commerce) on the work of its seventy-first session (Vienna, 5–9 October 2026)

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Contents

		Page
I.	Introduction	2
II.	Organization of the session	2
III.	Data provision contracts	3
	A. Introduction	3
	B. Article 2. Scope of application	3
	C. Article 13. Passive provision of data	10
	D. Articles 3 and 4	12
	E. Article 5. Obligation to provide the data	12
	F. Articles 6 and 7	13
	G. Article 8. Conformity of the data	13
	H. Article 9. Use of the data	13
	I. Article 10. Derived data	14
	J. Article 11. Common obligations of the data provider and data recipient	15
	K. Article 12. Non-performance	15
	L. Form of the instrument	15
IV.	Consolidation of UNCITRAL texts on electronic commerce and paperless trade	16
V.	Other business	16

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I. Introduction

1. At its seventy-first session, the Working Group advanced the finalization of its work on data provision contracts, as mandated by the Commission at its fifty-fifth session (A/77/17, para. 163), and held preliminary discussions on how to organize its work on the consolidation of UNCITRAL texts on electronic commerce and paperless trade, as mandated by the Commission at its fifty-ninth session (A/81/17, paras. 185 and 190).

II. Organization of the session

2. The Working Group, composed of all States members of the Commission, held its seventy-first session in Vienna from 5 to 9 October 2026.

3. The session was attended by representatives of the following States members of the Working Group: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Czechia, Dominican Republic, El Salvador, France, Germany, Greece, Hungary, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kuwait, Malaysia, Mexico, Morocco, Netherlands (Kingdom of the), Nigeria, Panama, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Thailand, Turkmenistan, Uganda, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

4. The session was attended by observers from the following States: Algeria, Costa Rica, Egypt, Guatemala, Honduras, Indonesia, Libya, Malta, Myanmar, Oman, Paraguay, Slovakia, Tajikistan, Tunisia, Uzbekistan and Zimbabwe.

5. The session was attended by observers from the European Union.

6. The session was attended by observers from the following international organizations:

(a) United Nations system: World Bank Group;

(b) Intergovernmental organizations: Eurasian Economic Union/Eurasian Economic Commission (EEU/EEC) and Gulf Cooperation Council (GCC);

(c) International non-governmental organizations: Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), American Law Institute (ALI), Beijing Arbitration Commission/Beijing International Arbitration Court (BAC/BIAC), Centro de Estudios de Derecho, Economia y Politica (CEDEP), China Council for the Promotion of International Trade (CCPIT), Conseil des Notariats de l'Union Européenne (CNUE), European Law Institute (ELI), Institute of Law and Technology, Faculty of Law, Masaryk University, International and Comparative Law Research Center (ICLRC), International Trademark Association (INTA), International Union of Notaries (UINL), Latin American Group of Lawyers for International Trade Law (GRULACI) and Shenzhen Court of International Arbitration (SCIA).

7. The Working Group elected the following officers:

Chair: Mr. Alan DAVIDSON (Australia)

Rapporteur: Ms. Ligia GONZÁLEZ LOZANO (Mexico)

8. The Working Group had before it the following documents:

(a) Annotated provisional agenda (A/CN.9/WG.IV/WP.194);

(b) Draft model legislative provisions on contracts for the provision of data (A/CN.9/WG.IV/WP.195); and

(c) Summary of informal intersessional consultations on the "passive" provision of data (A/CN.9/WG.IV/WP.196).

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9. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Data provision contracts.
5. Consolidation of UNCITRAL texts on electronic commerce and paperless trade.
6. Other business.
7. Adoption of the report.

III. Data provision contracts

A. Introduction

10. The secretariat introduced A/CN.9/WG.IV/WP.195 and explained that:

(a) Chapter II of the document contained a revised set of draft model legislative provisions reflecting the deliberations of the Working Group at its seventieth session (A/CN.9/1242, paras. 12–73), as well as a list of outstanding items for the Working Group to consider at the present session;

(b) Chapter III of the document outlined corresponding revisions to the draft explanatory note that had been before the Working Group at its seventieth session (A/CN.9/WG.IV/WP.193).

11. The secretariat also introduced A/CN.9/WG.IV/WP.196, which summarized the informal intersessional consultations held on 17–18 June 2026 on transactions involving the "passive" provision of data and identified some additional issues arising from those consultations for the Working Group to consider.

12. The Working Group heard that, at its fifty-ninth session, in 2026, the Commission had taken note of the advanced stage of work and had expressed an expectation that the Working Group would complete its work as expeditiously as possible and submit the text and accompanying explanatory note for finalization and adoption by the Commission at the latter's next session, in 2027 (A/81/17, para. 16). It was thus anticipated that, at the present session, the Working Group would finalize the text of the model legislative provisions and agree on its final form, then finalize the explanatory note at its next session on the basis of a revised draft to be prepared by the secretariat, which would align with the finalized text and incorporate any additional feedback received from the Working Group.

13. The Working Group agreed to consider articles 2 and 13 together before turning to the other outstanding items listed in paragraph 5 of A/CN.9/WG.IV/WP.195.

