

## **Recommendation 32**

### **E-COMMERCE SELF-REGULATORY INSTRUMENTS (Codes of Conduct)**

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[1.Introduction] [2.Self-Regulation] [3.Model Code of Conduct, Electronic Commerce Platform Netherlands] [4. Enforceability] [Annex I: Countries and Organizations in Attendance] [Annex II: Model Code of Conduct for Electronic Commerce]

#### **1. Introduction**

The development and facilitation of international trade using electronic business has necessitated the creation of a legal and regulatory framework. Over the past five years there has been enormous growth in open electronic business transactions including trans-border dealings between parties that have not entered into commercial transactions with each other before. The legal and regulatory framework therefore needs to develop to keep pace with the new demands of international trade using electronic technology. There is a necessity to remove uncertainty about the newness of the process and the differences from traditional paper-based international trade practices and create trust in electronic business.

There are four general types of legal solutions to provide the necessary legal certainty and security and to create trust:

- a. national legislation;
- b. international legal instruments, such as conventions, treaties, directives or alternative resolution schemes;
- c. contractual solutions, such as Recommendations 26 and 31 of UN/CEFACT;
- d. the process of self-regulation including co-regulation.

Many countries involved in international trade have already passed legislation adapting their legal system to the developments of electronic business, thus creating a legal framework for electronic business. In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted a Model law on electronic commerce recommending that member States give favorable consideration to this Model law when they enact or revise their laws. This reflected the need to harmonize the laws applicable to alternatives of paper-based methods of communication and storage of information. Furthermore, UNCITRAL is in the latter stages of developing a Model law on electronic signatures.

Some countries have pointed out the need for an international convention to ensure a uniformity of the legal rules applicable to electronic business. Until now no specific action has been taken to start the development of an international convention on electronic commerce in general or on specific topics related to electronic business such as the legal recognition of electronic signatures. It is recognized that the establishment and acceptance of international conventions is, inevitably, a slow process because of the need to establish trust and acceptance of basic principles among a wide international arena. On a regional level it has

been somewhat easier to develop initiatives for a legal framework for electronic business by means of international legal instruments.

The European Union, for example, has recently adopted several directives creating a legal framework for electronic business, such as the Directive on electronic commerce and the Directive on electronic signatures. Member States of the European Union must implement these directives in their national legislation within a specified period, usually two years.

In addition to national and international legislation the regulation of a one-to-one relationship created by contractual relations between parties involved in an electronic business transaction is an essential instrument to improve certainty regarding the legal position of the respective parties. Many initiatives at national and international levels have been taken to develop model contracts. Among them are the Model Interchange Agreement for the International Use of Electronic Data Interchange, which was adopted as Recommendation 26 by UN/ECE WP.4 in March 1991, and the Model Electronic Commerce Agreement, adopted by UN/CEFACT as Recommendation 31 in March 2000. A code of conduct, unlike Recommendations 26 and 31, is not a contractual solution. It is a self-regulatory instrument which can work in tandem with other means of facilitating e-commerce transactions.

## **2. Self-regulation**

Trust is essential for the development of electronic business between parties that have never dealt with each other before. Self-regulation has been recognized by Governments, international organizations, international electronic business platforms, national organizations and consumer organizations such as the Organization for Economic Cooperation and Development (OECD), the European Union, Trust UK and the Global Business Dialogue on Electronic Business, as a powerful instrument to create trust in electronic business.

Self-regulation means that businesses involved in electronic business voluntarily undertake to comply with certain rules of conduct when dealing electronically with others. Self-regulation can take different forms, e.g. adopting a code of conduct or participating in a national or international trustmark scheme.

States can play an important role in the creation of self-regulation instruments by promoting and facilitating the development of such instruments and also by themselves adopting codes of conduct for electronic commerce, thus undertaking to comply with certain rules of conduct governing the electronic communications between businesses and government.

It would be in the interest of international electronic business if self-regulation instruments such as codes of conduct and trustmark schemes would meet some basic requirements and would have a basic level of uniformity. Furthermore international electronic business would benefit from an international accreditation of self-regulation instruments.

## **3. Model Code of Conduct, Electronic Commerce Platform Netherlands**

The Model Code of Conduct for Electronic Commerce of the Electronic Commerce Platform the Netherlands was finalized in 1999. The initiative for the development of this code of

conduct was announced by the Netherlands Minister of Economic Affairs at a meeting of the OECD in Ottawa, Canada, in 1998 and the model code was presented at a meeting of the OECD in October 1999. Other international organizations such as the European Commission and the International Chamber of Commerce have shown a strong interest in this model Code of Conduct.

It should be remembered that the role of UN/CEFACT's Legal Working Group is to focus on practical workable solutions to facilitate electronic cross-border trade transactions, particularly in the field of contractual and consensual areas such as codes of conduct. If business users can adopt - with the vital encouragement of national Governments - voluntary self-regulatory schemes which will increase the confidence of users then there is the prospect of the development of an environment which is both self-policing, accountable and supportive of all users of the system.

It should be understood that UN/CEFACT is not specifically proposing the adoption of the Dutch model. This is simply an illustrative example of such a model which could be used as a checklist when developing such codes.

