

**B. Working paper submitted to the Working Group on Electronic Data Interchange at its twenty-eighth session: newly revised draft model statutory provisions on legal aspects of electronic data interchange (EDI) and related means of trade data communication: articles 1-10: note by the Secretariat**  
**(A/CN.9/WG.IV/WP.62) [Original: English]**

CONTENTS

	<i>Page</i>
INTRODUCTION .....	138
I. DRAFT MODEL STATUTORY PROVISIONS ON THE LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF DATA COMMUNICATION .....	139
CHAPTER I. GENERAL PROVISIONS .....	139
Article 1. Sphere of application .....	139
Article 2. Definitions .....	139
Article 3. Interpretation of the model statutory provisions .....	139
Article 4. [deleted] .....	140
[Article 5. Variation by agreement] .....	140
CHAPTER II. FORM REQUIREMENTS .....	140
Article 5 <i>bis</i> . .....	140
Article 6. [Functional equivalent] [Requirement] of "writing" .....	140
Article 7. [Functional equivalent] [Requirement] of "signature" .....	140
Article 8. [Functional equivalent] [Requirement] of "original" .....	140
Article 9. Admissibility and evidential value of a data [record] .....	140
CHAPTER III. COMMUNICATION OF DATA [RECORDS] .....	141
Article 10. [Effectiveness] [Obligations binding on the originator] of a data [record] .....	141

INTRODUCTION

1. Pursuant to a decision taken by the Commission at its twenty-fourth session,<sup>1</sup> in 1991, the Working Group on International Payments devoted its twenty-fourth session to identifying and discussing the legal issues arising from the increased use of electronic data interchange (EDI). The Working Group recommended that the Commission should undertake the preparation of legal rules on the use of EDI in international trade (A/CN.9/360, paras. 129-133).

2. The Commission, at its twenty-fifth session, in 1992, endorsed that recommendation 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>

3. The Working Group on Electronic Data Interchange devoted its twenty-fifth to twenty-seventh session to the preparation of uniform rules on the legal aspects of EDI (reports of those sessions are found in A/CN.9/373, A/CN.9/387 and A/CN.9/390). The work has been carried out on the basis of background working papers prepared by the Secretariat on

possible issues to be included in the uniform rules (A/CN.9/WG.IV/WP.53 and A/CN.9/WG.IV/WP.55). The draft articles of the uniform rules, which the Working Group decided should be prepared in the form of statutory provisions, were presented by the Secretariat in A/CN.9/WG.IV/WP.57 and A/CN.9/WG.IV/WP.60).

4. At its twenty-seventh session, in 1994, the Commission had before it the reports of the Working Group on the work of its twenty-sixth and twenty-seventh sessions (A/CN.9/387 and A/CN.9/390). The Commission expressed its appreciation for the work accomplished by the Working Group and noted that the Working Group had decided to use the term "model statutory provisions" in order to reflect the special nature of the text as a variety of statutory rules that an enacting State would not necessarily incorporate as a whole or together in any one particular place in its statutes (A/CN.9/390, paras. 16-17).

5. As to the time schedule for completion of the current work of the Working Group, the view was expressed that it might be difficult to complete the current work within one year and submit the model statutory provisions to the Commission at its next session since a number of issues, such as scope of application and party autonomy, still remained to be resolved, and that, at any rate, the Commission might not have sufficient time available on the agenda of its next

<sup>1</sup>Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17 (A/46/17), paras. 306-317.

<sup>2</sup>Ibid., Forty-seventh Session, Supplement No. 17 (A/47/17), paras. 140-148.

session to consider the rules. The prevailing view, however, was that a draft set of basic, "core" provisions could be completed by the Working Group at its twenty-eighth or twenty-ninth session, in particular since it had been decided that the relationships between EDI users and public authorities, as well as consumer transactions, should not be the focus of the model statutory provisions (A/CN.9/390, para. 21). It was pointed out that further provisions could be added at a later stage, in particular since that was an area of rapid technological development.

6. As to possible future topics, the Commission noted that, at its twenty-seventh session, the Working Group had adopted a recommendation to the Commission that preliminary work should be undertaken on the issue of negotiability and transferability of rights in goods in a computer-based environment as soon as it had completed the preparation of the model statutory provisions (A/CN.9/390, para. 155). That recommendation received general support. Another suggestion was that a broader approach should be adopted so as to include in any future work the negotiability of rights in securities. That suggestion was objected to on the ground that it might be particularly difficult to achieve uniformity on that concept in view of the high degree of regulation at the national level. Yet another suggestion, which received some support, was that the Commission should consider the legal issues arising in the context of the relationships between EDI users and service providers, such as electronic communications networks. However, recalling the discussion of that suggestion at the twenty-seventh session of the Working Group (A/CN.9/390, para. 159), the Commission was of the view that, at least at the current stage, liability of service providers was better dealt with in communications agreements and that, at any rate, it would be very difficult to devise rules that would apply to all types of electronic communications services. Yet another suggestion was to prepare a study on legal issues of encryption. With regard to that suggestion, the view was expressed that the matter fell more appropriately within the mandate of specialized national or international bodies.<sup>3</sup>

7. At its twenty-seventh session, the Working Group considered a revised draft of uniform rules on the legal aspects of electronic data interchange and related means of trade data communication prepared by the Secretariat (A/CN.9/WG.IV/WP.60). The Secretariat was requested to prepare a further revision of draft articles 1 to 10 on the basis of the deliberations and decisions of the Working Group (A/CN.9/390, para. 14).