B. Article 2. Scope of application

1. General considerations

14. It was observed that discussions at the seventieth session on article 2(1) and 13(1) had exposed diverging views on several threshold questions which might be addressed by building flexibility into the application of the provisions, which would enhance the harmonization potential of the draft provisions. It was cautioned, however, that flexibility should not come at the expense of clarity, which was particularly important when defining the scope of application of the provisions.

15. There was broad support for the view that reintegrating the substance of article 13 into the other provisions of the text was not desirable, particularly at this

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late stage of the project (cf. A/CN.9/WG.IV/WP.196, paras. 43–47). Nevertheless, it was suggested that paragraph 1 of article 13 could be incorporated into article 2.

2. Paragraph 1

(a) "Contracts for the provision of data"

16. The Working Group considered whether to delete or to substitute the words "for the provision of data" as proposed in A/CN.9/WG.IV/WP.196 (paras. 37–42).[1] It was pointed out that the expression "contracts for the provision of data" could be interpreted as establishing a new type of contract for which the provision of data was the sole or at least the main object – or subject-matter – of the contract. It was added that such an implication was particularly apparent in certain language versions.

17. The view was expressed that the scope of application of the draft provisions should be limited along those lines. It was reasoned that such an approach avoided inadvertently applying the provisions to any contract under which data happened to be exchanged between the parties. This potentially encompassed all contracts that were formed or performed by electronic means. It was also pointed out that data was not provided outside the contract merely because it was not the subject of an obligation in the contract. The approach also clarified that the draft provisions did not harmonize matters outside a contractual setting, including extracontractual rights in data and data activities regulated by laws referred to in article 2(4), on which national laws could differ significantly, including on the characterization of data as an object of property rights.

18. Accordingly, support was expressed for retaining the words "for the provision of data". It was suggested that the words could be replaced by a new provision along the following lines: "These provisions shall not apply to a contract where the provision of data is only incidental to the principal subject-matter of the contract". It was observed that the balance of rights and obligations reflected in the draft provisions was calibrated to contracts where the provision of data was the primary part of the contract and the draft provisions were not adapted to contracts where the provision of data was a by-product or ancillary part thereof.

19. Another view was expressed that the draft provisions should be given a broad application. It was pointed out that legal certainty and the relevance and utility of the provisions would be reduced if a significant number of transactions that were important to the data economy were excluded from scope, including on the grounds that the provision of data was not the sole or main object of the contract.

20. Several proposals were put forward to achieve that result. One proposal was to refer to contracts "relating to" or "affecting" the provision of data. Another proposal was to shift the focus from the contract to the obligations of the data provider, such that the draft provisions applied where the data provider was under an obligation to provide data to the data recipient. It was added that this approach could include "mixed contracts", such as a contract under which a party provided a data set as well as an analysis of the data. A question was raised, however, as to whether this approach would sufficiently capture transactions involving the passive provision of data, for which it was not clear that the data provider could be said to be under an obligation to provide data, whether because the data provider merely allowed the data recipient to access the data, or because access to the data was merely a condition for the data recipient to perform the contract (e.g. provision of a digital service).

21. It was pointed out that a broader application did not necessarily mean that the provisions would apply to all transactions involving the exchange of data. It was suggested that this could be addressed by requiring the provision of data to be at least one of the objects of the contract, thus representing a sufficiently separable element

[1] Paragraph 1 of article 2 in A/CN.9/WG.IV/WP.195 read as follows: "These provisions apply to contracts [for the provision of data] 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."

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of the contract to which the draft provisions could be applied while leaving the other elements of the contract to be governed by other law. It was further suggested that the requirement for the provision of data to be a separable element of the contract could be complemented by a statement clarifying that the provisions only applied to that element, which would avoid the undesirable result, using the example given of a "mixed contract" (see para. 20 above), whereby the provisions on timing and conformity would be applied to the service component of the contract.

22. The Working Group heard other possible express exclusions from scope, including with respect to (a) data generated as a by-product of the performance of the contract, and (b) data provided as a necessary condition for the performance of the contract (see para. 19 above). It was also pointed out that a broader application did not foreclose other provisions that might prescribe the scope of application for particular transactions. For instance, it was suggested that a provision could be inserted to include so-called "data barter" transactions (i.e. transactions in which data was provided as counter-performance for the supply of goods or services) within scope, but subject only to the special rules for the passive provision of data.

23. Yet another view was expressed that the provisions should allow for enacting States to determine whether to apply the provisions to a broad or narrow range of transactions. This could be achieved by keeping the words "for the provision of data" in square brackets in the final version and inviting States wishing to retain those words to further delimit the contracts covered, whether by excluding "data barter" transactions or contracts for which the provision of data was a secondary or ancillary part of the contract. In response, it was suggested that the Working Group should strive to give those words meaning, as leaving the scope of application entirely in the hands of each enacting State would do little to achieve harmonization.

24. At the same time, it was noted that a model law was, by its nature, a recommendation to States and that some variation in its enactment was to be expected. The options presented in the footnotes to article 1 of the UNCITRAL Model Law on Electronic Commerce (MLEC) were given as an example.

25. The Working Group considered a proposal to provide two options for paragraph 1: under "option A", paragraph 1 would be retained without square brackets while "option B" would be the following:

> "These provisions apply to contracts where part of the contract is the provision of data by one party (the 'data provider') to another party (the 'data recipient'), whether or not with the involvement of a third party. These provisions do not apply where the obligation to provide data is incidental to the contract."