National legislation inevitably takes more time than any would wish. However, codes of conduct are significantly more flexible and can be adopted with appropriate variation while still retaining the fundamental principles of fairness for all parties to individual transactions. This Recommendation promotes to members of UN/CEFACT the concept of a Code of Conduct which may be used as a template to develop the appropriate infrastructure at national, sectorial, industry or individual level so that there may develop an environment in which non-compliance with the proper criteria in a code of conduct will be perceived, both commercially and legally, as unacceptable conduct. If the objective is achieved then the judiciary of the relevant legislatures might find against e-commerce businesses which do not achieve the standards set down in the code of conduct.

#### **4. Enforceability**

This Recommendation does not suggest a unique enforcement mechanism. This must depend upon the application of the relevant law of a particular jurisdiction. However, alternative dispute resolution (ADR) processes may be included and the LWG of UN/CEFACT hopes to address this issue in its future work programme.

## **RECOMMENDATION**

The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) agrees to recommend that:

1. States members of the United Nations should, in addition to other solutions, recognize the essential need for the development, support and promulgation of voluntary codes of conduct for electronic business so as to support the development of international trade.
2. States members of the United Nations should therefore promote and facilitate the development of self-regulation instruments for electronic business as codes of conduct and trustmark schemes by national and international trade organizations.
3. States members of the United Nations should promote and facilitate the development of national and international accreditation schemes for self-regulation instruments.
4. National and international organizations developing codes of conduct for electronic commerce should take into account the Model Code of Conduct for Electronic Commerce developed by the Electronic Commerce Platform of the Netherlands, included as an annex to this Recommendation. The Annex below is only one example of a code of conduct which identifies the types of issues which need to be born in mind when developing similar instruments.

## ANNEX I

**Countries and organizations in attendance at the UN/CEFACT session where this recommendation was approved.**

Participants in the Seventh UN/CEFACT session in March 2001 included representatives of the following member States: Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, Cuba, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Lithuania, Luxembourg, Malta, Mauritius, Netherlands, Nigeria, Norway, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

The following intergovernmental organizations participated: Bank for International Settlements (BIS), Danube Commission (CD), European Free Trade Association (EFTA), European Organization for Nuclear Research (CERN), League of Arab States, and World Customs Organization (WCO).

The following United Nations bodies, regional commissions and specialized agencies were also represented: International Telecommunication Union (ITU), United Nations Commission on International Trade Law (UNCITRAL), United Nations Conference on Trade and Development (UNCTAD), United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), United Nations Economic and Social Commission for Western Asia (ESCWA), United Nations Institute for Training and Research (UNITAR), and the Universal Postal Union (UPU).

The following non-governmental organizations participated: European Electronic Messaging Association (EEMA), International Article Numbering Association (EAN), International Association of Ports and Harbours (IAPH), International Chamber of Commerce (ICC), International Multimodal Transport Association (IMMTA) and the International Organization for Standardization (ISO).

Observers present at the invitation of the secretariat included representatives of the Electronic Commerce Europe Association (ECEA), the Global Commerce Initiative (GCI), Organisation for the Advancement of Structured Information Standards (OASIS), REDTOO AG, the Taipei EDIFACT Committee, and Webforce International.

**ANNEX II**  
**MODEL CODE OF CONDUCT FOR ELECTRONIC COMMERCE,**  
**ELECTRONIC COMMERCE PLATFORM NETHERLANDS**

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(ORIGINAL DOCUMENT: MODEL CODE OF CONDUCT FOR ELECTRONIC COMMERCE, DRAFT VERSION 3.0) NOVEMBER 1999,  
ECP.NL)

## FOREWORD

Electronic Commerce Platform Netherlands (ECP.NL) is the national research and co-ordination center for electronic commerce in the Netherlands. ECP.NL is a partnership between users, suppliers, intermediary organizations, government departments and educational establishments. It works as a single body on matters of public information, preconditions, technology and standards, and international co-ordination relating to E-commerce.

In 1998, ECP.NL conducted a study into the legal problems concerning electronic commerce and the potential role of self-regulation in eliminating those problems. On the basis of the findings of this study and two conferences, ECP.NL drew up a Model Code for electronic commerce. The standards outlined in the Model were drafted in consultation with Dutch representatives of all the players involved, including the business community and scientific research organizations, government bodies and consumer organizations.

In drafting the Dutch Code, particular attention was focused on a range of existing initiatives in this field, both national and international.

This Dutch initiative has been presented as a model to a number of relevant international organizations, such as the OECD, the United Nations and the European Commission. Partly as a result, a number of these organizations have placed the subject of self-regulation concerning e-commerce on their agendas, taking the ECP.NL Model Code as an example.

You have before you a preliminary draft of the Model Code, which will serve as model for at least one year. During that year, experiences gained with this model will be collected, and if necessary the model will be adjusted in that light. The international discussions may also contribute towards further refinement of the Model Code. This Model Code is therefore a dynamic and flexible instrument.

Further information on ECP.NL and a number of advisory groups who helped in developing the Model Code of Conduct is included in Appendix IV.

Leidschendam, November 1999

## **1. Introduction**

### **1.1 Trust is the key to electronic commerce**

Electronic commerce offers important opportunities for the economy, jobs, the development of new services and new forms of partnering between and within businesses and industry sectors, and last but not least for consumers. At present many organizations and consumers, as well, remain reluctant to conduct business electronically, for example on the Internet. One important reason for this is that there is insufficient trust in the systems, the other business (which is often unknown), and the legal protection.

