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UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on
Electronic Data Interchange
Twenty-ninth session
New York, 27 February-10 March 1995

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication: preparation of a guide to enactment
4. Planning of future work: general discussion on the issue of incorporation by reference; general discussion on negotiability and transferability of rights in goods in an EDI environment
5. Other business
6. Adoption of the report

Notes on the provisional agenda

Pursuant to a decision taken by the Commission at its twenty-fourth session^{1/}, 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 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).

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.^{2/}

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

^{2/} Ibid., Forty-seventh Session, Supplement No. 17 (A/47/17), paras. 140-148.

The Working Group on Electronic Data Interchange devoted its twenty-fifth to twenty-seventh sessions to the preparation of uniform rules on the legal aspects of EDI (reports of those sessions are found in A/CN.9/373, 387 and 390). The work was 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 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 WP.60).

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). As to the time schedule for completion of the current work of the Working Group, the prevailing view 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.

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 (*ibid.*, 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 (*ibid.*, 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.^{3/}

At its twenty-eighth session, the Working Group approved a revised version of the model statutory provisions. The work was carried out on the basis of revised drafts prepared by the Secretariat (A/CN.9/WG.IV/WP.60 and WP.62). The report of that session is found in A/CN.9/406. As a result of a decision taken by the Working Group, the text was approved in the form of a draft model law (A/CN.9/406, para. 77).

The Working Group requested the Secretariat to circulate the text of the draft Model Law to Governments and interested organizations for comments. It was noted that the text of the draft Model Law, together with a compilation of comments by Governments and interested organizations, would be placed before the Commission at its twenty-eighth session for final review and adoption.

There was general support for a suggestion that the draft Model Law should be accompanied by a guide to assist States in enacting and applying the draft Model Law. The guide, much of which could be drawn from the travaux préparatoires of the draft Model Law, would also be helpful to EDI

^{3/} *Ibid.*, Forty-ninth Session, Supplement No. 17 (A/49/17), paras. 198-201.

users as well as to scholars in the area of EDI. The Working Group noted that, during its deliberations, it had proceeded on the assumption that the draft Model Law would be accompanied by a guide, to be adopted by the Commission. For example, the Working Group had decided in respect of a number of issues not to settle them in the draft Model Law but to address them in the guide so as to provide guidance to States enacting the draft Model Law. As to the timing and method of preparation of the guide, the Working Group agreed that the Secretariat should prepare a draft and submit it to the Working Group for consideration at its twenty-ninth session.

As to the planning of future work, the view was expressed that the Working Group at its twenty-ninth session, after completing its consideration of the draft guide to enactment to be prepared by the Secretariat, could have a general discussion on negotiability and transferability of rights in goods. Another view was that the issue of incorporation by reference could also be considered at the twenty-ninth session for possible inclusion in the draft Model Law. A number of delegations expressed their willingness to prepare a brief paper to facilitate discussions on both topics. It was noted, however, that, while the Working Group might have sufficient time for a general discussion, it could not go into detail on either topic.

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

Argentina, Austria, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Denmark, Ecuador, Egypt, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Morocco, Nigeria, Poland, Russian Federation, Saudi Arabia, Singapore, Slovakia, 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. Draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication: preparation of a guide to enactment

The Working Group will have before it a note by the Secretariat containing a draft guide to enactment of the draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication (A/CN.9/WG.IV/WP.64). 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);
- (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);
- (f) Note by the Secretariat outlining possible uniform rules on the legal aspects of electronic data interchange (EDI) (A/CN.9/WG.IV/WP.55);
- (g) Report of the Working Group on Electronic Data Interchange on the work of its twenty-fifth session (A/CN.9/373);
- (h) Note by the Secretariat containing a first draft of uniform rules on the legal aspects of EDI and related means of trade data communication (A/CN.9/WG.IV/WP.57);
- (i) Note by the Secretariat containing the text of a proposal by the United Kingdom of Great Britain and Northern Ireland (A/CN.9/WG.IV/WP.58);
- (j) Report of the Working Group on Electronic Data Interchange on the work of its twenty-sixth session (A/CN.9/387);
- (k) Note by the Secretariat containing revised articles of draft uniform rules on the legal aspects of EDI and related means of data communication (A/CN.9/WG.IV/WP.60);
- (l) Report of the Working Group on Electronic Data Interchange on the work of its twenty-seventh session (A/CN.9/390);
- (m) Note by the Secretariat containing newly revised draft model statutory provisions on the legal aspects of EDI and related means of data communication: articles 1 to 10 (A/CN.9/WG.IV/WP.62);
- (n) Report of the Working Group on Electronic Data Interchange on the work of its twenty-eighth session (A/CN.9/406).

Item 6. Adoption of the report

The Working Group may wish to adopt, at the close of its session, a report for submission to the twenty-eighth session of the Commission (to be held from 2 to 26 May 1995 at Vienna).

Meetings

The session of the Working Group will take place from 27 February to 10 March 1995 at the United Nations Headquarters, New York. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 9 March, 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, 27 February 1995, when the session will commence at 10:30.