26. It was clarified that the options were alternatives for the enacting State from which to choose. Each option was intended to arrive at a similar endpoint albeit by different means: option A by relying on the implication that "contracts for the provision of data" referred to contracts for which the provision of data was at least the main object; option B by describing the provision of data as a "part" of the contract to which the draft provisions could be applied. It was explained that the term "part", which replaced "element", was borrowed from article 3(2) of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This prompted a question about the relationship between the draft provisions and the CISG as both texts could conceivably apply to the same contract. It was stressed that option B did not call for a relative assessment of the different parts of the contract but rather an assessment of whether the part involving the provision of data was separable. Support was expressed for referring to "all or part" of the contract in option B.

27. It was observed that both options were compatible with maintaining a list of express exclusions of scope. For option A, it was suggested that an exclusion could be formulated along the following lines:

> "There is no contract for the provision of data where the data is provided in exchange for, or as ancillary to, the provision of services other than data."

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28. It was suggested that the meaning of "incidental" in option B might need to be elaborated.

29. It was observed that, while UNCITRAL texts provided options for enacting States, it was highly unusual for them to present two alternative formulations for a scope of application provision. The Working Group was therefore encouraged to develop a single option. It was noted that both options shared common elements, although the view was challenged that both options shared the same endpoint. It was suggested that option A could be expanded to cover contacts where the provision of data was not merely the sole or main object of the contract but "an object" thereof. Several drafting proposals were put forward to use this as a starting point for constructing a singular provision, including by inserting "and whether or not as the sole object of the contract" at the end of paragraph 1. It was observed that the term "object" presupposed that the parties had turned their mind to the provision of data under the contract. At the same time, it was noted that the term carried a particular legal meaning in some legal systems and was thus susceptible to different interpretations. It was therefore suggested to use a different term. A further suggestion was made to focus not on the contract but on the obligations of the parties.

30. It was suggested that, whichever approach was taken, the Working Group should check that paragraph 1 covered the scenarios for the passive provision of data that were intended to be covered.

31. Another drafting proposal was to insert "and whether or not the preponderant part of the obligations of the data provider consists in the provision of data". It was explained that this proposal, which presumed the retention of the words "contracts for the provision of data", also borrowed wording from article 3(2) of the CISG, although it was conceded that that provision served a different purpose. Concerns were expressed that a "preponderant part" analysis focused only on the data provider's obligations, while a characterization exercise to identify the object of a contract looked at the contract as a whole. The proposal, therefore, might do little to counteract the effect of the words "contracts for the provision of data" and thus not alleviate the limitation on scope that was implicit in those words.

32. Yet another proposal, which received broad support, was to delete the words "contracts for the provision of data" and insert "where the provision of data is the sole, main or at least one of the objects of the contract" before "whether or not with the involvement of a third party". It was explained that, as proposed, paragraph 1 would require the provision of data to be an object of the contract but did not mandate an exercise to characterize the whole contract. It was noted that the provisions would thus cover mixed contracts but not every contract that happened to involve data flows. They would also accommodate "data barter" and data pooling arrangements. The importance of such arrangements, and avoiding discrimination between different business models, was emphasized.

33. It was observed that, if a different term than "object" could not be found, it would be critical for the explanatory note to give the term meaning, so much so that the Working Group might not be in a position to finalize the text without having before it a revised explanatory note. A suggestion was made to substitute "subject" for "object". It was explained that the object of the contract was what the contract was about, its characteristic performance. It was observed that the object of a contract was not to be confused with the "objective" of the contract and was to be discerned from the terms of the contract rather than the parties' motivations or expectations in concluding the contract. It was noted that the operative provisions of the text also gave meaning to the term in that they already presupposed a particular type of transaction that should be mirrored in the scope of application provision.

34. The Working Group agreed to proceed on the basis of the following revised text, on which a final decision would be taken at its next session:

> "These provisions apply to contracts under which one party (the 'data provider') provides data to another party (the 'data recipient'), where the provision of data

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is the sole, main or at least one of the objects of the contract, whether or not with the involvement of a third party."

(b) Express exclusions from scope

35. The Working Group continued its consideration of possible exclusions from scope. Comparing the two exclusions put forward earlier in the session (para. 22 above), it was observed that the first exclusion (data generated as a by-product) was concerned with performance by the putative data provider of the contract and thus the provision of data in the same direction. It was suggested that the provision of data in that scenario could be described as "incidental" to that performance. Conversely, the second exclusion (data as a necessary condition for performance) was concerned with performance by the putative data recipient of the contract and thus the provision of data in the opposite direction, as well as performance of any other contract, whether or not with the data provider. It was observed that the scenario would encompass the supply of goods or services where the provision of data could be described as "necessary" for that performance.

36. In support of these exclusions, it was observed that applying the provisions to a minor data element inherent in a connected device could create uncertainty regarding the interaction of rules on conformity of data and of goods. It could also confer extensive rights on the data recipient and create contractual imbalance. It was further observed that a user providing data merely to enable a connected device to function should not incur additional obligations without receiving any additional economic benefit. Such a scenario was distinguished from one in which the user concluded a separate contract to provide access to data generated by the device in exchange for some additional service or value. It was suggested that these justifications and clarifications should be included in the explanatory note.