Building trust in electronic commerce relationships is therefore a need shared by many. Trust among consumers, but also among players in industry and commerce and also in government.

### **1.2 Instruments for building trust**

A good trans-border legal infrastructure assures legal and technical interoperability, thereby enabling the creation of above all legal security. Within the EU, work is proceeding on a harmonized infrastructure by means of the directive (still in draft form) governing certain aspects of electronic commerce.

But in the Netherlands a largely adequate legal framework already exists at the national level. The White Paper on Legislation for the Electronic Highways has already confirmed that broadly speaking the Dutch legislative system is sufficiently well equipped to support electronic transactions. The White Paper also indicates that an important role is reserved for self-regulation.

Subject to specific conditions, in this fast-changing world self-regulation is an effective mechanism capable of supplementing existing legislation and sometimes even serving as a provisional substitute for legislation. At the same time – as in the ‘off-line world’ - an important role is reserved for suppliers (the business community) to make a considerable effort itself to create that trust. One way to do this is to state that the supplier will conform to a code of practice. Such practice may be defined by legislation for example, but it can also be indicated by endorsement of a code of conduct or a policy statement.

Ultimately self-regulation in combination with legislation can create an effective level of trust. E-commerce businesses committed to a code of conduct can be challenged by customers to comply with that code. It cannot be ruled out that the standardization based on the code of conduct will become so generally accepted that it will also be enforceable by law.

### **1.2 Framework**

As a supplement to legislation, the ECP.NL Model Code provides a generic framework with the key items for a code of conduct designed to increase trust in e-commerce. At the same time this model proposes a number of specimen provisions suitable for serving as building blocks in drafting a code of conduct.

The generic nature of the ECP.NL Model Code makes it suitable as a starting-point for the drafting of (technology-independent) codes of conduct for a range of branches and sectors of society. As such, the model may be regarded as a kind of checklist for prudent electronic commerce between businesses or between businesses and consumers, and it can also be used by government. It has been drawn up in accordance with (customary) law, and focused on practice.

### **1.3 Principles**

As indicated above, the objective of this Model Code is to develop trust, based on the concept that whatever applies off-line must also apply on-line. In the formulation of provisions to be incorporated in a specific code, the following principles are applicable:



- **Reliability:** can the partners rely on the correctness and completeness of the information supplied? Are the communication and transaction systems reliable? Can one be sure that electronically contracted obligations will indeed be appropriately honored? Reliability of electronic commerce is conditional on participants themselves being responsible for reliable information and communication systems. This principle is further supported by a reliable organization and protection of any information exchanged.
- **Transparency:** “what we say is what we do.” To all participants it must be clear, understandable, logical and if possible verifiable with whom they are dealing and about what, subject to what conditions, and what information is relevant or being used for that purpose. Transparency forms the basis of trust.
- **Confidentiality and privacy:** the parties should have a defined degree of certainty that confidential information is indeed treated as such. The right to privacy must be assured.

## 1.4 Structure of the Model Code

The Model starts by stating the principal elements of a code of conduct. That does not mean the model contains a complete list of each and every item that a code of conduct should cover.

For instance, it may be that rules are already present in the form of an existing sector- or profession-related code of conduct or practice which also have a bearing on e-commerce. In that case adding such existing rules to the E-commerce Code of Conduct may be considered.

Furthermore, the model code disregards a number of largely national legal aspects of electronic commerce, such as the times of dispatch and receipt, or the parties’ liabilities in respect of the consequences of failures in electronic communication.

The priority items as set out in the model are broadly perceived, both in their mutual context and in their formulation, as a complete set of rules to which e-commerce partners should as a minimum commit themselves in order to generate sufficient trust among other parties.

ECP.NL recommends that the complete set of priority items be incorporated in a code of conduct.

In addition to priority items the Model also contains a number of specimen provisions suitable for use as building blocks for drafting individual codes of conduct. Each specimen provision is a model in itself, which may be used or modified according to the drafter’s own situation.

No specimen provision has been included for the priority item ‘enforcement’. However, a number of possible enforcement mechanisms are mentioned in the explanatory notes. Partners should define this priority item for themselves in an appropriate way when drafting their individual code of conduct. An attractive option would be to use mechanisms applied for the settlement of disputes within the professional group or sector concerned, or other suitable enforcement mechanisms.

In conclusion, explanatory notes are provided on a number of subjects.

## 2. Framework for a Code of Conduct

### 2.1 General

#### 2.1.1 Announcement

**Signing parties shall state that they will comply with the Code of Conduct.**

*Specimen provision:*

We will state as fully as possible, in a way appropriate to our electronic commerce activities, that we endorse and comply with this Code.

*Explanatory note*

Endorsers of the Code should clearly communicate to their (potential) market their commitment to comply with the Code; merely to sign the statement will not make the endorser's intention sufficiently obvious to others.

The endorser could for example refer to the Code in his electronic communications. The following step might be to include a reference in his General Terms and conditions. Another option is publication in a publicly accessible register, to be set up by a third party.