8. The present note contains newly revised articles 1 to 10 of the Model Statutory Provisions. Additions and modifications to the text are indicated by underlining. It may be noted that, in line with the recent instructions relating to the stricter control and limitation of United Nations documentation, no explanatory remarks have been added to the draft provisions. General reference is therefore made to the relevant portions of the Working Group report (A/CN.9/390); additional explanations will be provided orally during the session of the Working Group.

<sup>3</sup>Ibid., *Forty-ninth Session, Supplement No. 17 (A/49/17)*, paras. 198-201.

## I. DRAFT MODEL STATUTORY PROVISIONS ON THE LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF DATA COMMUNICATION

### Chapter I. General provisions\*

#### Article 1. Sphere of application\*\*

These *statutory provisions* apply to [commercial] information in the form of a data [record].

#### Article 2. Definitions

For the purposes of these *statutory provisions*:

(a) "Data [record]" means information [generated], stored or communicated by electronic, optical or analogous means including, but not limited to, electronic data interchange (EDI), *electronic mail*, telegramme, telex or telecopy;

(b) "Electronic data interchange (EDI)" means the [computerized transmission] [electronic interchange] of structured data between independent [computer] [information] systems;

(c) "Originator" of a data [record] means a person other than one acting as an intermediary with respect to that data [record], on whose behalf the data [record] purports to have been generated, stored or communicated;

(d) "Addressee" of a data [record] means a person other than one acting as an intermediary with respect to that data [record], who is intended by the originator to receive the data [record];

(e) "Intermediary", with respect to a particular data [record], means a person who, as an ordinary part of its business, engages in receiving data [records] and forwarding such data [records] to their addressees or to other intermediaries. [An intermediary may, in addition, provide such services as, [inter alia], formatting, translating, recording, preserving and storing data [records]].

(f) "Record"

*Variant A* means the form in which information is preserved for subsequent reference.

*Variant B* means a representation of data that is susceptible of accurate reproduction at a later time.

*Variant C* means a durable representation of information, either in, or capable of being converted into, a perceivable form.]

#### Article 3. Interpretation of the model statutory provisions

*Variant A* (1) In the interpretation of these *statutory provisions*, regard is to be had, [where appropriate], to their

\*These *statutory provisions* do not override any rule of law intended for the protection of consumers.

\*\*The Commission suggests the following text for States that might wish to limit the applicability of these *statutory provisions* to international data [records]:

These *statutory provisions* apply to a data [record] as defined in paragraph (1) of article 2 where the data [record] relates to international trading interests.

international character and to the need to promote uniformity in their application and the observance of good faith.

(2) Questions concerning matters governed by these *statutory provisions* which are not expressly settled in them are to be settled in conformity with the general principles on which these *statutory provisions* are based.

*Variant B* In the interpretation of these *statutory provisions*, regard is to be had to their purpose of giving effect to principles formulated internationally, which are intended to facilitate the use of technological developments in methods of communicating and holding information, and the need to promote uniformity in the application of those principles.

#### Article 4.

[deleted]

#### [Article 5. Variation by agreement

As between parties involved in generating, storing, communicating, receiving or otherwise processing data [records], and except as otherwise provided in these *statutory provisions*, their corresponding rights and obligations may be determined by agreement.]

### Chapter II. Form requirements

#### Article 5 bis.

Information shall not be denied legal effectiveness, validity or enforceability solely on the grounds that it is recorded as a data [record].

#### Article 6. [Functional equivalent] [Requirement] of "writing"

(1) Where a rule of law requires information to be presented in writing, or provides for certain consequences if it is not, that requirement shall be satisfied in relation to a data [record] containing the requisite information if

(a) the information can be [reproduced] [displayed] in [visible and intelligible] [legible, interpretable] [durable] form; and

(b) the information is preserved as a record.

(2) The provisions of this article do not apply to the following situations: [...].