37. It was recalled that other drafting proposals had been put forward during the session that sought to exclude the "incidental" provision of data and it was queried whether an express exclusion from scope for such transactions was needed as they were clearly not covered by paragraph 1. It was suggested therefore that the first of the two exclusions proposed might not be taken up.

38. As for the second exclusion, a question was raised as to the line between a transaction where the provision of data was necessary for the functioning of goods or services, which would be excluded from scope, and "data barter" transactions. In response, it was noted that, in the latter transaction, the data provider received an economic benefit for providing the data, although it was conceded that the line between the two types of transactions might not always be clear. To avoid difficulties, it was suggested that, rather than include the express exclusion from scope as proposed, the operative provisions of the text could be reviewed to ensure that they did not apply to such transactions, or applied in a manner that avoided the concerns raised.

39. It was pointed out that the exclusions from scope considered so far were about particular types of data transactions. It was added that paragraph 2 was concerned with excluding particular types of data and was based on the ALI/ELI Principles, which explained the focus in that paragraph on the "purpose of the data". It was suggested that paragraph 2 should logically be moved to article 1 as it was more a matter of the definition of "data". It was noted that the suggestion could be taken up in the next revision.

40. The Working Group heard a revised proposal to combine elements of both exclusions (i.e. the two exclusions in para. 22 above) into a single provision:

"These provisions do not apply where the absence of data provision would prevent the supply of a service or a functioning of a good."

41. The new provision was stated to cover scenarios where the provision of data was inherent, incorporated or interconnected with another contract performance,

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including data processing services. While there was general support for this position, concerns were expressed about the provision:

(a) In substance, the provision was not an exception to paragraph 1 (as revised), but a clarification of its operation. It was thus better suited to the explanatory note. Inserting it into article 2 inferred that such transactions would otherwise be covered by paragraph 1 and that the provision of data could be an object of the contract even though it played no stand-alone economic role in the contract so as to form a separable part thereof;

(b) The text was open to interpretation. It was suggested to refer to "proper" functioning, but even then, the text might unnecessarily engage product compliance regimes;

(c) The text might not keep pace with evolving business practices in the supply of data-enabled goods and services.

42. As an alternative, it was proposed to include the following provision, drawing on examples in other UNCITRAL model laws: "These provisions do not apply to the following […]". In response, it was noted that such examples were aimed at excluding particular types of transactions from specific provisions rather than limiting the scope of application of the text itself. The Working Group did not take up the proposal.

43. The Working Group agreed to place the text of the proposed new provision in square brackets for further consideration when finalizing paragraph 1 and to refer to "proper" functioning. It was agreed to retain an express exclusion for the "incidental" provision of data along the lines put forward during the session (see para. 18 above).

44. With regards to the geographic scope of application, it was noted that the provisions applied to both domestic and international contracts and that such an approach was appropriate in the data economy.

3. Paragraph 2

45. No comments were received on paragraph 2 in A/CN.9/WG.IV/WP.195 (noting para. 39 above).

4. Paragraph 3

46. There was support for deleting paragraph 3 in favour of relying on paragraph 4 to address concerns regarding consumer contracts. Views regarding the desirability and feasibility of excluding consumer contracts were reiterated (cf. A/CN.9/1241, paras. 33–36). It was pointed out that the concept of a "consumer" under national law did not always apply a purposive test and that paragraph 4 deferred to national law in identifying the laws "on matters related to … the protection of consumers". Support was also expressed for inserting a footnote to article 2 that indicated that enacting States might wish to exclude consumer contracts, similar to the approach taken in article 1 of the MLEC. Support was also expressed for retaining paragraph 3 and it was said that applying the provision in the context of data transactions did not pose any unique or insurmountable difficulties.

47. A compromise approach was to exclude consumer data providers under the general rules and consumer data recipients under passive data provision, expressed in the following drafting suggestion:

(a) Data providers acting for personal, family or household purposes except if they are data providers in a contract for the passive provision of data according to Article 13; and

(b) Data recipients acting for personal, family or household purposes in a contract for the passive provision of data according to Article 13.

48. It was suggested that this approach allowed consumers to benefit from the provisions while avoiding excessively burdensome obligations. In response, it was suggested that the draft provisions should avoid equating the passive provision of data

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with the protection of consumers. The view was also expressed that the special rules should not apply at all where the data provider was a consumer. Support was expressed for the compromise approach, which, it was observed, could serve as a basis for achieving consensus.

49. It was advocated that the Working Group should defer further consideration of paragraph 3 until after the contents of the other provisions and their application to the passive provision of data were more settled (A/CN.9/1241, para. 36). At the same time, it was noted that agreement on paragraph 3 – and article 2 generally – was necessary for the Working Group to properly consider the special rules in article 13.

50. The Working Group returned to the proposal to insert a footnote to article 2 (see para. 46 above). It was said that the Working Group should not take such an "opt-out" approach without first determining whether the provisions were suitable for consumer contracts. It was responded that the footnote would not imply that the Working Group had made such a determination, but that it deferred such a determination to enacting States. Proposals to apply an "opt-in" approach and to include the earlier compromise approach (para. 47 above) as an alternative in the footnote were not taken up, although support was expressed for the suggestion to address the possibility of a partial exclusion and the reasons therefor in the explanatory note.