#### 2.1.2 Definitions

**By giving definitions of certain terms occurring several times in the code of conduct, the signing parties shall increase the clarity and readability of the code.**

*Specimen provisions:*

*Electronic commerce activities:* All activities, communications and transactions having a business purpose or background that are performed electronically. An equivalent term is: electronic commerce.

*Other party:* Where this Code refers to 'other party' this shall also denote a potential other party and any other addressees or persons or organizations at which our electronic commerce activities are directed.

*Explanatory note*

The definition of electronic commerce activities matches the definition as used by ECP.NL and the Ministry of Economic Affairs, and is technology-independent. Moreover it is not directed only at service provision but it is also applicable to other types of business transactions and communications. This definition covers the broadest possible range of application.

#### 2.1.3 Scope of the E-commerce Code of Conduct

**Signing parties shall clearly indicate the scope of their Code.**

*Specimen provision:*

The Code is applicable in its entirety to all our electronic commerce activities unless explicitly stated otherwise. If an exception is made to the terms of the Code we shall ensure that the other party is able to take advance note of this, taking into account the method of electronic commerce and legal requirements, if any.

#### 2.1.4 Specific aspects relating to consumers

**Signing parties shall focus attention on consumer relations.**

*Specimen provision:*

We shall ensure that consumers' wishes, questions and problems regarding our goods and/or services are investigated in good time and that all reasonable steps are taken to answer questions and resolve problems.

Should a consumer with whom we undertake or have undertaken a transaction explicitly request confirmation of receipt or confirmation of the correctness of information supplied by us, we shall provide him with such confirmation in good time.

We shall ensure that consumers' wishes, questions and problems regarding our goods and/or services are answered within 14 days and that these are then effectively dealt with without delay.

### 2.1.5 Enforcement

**Signing parties shall focus attention on the way in which the Code of Conduct is enforced.**

□ *Specimen provision:*

No specimen provision has been included for the priority item 'enforcement'. However, a number of possible enforcement mechanisms are mentioned in the explanatory note below. Signing parties should define this priority item for themselves in an appropriate way when drafting their individual code of conduct. An attractive option would be to use mechanisms applied for the settlement of disputes within the professional group or sector concerned, or other suitable enforcement mechanisms.

*Explanatory note*

Codes of conduct may deal with the way in which the rules contained in the code are enforced. Significant is that the authority of a code of conduct for electronic commerce is determined by the level of the enforcement possibilities. This enforcement may be based in part on the legal context in which the businesses conduct e-commerce and in part on a set of self-regulatory instruments.

One could consider a certification system, a specific Code disputes commission and/or a Code registration system, either with or without disciplinary rules. It would also be possible to compile a register, which would make it possible to check who has endorsed the Code. Another option would be to use mechanisms applied for the settlement of disputes within the professional group or sector concerned. Several practical examples of enforcement structures for e-commerce codes of conduct are already known.

## 2.2 Reliability

### 2.2.1 Reliability of information

**Signing parties shall refrain from giving out misleading and/or incorrect information.**

□ *Specimen provision:*

We shall do our utmost to ensure that all substantive information originating from ourselves - including information on our own organization, joint partnerships, products and services - supplied by means of our electronic commerce activities is not misleading or incorrect.

### 2.2.2 Recognition of electronic communication

**Signing parties shall state:**

- 1. that they will recognize electronic communication;**
- 2. that they will accept electronic communication in legal proceedings (in court or otherwise).**

□ *Specimen provision:*

Should we receive information electronically, we shall not dismiss the validity, legal effects and/or enforceability thereof on account of the mere fact that the information is electronic and that we have not (also) received the information in hard copy.

Should it be intended to conclude an agreement by means of electronic communication, we shall not deny the conclusion of such an agreement on account of the mere fact that we have not sent the offer or received the acceptance (also) in hard copy.

Should in the course of legal proceedings (in court or otherwise) electronic information be submitted as evidence, we shall not claim that such information constitutes insufficient proof on account of the mere fact that the information was not made available to us (also) in hard copy.

*Explanatory note*

Dutch law in general imposes no formal requirements for the conclusion of legal acts (such as contractual agreements). They need not be concluded in writing, that is to say they can also be effected by electronic means. In the limited number of cases that the law does impose a formal requirement on a legal act (for example, the requirement of a written document, an authentic or a notarial deed), parties may not depart from that requirement. A provision to the effect that electronic communication will be recognized may contribute towards building trust on the part of the other party.

### 2.2.3 Reliability of systems and organization

**Signing parties shall assure the reliability of systems and organization.**

□ *Specimen provision:*

We shall do our utmost to acquit ourselves properly of our responsibility with regard to our organization and with regard to our systems and information. As far as possible we shall use generic and accessible standards for this purpose.

We shall ensure that our electronic commerce activities are integrated within our organization in such a way and that our information and communication systems are designed in such a way that we are indeed able to honor obligations undertaken and commitments entered into by electronic means.

We shall ensure that the information and communication systems used in the context of our electronic commerce activities are sufficiently available and robust to enable us to offer our services and/or products effectively, in compliance with applicable legislation and regulations, contractual obligations and in accordance with fair standards.

**Signing parties shall give clarity regarding demands for information and administrative organization.**

□ *Specimen provision:*

With regard to transactions entered into with another party, we shall indicate whether, and if so which, transaction data will be retained by us for a given period, in order to enable the other party to demand to receive (by electronic means) such data from us. We shall also indicate whether the other party will incur (fair) costs for the issue of such information.

