



# General Assembly

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**United Nations Commission  
on International Trade Law**  
Working Group IV (Electronic Commerce)  
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## **Legal aspects of electronic commerce**

### **Electronic contracting: provisions for a draft convention**

#### **Proposed amendment to article 10, paragraph 2, submitted by Belgium**

##### **Note by the Secretariat**

The annex to the present note contains a proposed amendment to article 10, paragraph 2, of the draft convention on the use of electronic communications in international contracts (A/CN.9/WG.IV/WP.110), as communicated to the Secretariat by Belgium.



## **Proposed amendment to article 10, paragraph 2, submitted by Belgium**

1. Article 10, paragraph 2, should be amended to read as follows:

“The time of receipt of a data message is the time from which the message becomes capable of being retrieved by the addressee or by any other person named by the addressee. A data message is presumed to be capable of being retrieved by the addressee when the data message enters an information system *which the addressee has agreed to use*”.

### **Justification**

2. The object of article 10, paragraphs 2 and 3, is to establish a functional equivalent of the conventional notion of receipt of a message at the place of business or habitual residence of the addressee, as contained, for example, in article 24 of the United Nations Convention on Contracts for the International Sale of Goods, which stipulates that a declaration “reaches” the addressee when it is delivered to his place of business or mailing address or to his habitual residence, and also in article 3, paragraph 1, of the UNCITRAL Model Law on International Commercial Arbitration, which provides that a written communication is deemed to have been received if it is delivered at the addressee’s place of business, habitual residence or mailing address.

3. The basic principle of article 10, paragraphs 2 and 3, which is that a data message is deemed to have been received at the place of business or at the habitual residence of the addressee as soon as it enters an information system of the addressee, appears to be inadequate to establish satisfactory functional equivalence and, therefore, cannot but lead to serious legal uncertainty, for example in the application of the two articles cited above.

4. The functional equivalent of the place of business or habitual residence of the addressee is not simply any information system of the addressee, but rather the information system which the addressee has agreed to use for the purpose of receiving data messages and from whose electronic mailbox the addressee may therefore legitimately be expected to retrieve data messages, in the same way as the addressee receives communications at the place of business or habitual residence that it has freely chosen.

5. It should also be noted that the reference to “an information system of the addressee”, as contained in the text proposed in document A/CN.9/WG.IV/WP.110, raises the question of what type of legal relationship between the addressee and the information system the text is referring to: is it a relationship of ownership or another, similar, type of relationship? A requirement for such a relationship to exist could limit unduly the type of information system that can be used to send a data message validly to the addressee. The proposed amendment avoids this problem by focusing on the agreement of the addressee as the sole criterion, irrespective of the legal relationship between the addressee and the information system which the addressee has agreed to use.

6. Of course, the amendment proposed above is based on the assumption that a satisfactory solution has been reached by the Working Group with regard to the definition of the concept “information system”.

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