51. After discussion, the Working Group agreed to delete paragraph 3 and to insert the footnote as proposed.

5. Paragraph 4

52. Broad support was expressed for retaining the first sentence of paragraph 4[2] and thus to remove the square brackets. Support was also expressed for a proposal to insert the words "with respect to the provision of data" at the end of the sentence, although it was observed that, as a result, the sentence addressed two different issues – i.e. (i) the scope of rights and obligations governed by the draft provisions, and (ii) the legal effect of the draft provisions – which might better be addressed in separate paragraphs. It was observed that one effect of paragraph 4 was that the draft provisions did not address property rights in the data, where recognized under applicable law. It was added that, as a result of the proposed amendment to the first sentence, another effect was to reinforce the minimum threshold requirement that the provision of data represent a separable part of the contract.

53. It was suggested that the second sentence of paragraph 4[3] should expressly apply to any rule of law "not specifically addressed by these provisions", although it was observed that such an amendment could be interpreted as providing that the provisions prevailed over mandatory law to the extent of any inconsistency, thus reversing the position currently reflected in the draft. General support was expressed for including a third sentence on the application of the rules to the data part and preserving the application of other rules of contract law to contracts or parts of contracts not involving data, although it was observed that such a provision should be combined with the first sentence in a separate provision. It was added that the provisions should avoid classifying those other rules as rules relating to the sale of goods or provision of services.

54. An alternative proposal was put forward to leave the first and second sentences of paragraph 4 as drafted and instead insert a new provision that more explicitly confined the application of the provisions to data-related parts of the contract, and affirmed the continued application of other laws to the other parts of the contract. A

[2] The first sentence of paragraph 4 of article 2 in A/CN.9/WG.IV/WP.195 read as follows: "[These provisions govern only the rights and obligations of the data provider and the data recipient arising from the contract.]"

[3] The second sentence of paragraph 4 of article 2 in A/CN.9/WG.IV/WP.195 read as follows: "Nothing in these provisions affects 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."

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question was raised as to whether it was appropriate to refer to "part", noting that the term was now not used in the revised paragraph 1 (see para. 34 above). It was suggested that "terms of the contract" or "rights and obligations of the parties" might be preferable. In response, it was suggested that the choice between these terms was a drafting matter. It was suggested that the new provision could be cast as a new paragraph separating the first and second sentences of paragraph 4.

55. The alternative proposal received broad support and the Working Group agreed to proceed with its consideration of paragraph 4 on the basis of the following revision:

> "4. These provisions govern only the rights and obligations of the data provider and the data recipient arising from the contract.
>
> 5. These provisions only apply to the parts of the contract concerning the provision of data. Other parts of the contract are governed by specific rules applicable to those contracts.
>
> 6. Nothing in these provisions affects 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."

56. It was also suggested that the substance of the text proposed for inclusion as a third sentence of paragraph 4 be retained in the explanatory note. It was observed that a clarification expressly recognizing the possible residual application of laws relating to the sale of goods or supply of services to those parts of the contracts not involving data could assist in explaining the treatment of mixed contracts and the relationship between the draft provisions and other applicable law.

57. It was noted that, if its application were not confined to rules of law "not specifically addressed by these provisions" as proposed (see 53 above), the second sentence of paragraph 4, now paragraph 6, could be interpreted as preserving the application of domestic law rules governing data transactions even where the draft provisions addressed the same issues. It was added that such an interpretation could create uncertainty regarding the relationship between the draft provisions and existing legislation and might hinder the enactment of the provisions or hamper their operation once enacted. It was suggested that this concern might be alleviated by specifically referring to "mandatory" rules of law. It was recalled, however, that the existing drafting reflected a formulation commonly used in UNCITRAL texts.

C. Article 13. Passive provision of data

1. General considerations

58. It was recalled that the passive provision of data was first introduced as a "mode of provision" in article 6 and thus treated among the core transactions covered by the draft provisions. It was added that the focus had since shifted to treating the passive provision of data as a special type of transaction warranting special treatment and it was important to establish a common understanding of the underlying policy objective of article 13. It was observed that the policy objective was to establish a "lighter" regime that was proportionate to the role played by the parties in the transaction, which promoted the flow of data and was economically significant. It was emphasized that article 13 did not impose a new obligation to provide data where such obligation did not exist under the contract, nor mandate the existence of a contract that otherwise did not exist. It was reiterated that article 13 was not designed to protect the data provider, nor did it presuppose that the data provider was a consumer. It was added that article 13 could be seen as addressing imbalance between the parties in terms of technical – not economic – means.

59. The link between article 13 and article 2(1) was recalled and the view was expressed that the two provisions were coherent in the present draft.

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2. Paragraph 1

60. It was observed that the chapeau[4] should make it clear that paragraph 1 was concerned with defining the concept of "passive" provision. A proposal was thus put forward to return to the previous formulation with some revisions as follows: "For the purposes of this article, the provision of data is under a contract for the passive provision of data if". Support was expressed for the proposal.