For the rest we shall organize our administration in such a way that our rights and obligations arising therefrom can be identified at all times and made accessible within a reasonable period, for the relevant statutory and/or agreed retention period.

*Explanatory note*

In some cases the other party will not record transaction data itself. In such cases that business is largely dependent on the e-commerce business and on the reliability of its administrative system as regards the issue of information on the transaction. To increase trust in this regard, an e-commerce business should include rules on this matter in its code of conduct.

**Signing parties shall refrain from activities capable of jeopardizing the availability of electronic information and communication systems.**

□ *Specimen provision:*

We shall refrain from activities that may reasonably jeopardize the availability, capacity and/or speed of electronic information and communication systems.

*Explanatory note*

This specimen provision indicates that the signing party will assure the reliability of the organization and the information and communication systems used for electronic commerce purposes. Logically, this will at all times be based on a fair assessment of the actual costs. That assessment will include weighing the risks and justified interests. The costs should not be so large as to nullify the economics of electronic commerce activities. It should furthermore be realized that absolute security of information and communication systems is not a reality, and that organizational aspects remain at all times subject human factors that are not manageable by technical means. It may also be that the reliability, availability, robustness and timeliness of the information and communication systems used depend on (services of) third parties contracted by the endorser. The necessity to choose such third parties with due diligence and to make good arrangements will be clear.

**2.2.4 Reliability of types of electronic signatures**

**With regard to electronic signatures the signing parties shall arrange:**

- 1. what reliable forms and technologies they accept for electronic signatures;**
- 2. what reliable forms and technologies they use for electronic signatures;**
- 3. the verification of an electronic signature;**
- 4. the quality standards imposed on third parties;**
- 5. the responsibility for the confidentiality of the electronic signature.**

□ *Specimen provision:*

We shall indicate in a timely and logical way, accessible to the other party, the forms and technologies for electronic signatures that we accept and/or use.

If we make use of an electronic signature in our electronic commerce activities, we shall ensure that it can be reliably verified. Third parties whose services we might use for that purpose shall be required demonstrably to comply with independently set quality standards.

The user of electronic signatures shall be responsible for the diligent management of the means therefor, in particular the confidentiality of keys.

*Explanatory note*

In the context of e-commerce, parties will frequently make use of electronic signatures. An other party may wonder whether the electronic signature used is reliable and what value should be assigned to it. In order to promote the other parties trust in electronic signatures and the underlying technology, an electronic commerce party should include the above rules on electronic signatures in its code of conduct.

In the context of third-party quality standards, one may consider quality standards as imposed on Trusted Third Parties (TTP's).

## 2.3 Transparency

### 2.3.1 Optimal transparency of information

**Signing parties shall indicate what information they will provide to the other party. The following items shall be dealt with clearly:**

- 1. applicability of General Terms if any;**
- 2. identity and full address; registration number in the Trade Register and VAT number if any;**
- 3. electronic communication address;**
- 4. any relevant information regarding certification and/or authorization of services/products; and information regarding the agency from which such qualification has been obtained;**
- 5. the principal features of the services and/or products offered,**
- 6. if applicable the minimum contract duration and possibilities for its termination;**
- 7. the adequately specified price and/or price components; and whether the price quoted is inclusive or exclusive of taxes;**
- 8. any other additional costs and liabilities, such as costs of delivery, insurance, expenses, etc., and for whose account these will be;**
- 9. method of invoicing, and when and how the invoice will be sent;**
- 10. information on product delivery dates, and information on the commencement and duration of service provision, in so far as applicable;**
- 11. any liability restrictions or guarantees that may apply;**
- 12. method of payment and to whom; and any terms of payment;**
- 13. the period for which offers remain valid;**
- 14. whether, when, and how a confirmation (of receipt or other matter) will be sent for relevant transactions;**
- 15. the way in which the other parties can record transaction data;**
- 16. the deadline by which acceptance or other declaration must have been received;**
- 17. whether and in what way the other party can return the ordered services/goods if these do not satisfy the terms of the agreement, and information on repayment of the purchase sum;**
- 18. the possibility, if any, for the other party to rescind the agreement, and the way in which this must be done;**
- 19. what law is applicable to transactions;**
- 20. what facilities are available in the event of disputes.**

*Specimen provision:*

We shall do our utmost to ensure that the other party can have access in good time of all relevant information relating to the content and terms of a given (intended) electronic transaction, having due regard for the method of electronic commerce. In particular, having due regard for the method of electronic commerce and before an agreement has been concluded, we shall at any rate:

- notify the other party of any general terms of business by electronic means unless this cannot reasonably be done, in which case they will be notified to the other party by other means,
- and furthermore, in so far as it is not included in our general terms of business, provide the following information:

*Full statement of the 20 above-mentioned items.*

*Explanatory note*

In electronic commerce parties conduct transactions at a distance. In that context there is often no opportunity to gain all kinds of information relevant to the decision whether or not to conclude the transaction. To create trust in electronic commerce it is therefore important for the other parties to be confident of having simple access to the information needed in order to take a well-considered decision.

To summarize the information use was made of Article 5 of the draft of the European Parliament and of the Council relating to certain legal aspects of electronic commerce in the internal market, and of Article 4 of Directive 97/7/EC of the European Parliament and of the Council relating to consumer protection in respect of distance contracts.

