

Report on the Seventieth Session of the United Nations Commission on International Trade Law Working Group IV: Electronic Commerce

by

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1. Executive Summary

The seventieth session of Working Group IV: Electronic Commerce of the United Nations Commission on International Trade Law (“UNCITRAL”) was held at United Nations Headquarters in New York from 23 to 27 March 2026.¹ The session focused on data provision contracts and related developments in the field of electronic commerce.²

Due to austerity measures in place at United Nations Headquarters³, the session commenced at 3 p.m. on 23 March 2026. Working hours were scheduled from 10:00 a.m. to 1:00 p.m. and from 3 p.m. to 6:00 p.m. A reduction in the duration of Working Group sessions—estimated at approximately 20 per cent was announced for future meetings.

The Working Group considered to continue work on default rules for data provision contracts, which have been prepared by the Secretariat in the form of model legislative provisions, as requested by the Working Group⁴. The development of default rules for data provision contracts, outlined a roadmap for finalizing a legal text on the subject, and received updates on ongoing exploratory and preparatory work relating to electronic commerce issues not currently included in its program of work.

Several side events were convened during the session. On wednesday, the European Commission hosted an event entitled “*Model contractual terms for voluntary sharing of data*”⁵, which examined the development and implications of such terms, drawing on prior consultations and comparative analyses. The event examined the development and legal implications of the Model Contractual Terms (MCTs) for voluntary data sharing, with particular attention to their role as a non-binding instrument aimed at facilitating fair and balanced contracts, especially for small and medium-sized enterprises (“SMEs”) and actors with weaker bargaining power.

¹ United Nations Commission on International Trade Law. Technical Assistance and Coordination. https://uncitral.un.org/es/working_groups/4/electronic_commerce.

² Working Group IV: Electronic Commerce | United Nations Commission on International Trade Law. (s. f.). https://uncitral.un.org/working_groups/4/electronic_commerce.

³ United Nations Commission on International Trade Law Working Group IV (Electronic Commerce) Seventieth session New York, 23–27 March 2026. Annotated provisional agenda. Pag. 2. A/CN.9/A/CN.9/WG.IV/WP.191.

⁴ United Nations Commission on International Trade Law Working Group IV (Electronic Commerce) Seventieth session New York, 23–27 March 2026. Draft model legislative provisions on contracts for the provision of data: Text. Note by the Secretariat. [A/CN.9/WG.IV/WP.192](https://uncitral.un.org/working_groups/4/electronic_commerce).

⁵ European Commission. Draft Recommendation on non-binding model contractual terms on data access and use and non-binding standard contractual clauses for cloud computing contracts POLICY AND LEGISLATION. Publication 19 November 2025. <https://digital-strategy.ec.europa.eu/en/library/draft-recommendation-non-binding-model-contractual-terms-data-access-and-use-and-non-binding>.

On Thursday, the Russian Federation organized the event “*Shaping UNCITRAL’s agenda on the legal aspects of paperless trade: Potential way forward*”, providing a platform to discuss ongoing proposals and future directions based on earlier initiatives. The event provided a platform for discussion on the future of UNCITRAL’s agenda with regard to the legal aspects of paperless trade.

2. Main Discussion Points

The session opened with the election of officers, adoption of the agenda, and an introductory briefing by the Secretariat.

a. Data Provision Contracts (continued)

i. Article 10⁶ (continued)

The Working Group continued its consideration of Article 10. Initially, it was observed that the legal characterization of derived data as a “substitute” for provided data could give rise to interpretative uncertainty. In response, it was clarified in the explanatory note that derived data and provided data should not be regarded as mutually interchangeable.

Afterwards, the proposal to replace the term “*investment*” with “*effort*”, on the grounds of neutrality, did not command a consensus. Even so, it was suggested that the explanatory note could usefully elaborate on the notion of investment by referring to the allocation of time, financial means and material resources.