61. Different views were expressed regarding subparagraph (b).[5] On one view, it should be deleted in its entirety. On another view, the first part of the subparagraph should be retained as it helpfully described the object of the transaction. On yet another view, the subparagraph should be retained as it complemented a limited scope of application for the provisions. Alternatively, it was suggested to replace the second part of the subparagraph with the words in footnote 27 of A/CN.9/WG.IV/WP.195, which would avoid applying the rules to transactions that did involve a contract for the provision of data or for which it was inappropriate to apply the obligations in paragraph 2.

62. Several proposals were heard to amend the remaining subparagraphs.

63. It was proposed that subparagraph (a)[6] be reformulated as follows: "The data provider authorizes or provides access to the data or the data source by the data recipient". It was observed that, as such, the provision avoided the term "means", which did not carry a clear meaning. In response, it was observed that the reference to "means" should be retained, as reflected in the compromise proposal developed at the sixty-ninth session (A/CN.9/1241, para. 41).

64. The meaning of the term "authorize" was also queried. It was observed that "authorization" did not necessarily imply an obligation and should not be equated with the provision of data without more on the part of the data provider to make the data available to the data recipient. It was also observed that the wording in subparagraph (a) was complemented in other provisions, including article 5 and article 13(2), and should not be amended without considering the consequences for those other provisions. Support was expressed for retaining the subparagraph as drafted.

65. It was suggested that, to reinforce the focus of article 13 on the technical imbalance between the parties, a provision should be inserted that safeguarded the technical sphere of the data provider. Accordingly, it was proposed to supplement subparagraph (a) with the following: "The data provider may refuse any request by the data recipient to modify the technical means integrated into the technical systems of the data provider. If, as a result of such refusal, the contractual obligation at hand can no longer be performed, either party may terminate the contract". Support was expressed in principle for the proposal, which demonstrated that the provision of data was not always such that non-performance would occasion a breach of contract but rather produce other legal consequences, such as a right to terminate.

66. With respect to subparagraph (c),[7] it was proposed to replace the word "control" with a higher threshold, such as "comprehensive" or "complete" control. Alternatively, it was suggested to revert to a requirement that the data provider gave no guarantee as to the quantity or quality of the data.

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[4] The chapeau of paragraph 1 of article 13 in A/CN.9/WG.IV/WP.195 read as follows: "This article applies to the contract if".

[5] Paragraph 1(b) of article 13 in A/CN.9/WG.IV/WP.195 read as follows: "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]".

[6] Paragraph 1(a) of article 13 in A/CN.9/WG.IV/WP.195 read as follows: "The data recipient provides the means to access the data under the contract".

[7] Paragraph 1(c) of article 13 in A/CN.9/WG.IV/WP.195 read as follows: "The data provider does not have control over the quantity or quality of the data".

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67. It was also suggested that a new subparagraph be inserted as follows: "In light of the passive nature of the data provider's conduct under the contract, the data provider cannot reasonably be expected to undertake certain responsibilities". It was explained that the new subparagraph drew on Principle 10 of the "Principles for a Data Economy" jointly developed by the American Law Institute and the European Law Institute ("ALI/ELI Principles") and provided a useful clarification of the overall objective of maintaining special rules on the passive provision of data. In response, it was questioned whether a transaction involving the passive provision of data should be defined by reference to the conclusion of what "cannot reasonably be expected" that flowed from the transaction meeting factors set out elsewhere. It was also questioned whether it was sufficient to invoke Principle 10 of the ALI/ELI Principles given that the special rules for the passive provision of data in article 13 already departed substantially from Principle 10, particularly insofar as it imposed an obligation not to impede access to data under paragraph 2(b). A concern was raised that the proposed wording of the new subparagraph was too vague and that it would suffice to address the issue in the explanatory note. It was added that the provision was more relevant to paragraph 3. Conversely, support was expressed for the proposed subparagraph as it established a flexible standard that was well-suited to evolving industry practices.

3. Paragraph 2

68. Support was expressed for deleting subparagraph (b).[8] It was observed that, notwithstanding the deletion, an obligation not to impede access could be said to arise from the duty to cooperate under article 11(1), which continued to apply. Another view was to retain it.

4. Paragraph 3

69. It was proposed that article 11(2) should also be disapplied, particularly in view of the amendments introduced thereto at the seventieth session (A/CN.9/1242, para. 29). It was anticipated that the provisions listed in paragraph 3 might need to be revisited if amendments were made to other provisions, notably article 5. Questions were also raised about the continued application of articles 5 and 9 to 12.

D. Articles 3 and 4

70. No comments were received on articles 3 and 4 in A/CN.9/WG.IV/WP.195.

E. Article 5. Obligation to provide the data

71. The Working Group agreed to retain the words "and providing any information necessary to access the data" in paragraph 2 (without square brackets).[9] Such an obligation, it was observed, complemented articles 6(2)(b) and (3) and was consistent with article 9.

72. Views differed on referring to "use" instead of – or in addition to – "access". It was explained that information to use the data included metadata, documentation, data models and domain tables, as well as information on third-party rights. While providing information was helpful, it placed a considerable burden on the data provider that was not appropriate for transactions involving the passive provision of data. Moreover, an obligation to provide such information could already derive from the general duty to cooperate in article 11(1).