#### Article 7. [Functional equivalent] [Requirement] of "signature"

(1) Where a rule of law requires information to be signed, or provides for certain consequences if it is not, that requirement shall be satisfied in relation to a data [record] containing the requisite information if

(a) a method [of authentication] identifying the originator of the data [record] and indicating the originator's

approval of the information contained therein has been agreed between the *originator* and the addressee of the data [record] and that method has been used; or]

(b) a method [of authentication] is used to identify the originator of the data [record] and to indicate the originator's approval of the information contained therein; and

(c) that method was as reliable as was appropriate for the purpose for which the data [record] was [generated or communicated] [made], in the light of all circumstances [, including any agreement between the *originator* and the addressee of the data [record]].

(2) The provisions of this article do not apply to the following situations: [...].

#### Article 8. [Functional equivalent] [Requirement] of "original"

(1) Where a rule of law requires information to be presented in the form of an original record, or provides for certain consequences if it is not, that requirement shall be satisfied in relation to a data [record] containing the requisite information if:

(a) that information is displayed to the person to whom it is to be presented; and

(b) there exists a reliable assurance as to the integrity of the information between the time the originator first composed the information in its final form, as a data [record] or as a record of any other kind, and the time that the information is displayed.

(2) Where any question is raised as to whether subparagraph (b) of paragraph (1) of this article is satisfied:

(a) the criteria for assessing integrity are whether the information has remained complete and, apart from the addition of any endorsement, unaltered; and

(b) the standard of reliability required is to be assessed in the light of the purpose for which the relevant record was made and all the circumstances.

(3) The provisions of this article do not apply to the following situations: [...].

#### Article 9. Admissibility and evidential value of a data [record]

(1) In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to prevent the admission of a data [record] in evidence

(a) on the grounds that it is a data [record]; or,

(b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not an original document.

(2) Information presented in the form of a data [record] shall be given due evidential weight. In assessing the evidential weight of a data [record], regard shall be had to the reliability of the manner in which the data [record] was generated, stored or communicated, to the reliability of the

manner in which the information was authenticated *and to any other relevant factor.*

(3) *Subject to any other rule of law, where subparagraph (b) of paragraph (1) of article 8 is satisfied in relation to information in the form of a data [record], the information shall not be accorded any less weight in any legal proceedings on the grounds that it is not presented in the form of an original record.*

### Chapter III. Communication of data [records]

#### Article 10. [Effectiveness] [Obligations binding on the originator] of a data [record]

(1) *As between the originator and the addressee, an originator is [deemed] [presumed] to have approved the [content] [communication] of a data [record] if it was [issued] [transmitted] by the originator or by another person who had the authority to act on behalf of the originator in respect of that data [record].*

(2) *As between the originator and the addressee, a data [record] is [deemed] [presumed] to be that of the originator if the addressee properly applied a procedure previously agreed with the originator for verifying that the data [record] was the data [record] of the latter.]*

[(3) *An originator who is not [deemed] [presumed] to have approved the data [record] by virtue of paragraph (1) or (2) of this article is [deemed] [presumed] to have done so by virtue of this paragraph if:*

(a) *the data [record] as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to the authentication procedure of the originator; or*

(b) *the addressee verified the authentication by a method which was reasonable in the circumstances.]*

[(4) *The originator and the addressee of a data [record] are permitted to agree that an originator may be [deemed] [presumed] to have approved the data [record] although the authentication is not [commercially] reasonable in the circumstances.]*

[(5) *Where an originator is [deemed] [presumed] to have approved the content of a data [record] under this article, it is [deemed] [presumed] to have approved the content of the data [record] as received by the addressee. However, where a data [record] contains an error, or duplicates in error a previous [record], the originator is not [deemed] [presumed] to have approved the content of the data [record] by virtue of this article in so far as the data [record] was erroneous, if the addressee knew of the error or the error would have been apparent, had the addressee exercised reasonable care or used any agreed procedure of verification.]*

[(5) *bis Paragraph (5) of this article applies to an error or discrepancy in an amendment or a revocation message as it applies to an error or discrepancy in a data [record].]*

[(6) *The fact that a data [record] is [deemed] [presumed] to be effective as that of the originator does not impart legal significance to that data [record].]*

## C. Report of the Working Group on Electronic Data Interchange (EDI) on the work of its twenty-ninth session (New York, 27 February-10 March 1995)

(A/CN.9/407) [Original: English]

### CONTENTS

	<i>Paragraphs</i>
INTRODUCTION .....	1-13
I. DELIBERATIONS AND DECISIONS .....	14-15
II. CONSIDERATION OF THE DRAFT GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF COMMUNICATION	16-99
General remarks .....	16-19
Consideration of the paragraphs of the draft Guide .....	20-99
HISTORY AND PURPOSE OF THE MODEL LAW .....	20-28
A. History (paragraphs 1-21) .....	20-24
B. Purpose (paragraphs 22-26) .....	25-28
PART ONE. INTRODUCTION TO THE MODEL LAW .....	29-36
A. Objectives (paragraphs 27-29) .....	29
B. Scope (paragraphs 30-33) .....	30