No general provision has been concluded with regard to what law is applicable to electronic commerce. For use between parties in the Netherlands, transactions are in principle governed by Dutch law. However, if multiple legal systems may apply it makes sense before concluding a transaction to investigate which law will be applicable. International Private Law assumes that the businesses themselves are in principle free to choose the law they wish. This choice should be explicitly stated, and it is advisable to record it. Note that in certain case International Private Law offers protection to vulnerable public interests, for example consumers.

### 2.3.2 Identifiable commercial communications

**Signing parties shall focus attention on the identifiability and origin of their commercial communications.**

□ *Specimen provision:*

Our commercial communications made available and/or disseminated by electronic means shall at all times be identifiable as such and as originating from ourselves. Should we make available and/or disseminate by electronic means commercial communications originating from third parties, we shall ensure that that material is identifiable as such and as originating from those third parties.

**Should a signing party apply an opt-in or opt-out facility, it shall give clear information thereon.**

□ *Specimen provision opt-out:*

Should recipients of commercial communications that we transmit by electronic mail explicitly notify to us or to a third party designated by us that they do not wish, or no longer wish, to receive that material, then we shall respect that wish. In our commercial communications we shall indicate the way in which this can be simply and rapidly done.

□ *Specimen provision opt-in:*

We shall send no commercial communications by electronic mail unless the addressees of such material have explicitly notified beforehand to us or to a third party designated by us that they wish to receive that material. We shall indicate the way in which that can be simply and rapidly done.

*Explanatory note*

For parties who prefer not to receive commercial communications, signing parties could consider setting up a system to enable parties to make that known. Such a system is known as an opt-out system. There are also opt-in systems. These systems provide for no commercial communications to be transmitted to parties unless they have explicitly stated that they wish to receive it. If such a system is available to them, electronic commerce parties can include a relevant rule in their code of conduct.

In the Netherlands, instead of the specimen provision proposed in this Model Code use could be made of the Dutch Code of Advertising.

## 2.4 Confidentiality and Privacy

### 2.4.1 Privacy

**Signing parties shall respect the privacy of the other party and shall indicate the way in which they will do so.**

□ *Specimen provision:*

1. Good privacy management is an essential part of the management of our business contacts, and for that reason our privacy policy is made known in a clear way. We regard personal data to be confidential information, and these shall therefore be processed only if:
  - a) it is justifiable in the context of normal business operation;
  - b) it is clear to the other party concerned;
  - c) the data are relevant and not excessive for electronic commerce purposes;
  - d) the data are correct and complete;
  - e) they are processed in a fair and lawful way.
2. In so far as personal data are passed on to third parties, this shall be done only with the other parties consent or on account of a legal duty.
3. Personal data that are no longer required for electronic commerce purposes will be rendered unidentifiable or destroyed.
4. Requests by parties to inspect and correct their data will be honoured provided this does not require disproportionate efforts on our part.

*Explanatory note:*

In this article the endorser undertakes to respect and comply with national and international legislation where applicable to his electronic commerce activities. This will apply in any case where personal particulars are processed. Directive 95/46/EC of 24 October 1995 governing the protection of individuals in respect of the processing of personal data will apply in that case; this Directive is to be implemented in the Netherlands shortly by means of the Data Protection Act. In certain cases (for example where Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector of 15 December 1997 applies) data on legal persons must also be treated as personal data.

Certain branches, consumers or forms of data processing may be subject to specific rules and/or codes. The endorser may also declare that he complies with a specific regulatory measure.

### 2.4.2 Confidential information

**To promote trust in their electronic commerce activities, signing parties shall indicate that they will respect the confidentiality of confidential information received from the other party and that they will take measures to ensure this confidentiality.**

□ *Specimen provision:*

Should we receive information from an other party or a third party of which we are or may in reasonableness be aware that it needs to be treated as confidential, we shall ensure that effective measures are taken for the information and communication systems for which we are responsible in order to guarantee that confidentiality. We shall as far as we are able indicate whether the transmission and/or reception of information entails exceptional risks for the maintenance of confidentiality.



### 2.4.3 Intellectual property rights

<b>Signing parties shall respect intellectual property rights.</b>
--

□ *Specimen provision:*

Should we by electronic means offer products and/or services carrying third-party rights, we shall make every reasonable effort to ensure that intellectual property rights are respected and that obligations arising therefrom are duly honored.

Should or could we be aware that information becoming electronically available to us is subject to such rights we shall ensure that such information is used by ourselves in a lawful manner only. If we become aware of infringement of such rights by third parties, we shall as far as reasonably possible notify the proprietor concerned.

## **Appendix I**

### **Summary of priority items**

#### **General**

- Signing parties shall state that they will comply with the Code of Conduct.
- By giving definitions of certain terms occurring several times in the code of conduct, the signing parties shall increase the clarity and readability of the code.
- Signing parties shall clearly indicate the scope of their Code.
- Signing parties shall focus attention on consumer relations.
- Signing parties shall focus attention on the way in which the Code of Conduct is enforced.