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[8] Paragraph 2(b) of article 13 in A/CN.9/WG.IV/WP.195 read as follows: "The data provider shall: […] (b) Not impede that access."

[9] Article 5(2) in A/CN.9/WG.IV/WP.195 read as follows: "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]."

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F. Articles 6 and 7

73. No comments were received on articles 6 and 7 in A/CN.9/WG.IV/WP.195.

G. Article 8. Conformity of the data

74. The Working Group agreed to delete "impliedly" in paragraph 2(b).[10] While such words served a protective function, requiring the data to be fit for particular purposes "impliedly" made known was unrealistic in the data economy.

75. The Working Group agreed to retain the words "or in accordance with representations made by the data provider with respect to the data before the conclusion of the contract" in paragraph 2(c) (without square brackets).[11] It was explained that "representations" was a broad term that covered public statements. It was suggested that the explanatory note clarify that, while the provision was concerned with representations made at the time the contract was concluded, the parties remained free to modify data conformity expectations during the term by mutual agreement.

76. The Working Group agreed to insert the following at the end of paragraph 3(b): "In case the data is not free of such rights, the data provider shall inform the data recipient thereof". It was noted that the meaning of the expressions "right or claim of a third party" and "impede" were elaborated in the draft explanatory note (A/CN.9/WG.IV/WP.193, para. 55), based on which paragraph 3(b) would ordinarily apply to limitations on the use of the data. It was explained that locating the new sentence in article 8 meant that the obligation to inform was disapplied to transactions involving the passive provision of data under article 13(3), which was the desirable outcome. The secretariat was nevertheless invited to consider the location of the new sentence within these limits.

77. The Working Group agreed to retain "origin" and "coherence" in paragraph 4(a) (without square brackets) and to delete "availability".[12]

78. The Working Group agreed to retain paragraph 5 (without square brackets).[13]

H. Article 9. Use of the data

79. It was proposed to limit paragraph 2[14] to use of the data by the data recipient itself, and to circumstances in which the data recipient knew or could not have been

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[10] Paragraph 2(b) of article 8 in A/CN.9/WG.IV/WP.195 read as follows: "In addition, and unless otherwise agreed by the parties, the data provider shall provide the data that: […] (b) Is fit for any particular purpose expressly [or impliedly][10] 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".

[11] Paragraph 2(c) of article 8 in A/CN.9/WG.IV/WP.195 read as follows: "In addition, and unless otherwise agreed by the parties, the data provider shall provide the data that: […] (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]."

[12] Paragraph 4(a) of article 8 in A/CN.9/WG.IV/WP.195 read as follows: "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,] coherence, accuracy and currency, as well as the format and structure of the data".

[13] Paragraph 5 of article 8 in A/CN.9/WG.IV/WP.195 read as follows: "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."

[14] Paragraph 2 of article 9 in A/CN.9/WG.IV/WP.195 read as follows: "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."

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unaware of the relevant rights. It was explained that the paragraph was originally intended to cover the downstream use of the data, but it was observed that it was unreasonable to impose an obligation on the data recipient as currently formulated. It was also proposed to limit paragraph 2 to rights that were known at the time of contract conclusion. After discussion, the Working Group agreed to reformulate the paragraph as follows: "The data recipient shall not use the data in a manner that infringes any right of the data provider or of a third party with respect to the use of the data of which, at the time of the conclusion of the contract, the data recipient knew or could not have been unaware".

80. It was explained that paragraph 3 [15] was originally intended to protect the interests of the data provider and to establish a mutuality of obligations between the parties under default rules. It was nevertheless observed that the current wording of the paragraph was unclear and that, in any event, the terms for using the means provided by the data provider would be specified in the contract. As such, the paragraph was said to be unnecessary and could be seen to intrude on party autonomy. Support was expressed for retaining the paragraph as drafted and for deleting it entirely. As a compromise, it was suggested to refer to the data provider "limiting" the means of use. The Working Group agreed to reformulate paragraph 3 along the following lines: "If the data provider limits the means to use the data under the contract, the data recipient shall comply with those limits". It was suggested that examples of relevant scenarios could be provided in the explanatory note.

81. It was recalled that the Working Group had not taken up a proposal to establish a default rule where the data recipient was entitled to use the data only for a limited period of time specified in the contract (A/CN.9/1241, para. 71). It was suggested that what this meant for the use of the data beyond such limited period of time, including erasure of the data by the data recipient, could be elaborated in the explanatory note, notably in remarks on paragraph 1(b).

I. Article 10. Derived data

82. Views were expressed for and against the proposal to revise the chapeau of paragraph 3 (A/CN.9/WG.IV/WP.195, paragraph 5(k)). With respect to the grounds in subparagraphs (a) and (b), it was observed that advancements in technology could enhance the ability for data to be reverse engineered or to serve as a substitute and that this could have unintended consequences for the scope of the requirement that the derived data be "sufficiently distinct" under paragraph 2(b). Accordingly, it was suggested that subparagraphs (a) and (b) of paragraph 3 should be deleted or qualified in terms of time and state of technology, including by:

(a) Inserting the following at the beginning of paragraph 3(a): "within certain time, range and technical conditions"; and

(b) Inserting the word "direct" before "substitute" in paragraph 3(b).