It was also noted that the legal treatment of derived data, including the allocation of rights as between the parties, remains subject to party autonomy and may be modified by agreement. In practice, rights relating to derived data are commonly reflected in the contract’s pricing rather than being contingent upon the level of investment.

ii. Article 11⁷ – Common Obligations of the Data Provider and the Data Recipient

1. Paragraph 1

The Working Group reviewed the scope of the duty to cooperate, in reference to the UNIDROIT Principles of International Commercial Contracts, in particular Article 5.1.3. A proposal was made to extend the duty to cover obligations arising under applicable law. Nevertheless, it was observed that such an extension could impose an excessive burden on

⁶ Article 10. Derived data. 1. As between the parties to the contract, the data recipient is entitled to provide derived data to a third party. 2. For the purposes of paragraph 1, “derived data” means data that: (a) The data recipient generated by processing the data provided under the contract, including by combining that data with other data; and (b) Is sufficiently distinct from the data provided under the contract in terms of its content, format and structure. 3. For the purposes of paragraph 2(b), whether the derived data is sufficiently distinct is to be determined taking into account all relevant circumstances, which may include: (a) Whether the derived data can be processed to generate data that is essentially identical to the data provided under the contract, including by way of reverse engineering; (b) Whether the derived data can be used as a substitute for the data provided under the contract; and (c) The level of investment involved in the generation of the derived data.

⁷ Article 11. Common obligations of the data provider and data recipient 1. Each party shall cooperate with the other party when such cooperation may reasonably be expected for the performance of that party’s obligations under the contract and these provisions. [2. Each party shall give notice to the other party of any serious data breach affecting the provision of the data under the contract within a reasonable time after becoming aware of it.]

the parties, particularly where the applicable law had not been identified or disclosed at the time of contracting.

The Working Group reached a consensus to retain paragraph 1 in its current form.

2. Paragraph 2

It was clarified that, within the context of data provision contracts, the obligation to notify primarily concerns breaches of confidentiality rather than breaches of integrity. Reference was made to the notion of “data breach” as employed in the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, which encompasses both integrity and confidentiality elements.

The Working Group agreed to revise paragraph 2 to read as follows:

“Any data breach that creates a significant risk to the rights of the parties or third parties shall be notified to the other party without undue delay after becoming aware of it.”

iii. Article 12⁸ – Non-Performance

1. General Considerations

Divergent views were expressed within the Working Group as to whether the default rules are obligated to defer entirely to remedies available under applicable law or, in the alternative, articulate remedies specifically adapted to data provision contracts. Some support was expressed for the inclusion of a non-exhaustive list of indicative remedies, such as termination, and price reduction.

2. Paragraph 1

It was noted that the negative formulation of paragraph 1 did not explicitly articulate the availability of remedies under applicable law. Nevertheless, it was noted that this drafting technique is consistent with other UNCITRAL instruments. There was agreement that further clarification could appropriately be provided in the explanatory note. The Working Group also considered that the inclusion of specific remedies would be inappropriate in a model legislative text, given the diversity of legal systems.

3. Paragraph 2

The Working Group endorsed a revised formulation emphasizing the distinguishing characteristics of data: *“Without limiting paragraph 1, when applying remedies for a failure to perform an obligation with respect to the provision or use of data, due regard should be had to the particular qualities of data, including its intangibility and non-rivalrous nature.”*

⁸ Article 12. Non-performance 1. Nothing in these provisions affects the application of any rule of law that may govern the legal consequences of a failure of a party to perform its obligations under the contract or these provisions. 2. If the data provider fails to perform its obligations under [articles 6 or 7], the data recipient may require performance by the data provider in accordance with applicable law. 3. If the data provider is entitled by law to claim restitution from the data recipient of data provided under the contract, that requirement may be met by the data recipient erasing the data from any information system under its control, provided that the data provider remains in a position to use the data.

