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**United Nations Commission  
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## **Legal barriers to the development of electronic commerce in international instruments relating to international trade**

### **Compilation of comments by Governments and international organizations**

#### **Addendum**

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## **II. Compilation of comments**

### **A. States**

#### **Belgium**

[Original: French]

1. The comments of the Belgian delegation are essentially limited to the international conventions with regard to which the survey proposes that issues arising from their application in the context of electronic commerce be addressed during the deliberations of the Working Group on Electronic Commerce on the development of an international instrument dealing with certain issues relating to electronic contracting. The conventions concerned are the following: the Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and the Protocol amending it (Vienna, 11 April 1980), the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980), the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 17 April 1991), the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (Geneva, 1 March 1973) and the Protocol to it, the United Nations Convention on the Carriage of Goods by Sea (Hamburg, 31 March 1978) and the United Nations Convention on International Multimodal Transport of Goods (Geneva, 24 May 1980).
2. The Belgian delegation wonders whether its understanding is correct that the proposal referred to above presupposes that a future international convention on electronic contracting would, of itself, enable the difficulties arising from the application of the aforementioned conventions in the context of electronic commerce to be resolved without those conventions being amended. Such an approach would differ from that proposed in document A/CN.9/WG.IV/WP.89, namely, the drafting of an interpretative agreement in a simplified form. Given the rules of treaty law, particularly those relating to the application of successive treaties, it is not clear how the mere juxtaposition of a new convention would enable the problems raised by previous conventions to be resolved.
3. As to whether, in substance, the provisions of the draft convention on electronic contracting, as considered by the Working Group on Electronic Commerce at its thirty-ninth session (see A/CN.9/WG.IV/WP.95), would enable the difficulties identified in the survey to be resolved, three points should perhaps be underlined.
4. Firstly, difficulties arising from the provisions for the exchange by parties of notifications, declarations or communications might be encountered only if the draft, in particular article 10, permitted the use of electronic data not just at the stage of contract formation proper but also in the performance of the contract.
5. Secondly, and more specifically, the difficulties arising from the United Nations Convention on Contracts for the International Sale of Goods, particularly the issue of the applicability of the Convention to sales of “virtual goods”, seem to be of a different nature. They are not related as such to the use of electronic data in the context of a contract, but arise merely from the definition of the scope of the

Convention, which is limited to sales of “goods”, a term that has generally been interpreted as designating tangible movable goods and that might therefore exclude virtual goods. If that were the case, this Convention could be made applicable to sales of virtual goods, where appropriate, only through a modification of its scope and not simply through application of the draft convention’s rules on electronic contracting.

6. Thirdly, as regards the difficulties linked to certain form requirements, particularly those relating to the existence of a writing or a document, resolution of those difficulties by means of the draft convention would presuppose, whatever the circumstances, a clear specification of the distinction established in article 6, paragraph 2, between, on the one hand, matters settled in the convention and, on the other, matters governed by but not settled in it, which, in the absence of application of general principles, must be settled by the law applicable by virtue of the rules of private international law. If, in this context, article 13 of the draft, relating to form requirements, were to be interpreted as leaving the issue of form requirements to the applicable law, this draft might prove to be of no help in relation to the difficulties mentioned. This would be all the more incomprehensible given that article 10 affirms the principle of the validity of a contract concluded electronically, unless it is to be understood that article 13, contrary to article 10, covers only the issue of proof of the contract and not its validity, which would hardly seem desirable.

7. Overall, the Belgian delegation can support the conclusions on the other conventions considered in the survey, which suggest that some of the conventions should be considered in other forums. However, it would be necessary to ensure that any solutions that might emerge were consistent. This is particularly true with regard to the Convention on the Contract for the International Carriage of Goods by Road of 19 May 1956, the object of which is very similar to that of the Convention on the Contract for the International Carriage of Passengers and Luggage by Road of 1 March 1973, and with regard to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 and the European Convention on International Commercial Arbitration of 21 April 1961, which raise some of the same issues as those covered by the draft convention on electronic contracting. Moreover, it can be seen that the difficulties raised by electronic substitutes for bills of lading and other transport documents in the context of the United Nations Convention on the Carriage of Goods by Sea of 31 March 1978 might also be covered by the future work of the Working Group on Electronic Commerce on legal issues related to the transfer of rights, particularly rights in tangible goods, by electronic means.