83. In response, it was suggested that the paragraph should be retained. It was also said that no change was necessary to clarify that paragraph 3 did not prejudice paragraph 2(b) and that this could be clarified in the explanatory note. It was suggested that the proposed insertions in paragraphs 3(a) and 3(b) could be included in square brackets for further consideration.

[15] Paragraph 3 of article 9 in A/CN.9/WG.IV/WP.195 read as follows: "If the data provider provides the means to use the data under the contract, the data recipient shall use the data by those means."

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

84. In response to the issue listed in paragraph 5(l) of A/CN.9/WG.IV/WP.195, it was proposed to insert in paragraph 1 the words "with respect to the provision of data" before "under the contract".[16] In response it was observed that this specification was redundant, particularly in view of new article 2(5) (see para. 55 above). On the basis that the inserted words added clarity, the Working Group agreed to the proposal.

85. In response to the issue listed in paragraph 5(m) of A/CN.9/WG.IV/WP.195, to reduce restrictions, it was suggested to delete paragraph 2 or to amend it along the following lines:

(a) "Where a party becomes aware of a data breach affecting the provision of data, it shall notify the other party without undue delay".

(b) "Where a party become aware of a breach of provided data affecting the provision of data, it shall notify the other party without undue delay".

86. Due to time constraints, the Working Group agreed to defer further consideration of article 11 to its next session.

K. Article 12. Non-performance

87. No comments were received on article 12 in A/CN.9/WG.IV/WP.195.

L. Form of the instrument

88. The Working Group recalled its earlier discussions on the form of the text (A/CN.9/1241, paras. 74–77) and heard a further exchange of views. It was explained that the choice between model law, model legislative provisions and legislative guide depended on the degree of confidence that harmonization could be achieved.

89. In favour of a model law, it was said that the text constituted a coherent and interconnected set of provisions befitting a model law, while "model legislative provisions" signalled that the provisions could be implemented selectively.

90. In favour of model legislative provisions, it was observed that States did not generally maintain dedicated laws on data provision contracts and that a wide variety of techniques could be expected to incorporate the provisions into domestic law. It was observed that the absence of domestic law was no obstacle to opting for a model law. It was added that model legislative provisions had the same legislative quality as model laws and that the choice between the two instruments was ultimately one of presentation not substance.

91. In favour of a legislative guide, it was noted that a "softer" law text was more appropriate given the continuing discussions on scope. It was observed that legislative guides generally identified and analysed alternative legislative approaches and produced recommendations without formulating precise legislative provisions. A legislative guide would thus require significant additional work.

92. The Working Group agreed to defer a final decision to its next session and asked the secretariat to prepare a revised version of the text, in the form of a model law, for finalization at its next session, together with a revised and expanded explanatory note in the form of a guide to enactment.

[16] Paragraph 1 of article 11 in A/CN.9/WG.IV/WP.195 read as follows: "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."

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IV. Consolidation of UNCITRAL texts on electronic commerce and paperless trade

93. The Working Group welcomed its new mandate (para. 1 above) to review and develop a consolidation of UNCITRAL texts on electronic commerce, based on an outline prepared by the secretariat (A/CN.9/1263, chap. IV), and to consider issues on paperless trade in conjunction with that work.

V. Other business

94. The Working Group was informed of the decision of the Commission at its fifty-ninth session to advance work on a number of other topics related to electronic commerce that had been brought to the attention of the Working Group at its sixty-ninth and seventieth sessions (A/CN.9/1241, para. 80; A/CN.9/1242, para. 74).

95. In particular, it heard that the Commission had agreed to hold a joint session with the Hague Conference on Private International Law (HCCH) to address three of those topics – i.e. secured transactions involving digital assets, digital platforms and private law, and digital payments – as well as work of HCCH on central bank digital currencies (CBDCs) and digital tokens. It was noted that:

(a) The joint session would be held in two parts, with the first part hosted by the UNCITRAL secretariat at the Vienna International Centre (9–12 November 2026) and the second part hosted by the Permanent Bureau of HCCH in The Hague (19–22 January 2027);

(b) Invitations to the first part had been sent to member States of UNCITRAL and observer States, international governmental and non-governmental organizations invited to attend UNCITRAL sessions, and individual experts.

96. The Working Group was also informed of cooperation between the UNCITRAL secretariat and the European Law Institute to develop model contractual terms on automated contracting, which would complement the UNCITRAL Model Law on Automated Contracting.

97. Support was expressed for informal consultations before the next session, particularly on the explanatory note. It was recalled that such consultations should be hosted by the secretariat, be inclusive and involve no decision-making, with their results reported to the Working Group. It was added that such consultations could involve receiving written input on the draft explanatory note from experts.

98. The Working Group was informed of the decisions of the Commission allowing working groups to use the final meeting of their sessions for substantive discussions and to adopt the report of the session by a written procedure (A/77/17, para. 36; A/78/17, para. 219). Divergent views were expressed as to whether the Working Group should apply this procedure for the present session to achieve the timely finalization of its work. Ultimately, the Working Group agreed to further consider the option to maximize the use of available meeting time at future sessions.

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