#### **Reliability**

- Signing parties shall refrain from giving out misleading and/or incorrect information
- Signing parties shall state:
  1. that they will recognize electronic communication;
  2. that they will accept electronic communication in legal proceedings (in court or otherwise).
- Signing parties shall assure the reliability of systems and organization.  
Signing parties shall give clarity regarding demands for information and administrative organization.  
Signing parties shall refrain from activities capable of jeopardizing the availability of electronic information and communication systems.
- With regard to electronic signatures the signing parties shall arrange:
  1. what reliable forms and technologies they accept for electronic signatures;
  2. what reliable forms and technologies they use for electronic signatures;
  3. the verification of an electronic signature;
  4. the quality standards imposed on third parties;
  5. the responsibility for the confidentiality of the electronic signature.

#### **Transparency**

- Signing parties shall indicate what information they will provide to the other party.

The following items shall be dealt with clearly:

1. applicability of General Terms if any;
2. identity and full address; registration number in the Trade Register and VAT number if any;
3. electronic communication address;
4. any relevant information regarding certification and/or authorization of services/products; and information regarding the agency from which such qualification has been obtained;

5. the principal features of the services and/or products offered,
  6. if applicable the minimum contract duration and possibilities for its termination;
  7. the adequately specified price and/or price components; and whether the price quoted is inclusive or exclusive of taxes;
  8. any other additional costs and liabilities, such as costs of delivery, insurance, expenses, etc., and for whose account these will be;
  9. method of invoicing, and when and how the invoice will be sent;
  10. information on product delivery dates, and information on the commencement and duration of service provision, in so far as applicable;
  11. any liability restrictions or guarantees that may apply;
  12. method of payment and to whom; and any terms of payment;
  13. the period for which offers remain valid;
  14. whether, when, and how a confirmation (of receipt or other matter) will be sent for relevant transactions;
  15. the way in which the other parties can record transaction data;
  16. the deadline by which acceptance or other declaration must have been received;
  17. whether and in what way the other party can return the ordered services/goods if these do not satisfy the terms of the agreement, and information on repayment of the purchase sum;
  18. the possibility, if any, for the other party to rescind the agreement, and the way in which this must be done;
  19. what law is applicable to transactions;
  20. what facilities are available in the event of disputes.
- Signing parties shall focus attention on the identifiability and origin of their commercial communications.  
Should a signing party apply an opt-in or opt-out facility, it shall give clear information thereon.

### **Confidentiality and privacy**

- Signing parties shall respect the privacy of the other party and shall indicate the way in which they will do so.
- To promote trust in their electronic commerce activities, signing parties shall indicate that they will respect the confidentiality of confidential information received from the other party and that they will take measures to ensure this confidentiality.
- Signing parties shall respect intellectual property rights.

## Appendix II

### Summary of specimen provisions

#### General

- **Announcement**

We will state as fully as possible, in a way appropriate to our electronic commerce activities, that we endorse and comply with this Code.

- **Definitions**

*Electronic commerce activities:* All activities, communications and transactions having a business purpose or background that are performed electronically. An equivalent term is: electronic commerce.

*Other party:* Where this Code refers to ‘other party’ this shall also denote a potential other party and any other addressees or persons or organizations at which our electronic commerce activities are directed.

- **Scope of the E-commerce Code of Conduct**

The Code is applicable in its entirety to all our electronic commerce activities unless explicitly stated otherwise. If an exception is made to the terms of the Code we shall ensure that the other party is able to take advance note of this, taking into account the method of electronic commerce and legal requirements, if any.

- **Specific aspects relating to consumers**

We shall ensure that consumers’ wishes, questions and problems regarding our goods and/or services are investigated in good time and that all reasonable steps are taken to answer questions and resolve problems.

Should a consumer with whom we undertake or have undertaken a transaction explicitly request confirmation of receipt or confirmation of the correctness of information supplied by us, we shall provide him with such confirmation in good time.

We shall ensure that consumers’ wishes, questions and problems regarding our goods and/or services are answered within 14 days, and that these are then effectively dealt with without delay.

- **Enforcement**

No specimen provision has been included for the priority item ‘enforcement’. However, a number of possible enforcement mechanisms are mentioned in the explanatory note. Signing parties should define this priority item for themselves in an appropriate way when drafting their individual code of conduct. An attractive option would be to use mechanisms applied for the settlement of disputes within the professional group or sector concerned, or other suitable enforcement mechanisms.

#### Reliability

- **Reliability of information**

We shall do our utmost to ensure that all substantive information originating from ourselves, including information on our own organization, joint partnerships, products and services, supplied by means of our electronic commerce activities is not misleading or incorrect.

- **Recognition of electronic communication**

Should we receive information electronically, we shall not dismiss the validity, legal effects and/or enforceability thereof on account of the mere fact that the information is electronic and that we have not (also) received the information in hard copy.

Should it be intended to conclude an agreement by means of electronic communication, we shall not deny the conclusion of such an agreement on account of the mere fact that we have not sent the offer or received the acceptance (also) in hard copy.

Should in the course of legal proceedings (in court or otherwise) electronic information be submitted as evidence, we shall not claim that such information constitutes insufficient proof on account of the mere fact that the information was not made available to us (also) in hard copy.

#### ▪ **Reliability of systems and organization**

We shall do our utmost to acquit ourselves properly of our responsibility with regard to our organization and with regard to our systems and information. As far as possible we shall use generic and accessible standards for this purpose.