4. Paragraph 3

Support was expressed by several delegations for replacing the term “*restitution*” with “*return or surrender*”, in accordance with the mandate of Principle 4(2) of the *Principles for a Data Economy* developed by the American Law Institute and the European Law Institute.⁹

It was underscored that data erasure may constitute an adequate means of complying with an obligation to return or surrender data, particularly in circumstances in which the data provider already retains access to or control over the data. While a revised formulation was proposed, the Working Group ultimately decided not to adopt it.

iv. Article 13¹⁰ – Passive Provision of Data

1. General Considerations

There was general agreement in favour of maintaining a standalone provision addressing the passive provision of data. It was noted that such transactions differ fundamentally from other forms of data provision contracts, to the extent that the provision of data is ancillary to the principal transaction and does not involve active conduct on the part of the data provider.

It was also emphasized that Article 13 is intended to adapt the default rules to this specific category of transactions instead of affording protection to the data provider. Pursuant to Article 2(1), Article 13 is limited to contracts whose primary object is the provision of data and does not extend to contracts under which the provision of data is merely incidental, such as contracts for the sale of goods or services.

Concerns were noted regarding the prospective application of this provision to situations involving user consent to cookies and similar technologies. Consequently, it was clarified that the draft provisions apply solely to contractual relationships and do not address issues of contract formation, nor are they regarded as equivalent to consent to data collection with consent to be bound by a contract.

2. Paragraph 1

Most delegations expressed support for the deletion of subparagraph (d), recalling concerns previously raised at the sixty-ninth session. Questions were also raised regarding whether transactions involving access to data through application programming interfaces (APIs) would be covered by the scope of passive provision.

⁹ The American Law Institute & The European Law Institute. (2021). ALI/ELI principles for a data economy: Data transactions and data rights (Principles 1–40). The American Law Institute and The European Law Institute.

¹⁰ Article 13. Passive provision of data 1. For the purposes of this article, the provision of data is “passive” if, as agreed by the parties: (a) The data recipient provides the means to access the data; [(b) The object of the transaction is the data recipient obtaining access to data generated by a product, service, or activity performed by the data provider in exchange for the data provider obtaining access to a product, service, or other value supplied by the data recipient;] (c) The data provider does not have control over the quantity or quality of the data; and [(d) The data provider does not have meaningful influence on the terms of the transaction.] 2. Unless otherwise agreed by the parties, in the case of a contract for the passive provision of data, the data provider shall: (a) allow the data recipient to access data by the means that the data recipient has provided according to the contract; and (b) not impede access to the data. 3. Articles 6 to 8 [and 11 and 12] shall not apply to contracts for the passive provision of data.

The need for clear, precise and operational definitions of passive data provision, as well as the associated obligations of the parties, was strongly emphasized.

3. Conclusion

The seventieth session of UNCITRAL Working Group IV represented a substantive advancement in the development of default rules governing data provision contracts. The discussions reflected a continued commitment to balancing legal certainty with flexibility, while preserving party autonomy and taking into account the distinctive characteristics of data as an economic asset.

Advancements achieved during the session included the refinement of key provisions relating to derived data, common obligations of the parties, and remedies for non-performance. In particular, the Working Group emphasized the necessity of ensuring that the draft provisions remain adaptable across diverse legal systems, while avoiding unnecessary rigidity or over-specification.

The discussions identified the evolving complexity of data-driven transactions, including issues related to confidentiality, risk allocation, and the passive provision of data. The careful consideration of these matters demonstrates the Working Group's intention to develop a coherent and technologically neutral legal framework capable of supporting cross-border electronic commerce.

Notwithstanding the progress made, several issues remain subject to further consideration, including the precise articulation of certain concepts and the scope of specific provisions. The roadmap established for the finalization of the text provides a clear basis for continued work.

Overall, the session confirmed the fundamental role of UNCITRAL in fostering the harmonization and modernization of international trade law in the digital economy. The results of the session will contribute meaningfully to the ongoing development of a legal infrastructure that facilitates trust, interoperability, and innovation in data-related transactions.