



Policy considerations on the Electronic Communications Convention

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Purposes of the Electronic Communications Convention

Four purposes of the Convention:

1. Facilitate the use of electronic communications in international trade law, in particular in connection with treaties concluded before the wide diffusion of electronic means;
2. Reinforce the level of uniformity in the implementation of the UNCITRAL Model Laws;
3. Update certain provisions of the UNCITRAL Model Laws on Electronic Commerce and on Electronic Signatures;
4. Provide core e-commerce legislation to developing countries.

1. Facilitate the use of e-communications

Facilitate the use of electronic communications in international trade law, in particular with respect to treaties concluded before the diffusion of electronic means:

- New York Convention:
 - Art. II(2), “agreement in writing”;
 - Art. IV, “original or duly certified copy of the arbitral agreement [and of the arbitral award]”.

- CISG:
 - Art. 12, “written form requirement”.
- Both conventions have a large number of State parties: the procedure for their amendment is likely to be very cumbersome.



2. Increase uniformity in e-commerce legislation

Goal: to reinforce the level of uniformity in the implementation and application of the UNCITRAL Model Law on Electronic Commerce, 1996 and of the UNCITRAL Model Law on Electronic Signatures, 2001.

The Convention establishes a common legislative core for cross-border transactions.

Example: functional cross-border recognition of electronic signatures (art. 12 MLES).

- several laws require a formal recognition act (usually, on a bilateral basis);
- art. 9(3) ECC uses a reliability test based on technology and other circumstances, including contractual agreements;
- it also ensures that when the e-signature has fulfilled its function it may not be repudiated.



3. Update UNCITRAL model laws

- Update certain provisions of the UNCITRAL model laws:
 - Location of the parties (art. 6 ECC):
 - Location of equipment, supporting technology;
 - Place from where the information system is accessed;
 - Use of country-specific domain name or email address;are not necessarily relevant for the determination of the party's place of business.
 - Party's "intention" in signing (art. 9(3)(a) ECC) better captures the various functions of signatures than the notion of "approval" (contained in art. 7(1)(a) MLEC).

3. Update UNCITRAL model laws

- Update certain provisions of the UNCITRAL model laws:
 - Time and place of dispatch and receipt (art. 10 ECC):
 - Dispatch occurs when the communication leaves the information system of the originator
 - (amends art. 15(1) MLEC);
 - Receipt occurs when the communication may be retrieved and, for non-designated addresses, the addressee is aware that a communication was sent
 - (amends art. 15(2) MLEC).



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uce new provisions:

itations to make offers (art. 11 ECC):

A proposal not addressed to specific parties is considered an invitation to make offers

- Gives flexibility to on-line traders in controlling stocks (see also art. 14(2) CISG: an invitation to the public is an invitation to make offers);

ie of automated message systems (art. 12 ECC):

The contract is valid and enforceable also when no natural person reviewed or intervened in the actions carried out by the automated message system.