We shall ensure that our electronic commerce activities are integrated within our organization in such a way and that our information and communication systems are designed in such a way that we are indeed able to honour obligations undertaken and commitments entered into by electronic means.

We shall ensure that the information and communication systems used in the context of our electronic commerce activities are sufficiently available and robust to enable us to offer our services and/or products effectively, in compliance with applicable legislation and regulations, contractual obligations and in accordance with fair standards.

With regard to transactions entered into with another party, we shall indicate whether, and if so which, transaction data will be retained by us for a given period, in order to enable the other party to demand to receive (by electronic means) such data from us. We shall also indicate whether the other party will incur (fair) costs for the issue of such information.

For the rest we shall organize our administration in such a way that our rights and obligations arising therefrom can be identified at all times and made accessible within a reasonable period, for the relevant statutory and/or agreed retention period.

We shall refrain from activities that may reasonably jeopardize the availability, capacity and/or speed of electronic information and communication systems.

#### ▪ **Reliability of types of electronic signatures**

We shall indicate in a timely and logical way, accessible to the other party, the forms and technologies for electronic signatures that we accept and/or use.

If we make use of an electronic signature in our electronic commerce activities, we shall ensure that it can be reliably verified. Third parties whose services we might use for that purpose shall be required demonstrably to comply with independently set quality standards.

The user of electronic signatures shall be responsible for the diligent management of the means therefor, in particular the confidentiality of keys.

## **Transparency**

#### ▪ **Optimal transparency of information**

We shall do our utmost to ensure that the other party can have access in good time of all relevant information relating to the content and terms of a given (intended) electronic transaction, having due regard for the method of electronic commerce. In particular, having due regard for the method of electronic commerce and before an agreement has been concluded, we shall at any rate:

- notify the other party of any general terms of business by electronic means unless this cannot reasonably be done, in which case they will be notified to the other party by other means,
- and furthermore, in so far as it is not included in our general terms of business, provide the following information:

*Full statement of the 20 mentioned items.*

▪ **Identifiable commercial communications**

Our commercial communications made available and/or disseminated by electronic means shall at all times be identifiable as such and as originating from ourselves. Should we make available and/or disseminate by electronic means commercial communications originating from third parties, we shall ensure that that material is identifiable as such and as originating from those third parties.

*opt-out provision:*

Should recipients of commercial communications that we transmit by electronic mail explicitly notify to us or to a third party designated by us that they do not wish, or no longer wish, to receive that material, then we shall respect that wish. In our commercial communications we shall indicate the way in which this can be simply and rapidly done.

*opt-in provision:*

We shall send no commercial communications by electronic mail unless the addressees of such material have explicitly notified to us or to a third party designated by us that they wish to receive that material. We shall indicate the way in which that can be simply and rapidly done.

## **Confidentiality and Privacy**

▪ **Privacy**

1. Good privacy management is an essential part of the management of our business contacts, and for that reason our privacy policy is made know in a clear way. We regard personal data to be confidential information, and these shall therefore be processed only if:
  - a) it is justifiable in the context of normal business operation;
  - b) it is clear to the other party concerned;
  - c) the data are relevant and not excessive for electronic commerce purposes;
  - d) the data are correct and complete;
  - e) they are processed in a fair and lawful way.
2. In so far as personal data are passed on to third parties, this shall be done only with the other parties consent or on account of a legal duty.
3. Personal data that are no longer required for electronic commerce purposes will be rendered unidentifiable or destroyed.
4. Requests by parties to inspect and correct their data will be honored provided this does not require disproportionate efforts on our part.

▪ **Confidential information**

Should we receive information from an other party or a third party of which we are or may in reasonableness be aware that it needs to be treated as confidential, we shall ensure that effective measures are taken for the information and communication systems for which we are responsible in order to guarantee that confidentiality. We shall as far as we are able indicate whether the transmission and/or reception of information entails exceptional risks for the maintenance of confidentiality.

▪ **Intellectual property rights**

Should we by electronic means offer products and/or services carrying third-party rights, we shall make every reasonable effort to ensure that intellectual property rights are respected and that obligations arising therefrom are duly honored.

Should or could we be aware that information becoming electronically available to us is subject to such rights we shall ensure that such information is used by ourselves in a lawful manner only. If we become aware of

infringement of such rights by third parties, we shall as far as reasonably possible notify the proprietor concerned.

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## Appendix IV ECP.NL

In drafting the Code, two groups acted as a sounding board: the ECP.NL Forum and the Government Advisory Group.

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### **ECP.NL: the neutral research and co-ordination center for electronic commerce**

At the beginning of 1998 the business community and the Ministry of Economic Affairs co-founded the national research and co-ordination center for electronic commerce in the Netherlands: Electronic Commerce Platform Netherlands (ECP.NL). ECP.NL is an independent non-profit partnership between players with an interest in the speedy introduction of electronic commerce. These are users, suppliers, government agencies, intermediary organizations, and educational establishments. ECP.NL's goal is to develop and adopt e-commerce in a joint effort; not as a technological IT development but as a strategic fundamental development for the economy and the competitiveness of the Netherlands. Its activities take place in the context of public information, preconditions, international co-ordination, and the initiation and publicizing of relevant specimen projects.

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This E-commerce Code of Conduct is also available on the ECP.NL web site.

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