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UNITED NATIONS COMMISSION  
ON INTERNATIONAL TRADE LAW  
Working Group on  
Electronic Data Interchange  
Twenty-fifth session  
New York, 4-15 January 1993

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Outline of possible rules  
on the legal aspects of  
electronic data interchange (EDI)
4. Other business
5. Adoption of the report

Notes on the provisional agenda

At its twenty-fourth session, in 1991, the Commission was agreed that the legal issues of electronic data interchange (EDI) would become increasingly important as the use of EDI developed and that the Commission should undertake work in that field. <sup>1/</sup> The Commission was agreed that, given the number of issues involved, the matter needed detailed consideration by a Working Group. Pursuant to that decision, the Working Group on International Payments devoted its twenty-fourth session to identifying and discussing the legal issues arising from the increased use of EDI.

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<sup>1/</sup> Report of the United Nations Commission on International Trade Law on the work of its twenty-fourth session, Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17 (A/46/17), paras. 306-317.

At its twenty-fifth session, in 1992, the Commission had before it the report of the Working Group on International Payments on the work of its twenty-fourth session (A/CN.9/360). As requested by the Commission, the report contained recommendations for future work by the Commission with respect to the legal issues of EDI. The report suggested that any future work by the Commission in the field should be aimed at facilitating the increased use of EDI. The report also noted that the deliberations of the Working Group had made it clear that there existed a need for legal norms to be developed in the field of EDI. The report further suggested that the review of legal issues arising out of the increased use of EDI had also demonstrated that among those issues some would most appropriately be dealt with in the form of statutory provisions. Examples of such issues included: formation of contracts; risk and liability of commercial partners and third-party service providers involved in EDI relationships; extended definitions of "writing" and "original" to be used in an EDI environment; and issues of negotiability and documents of title (*ibid.*, para. 129).

The report also suggested that other issues arising from the use of EDI were not ready for consideration in the context of statutory provisions and would require further study or further technical or commercial developments. While it was generally felt by the Working Group that it was desirable to seek the high degree of legal certainty and harmonization provided by the detailed provisions of a uniform law, it was also felt that care should be taken to preserve a flexible approach to some issues where legislative action might be premature or inappropriate. As an example of such an issue, it was stated that it might be fruitless to attempt providing legislative unification of rules on evidence applicable to EDI messaging. It was stated in the report that, on some such issues, the Commission might deem it appropriate to undertake the preparation of legal rules, legal principles or recommendations (*ibid.*, para. 130).

The Working Group recommended that the Commission should undertake the preparation of legal norms and rules on the use of EDI in international trade. The Working Group was agreed that such norms and rules should be sufficiently detailed to provide practical guidance to EDI users as well as to national legislators and regulatory authorities. The Group also recommended that the Commission, while it should aim at providing the greatest possible degree of certainty and harmonization, should not, at that stage, make a decision as to the final form in which those norms and rules would be expressed (*ibid.*, para. 131).

As regards the possible preparation of a standard communication agreement for world-wide use in international trade, the Working Group was agreed that, at least currently, it was not necessary for the Commission to develop a standard communication agreement. However, the Working Group noted that, in line with the flexible approach recommended to the Commission concerning the form of the final instrument, situations might arise where the preparation of model contractual clauses would be regarded as an appropriate way of addressing specific issues (*ibid.*, para. 132).

The Working Group reaffirmed the need for close cooperation between all international organizations active in the field. It was agreed that the Commission, in view of its universal membership and general mandate as the core legal body of the United Nations system in the field of international trade law, should play a particularly active role in that respect (*ibid.*, para. 133).

At its twenty-fifth session, the Commission expressed its appreciation for the work accomplished by the Working Group. In line with the suggestions of the Working Group, the Commission was agreed that there existed a need to investigate further the legal issues of EDI and to develop practical rules in that field. It was agreed, along the lines suggested by the Working Group, that no decision should be taken at this early stage as to the final form or the final content of the legal rules to be prepared by the Commission. In particular, it was agreed that, while some issues would most appropriately be dealt with in the form of statutory provisions, other issues might more appropriately be dealt with through model contractual clauses.

After discussion, the Commission endorsed the recommendation contained in the report of the Working Group (*ibid.*, paras. 129-133) and entrusted the preparation of legal rules on EDI to the Working Group on International Payments, which it renamed the Working Group on Electronic Data Interchange. <sup>2/</sup>

The Working Group is composed of all States members of the Commission. These are:

Argentina, Austria, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Morocco, Nigeria, Poland, Russian Federation, Saudi Arabia, Singapore, Spain, Sudan, Thailand, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

Item 1. Election of officers

The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Outline of possible rules on the legal aspects of electronic data interchange (EDI)

The Working Group will have before it a note by the Secretariat containing an outline of possible rules on the legal aspects of EDI (A/CN.9/WG.IV/WP.55). The Working Group may wish to use the note as a basis for its deliberations.

The following documents will be made available at the session:

(a) Report of the Secretary-General on the Legal Value of Computer Records (A/CN.9/265);

(b) Report of the Secretary-General on Electronic Data Interchange - Preliminary study of legal issues related to the formation of contracts by electronic means (A/CN.9/333);

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<sup>2/</sup> Report of the United Nations Commission on International Trade Law on the work of its twenty-fifth session, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17), paras. 140-148.

(c) Report of the Secretary-General on Electronic Data Interchange (A/CN.9/350);

(d) Note by the Secretariat discussing possible issues to be included in the programme of future work on the legal aspects of EDI (A/CN.9/WG.IV/WP.53);

(e) Report of the Working Group on International Payments on the work of its twenty-fourth session (A/CN.9/360).

**Item 5. Adoption of the report**

The Working Group may wish to adopt, at the close of its session, a report for submission to the twenty-sixth session of the Commission (to be held from 5 to 23 July 1993 at Vienna).

**Meetings**

The session of the Working Group will take place from 4 to 15 January 1993 at the United Nations Headquarters, New York. No meeting will be scheduled for Thursday, 14 January, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 10:00 to 13:00 and from 15:00 to 18:00, except on Monday, 4 January 1993, when the session will commence at 10:30 am.