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Draft Convention on the Use of Electronic Communications in International Contracts

Addendum

Compilation of comments by Governments and international organizations

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II. Compilation of comments

A. States

1. Germany

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1. The German delegation is concerned that the current wording of article 3 of the UNCITRAL draft convention on the use of electronic communications in international contracts may allow the parties to circumvent the requirements imposed by article 9 with regard to the electronic form. Furthermore, article 3 should not apply to article 18 et seq. of the convention, in order to allow that certain matters may effectively be excluded from the convention's scope. The German delegation thus recommends that the wording of article 3 of the draft convention be amended to read as follows:

“Article 3. Party autonomy

The parties may exclude the application of this Convention or derogate from or vary the effects of articles 10 to 14.”

2. We fully support the provision of article 9, paragraph 6, which has not yet been finally discussed due to lack of time. In order to attain the broadest possible uniformity in terms of its scope, the German delegation prefers this provision to the alternate suggestion of a corresponding exclusion of matters at the national level in accordance with article 18, paragraph 2, of the draft convention.

3. We suggest that in article 14, paragraph 1, the term “rescind” be substituted for the term “withdraw”. This has the advantage that it may be more easily integrated into the national legal systems. Furthermore, the German delegation has concerns about the provisions of article 14, paragraph 1, letters a to c. The Working Group may wish to consider leaving the substantive details of the right of rescission to legislators at the national level. In the event that the Working Group prefers to maintain detailed provisions with respect to the requirements for such right of rescission in the draft convention, the German delegation considers the following changes and/or additions to be necessary:

(a) In article 14, paragraph 1, letter a, the term “without culpable delay” should be substituted for the legal term “as soon as possible,” which is too indefinite.

(b) In view of the German delegation, it is also necessary to add the following wording to article 14, paragraph 1:

“(x) it may be assumed that the person or the party on whose behalf that person was acting would not have issued the electronic communication in knowledge of the facts and with a sensible appreciation of the case,”

This additional requirement is primarily designed to prevent having insignificant or perhaps even intentional input errors (e.g. input of a sum of 100,000.10 EUR instead of 100,000.00 EUR) being misused by the data entry person to subsequently release

him from otherwise binding statements (e.g. acceptance of a contract offer) because being bound to the statements is no longer desirable for other reasons (e.g. subsequent awareness of a more economical offer). The legal certainty of trade would suffer significantly from an unrestricted right of rescission.

(c) We also propose that article 14, paragraph 1, letter b, of the draft convention be deleted. The German delegation is of the opinion that the right to rescind an electronic communication due to an input error should not be made dependent upon whether the person making the input error has taken reasonable steps to return or destroy the received goods or services. As this is rather a consequence than a prerequisite of rescission, the issue should be left to legislators at the national level.

(d) Also, article 14 should be amended to include the following:

“(x) The right of rescission shall be barred if two years have elapsed since the electronic communication has been issued.”

We believe that, for reasons of legal certainty, the right of rescission should be subject to a time limit.

(e) Finally, we would welcome a provision in article 14, which would leave to national legislators the possibility to provide for compensation claims in favour of the recipient of an electronic communication, who relies on the effectiveness of the communication, against the person challenging the electronic communication on the grounds of an input error.
