

Open EDI and Law in Europe

A Regulatory Framework

by

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Preface

This volume is about open EDI, an application of electronic commerce and its relationship with law. When I started this research in September 1992 I thought I could combine a theoretical background with my practical intentions to suggest viable solutions to a legal problem created by information technology. Along the way I changed my course back and forth several times. The ideas presented in this volume have little to do with my original concept on this project. There is one point, however, that remains unchanged. This is the need for a change in the way we lawyers view open EDI and electronic commerce in general. Although electronic commerce applications all allow the transfer of electronic data from one point to another, open EDI also allows for commercial transactions to take place in a fully automated and highly organised trading environment.

When confronted with technology the typical reaction of law is to support interpretations and amendments of existing statutes so that old laws can accommodate change in technology. Open EDI, however, draws a line and limits this possibility of regulation. Open EDI permits *ad hoc* open electronic transactions irrespective of geographical border and jurisdictions among trading partners with no prior trade relationship. By doing this, open EDI limits the possibility of using up front interchange agreements to address the legal problems of the interchange. It is, therefore, necessary to use legal instruments supported by information technology to overcome legal problems.

Openness in an electronic environment is the missing keyword for law and a function that has the potential to initiate change in law that is not often observed. Possible regulations should address the need of the users to act in such a trading environment uninhibited of basic legal concerns. This research project concludes that to respond to the challenge of open EDI it is necessary to work towards a new legal framework based on international law and supported by information technology.

This study addresses the issue of open EDI and the law. It can also be valuable to those seeking legal information on electronic commerce in general.

This volume is interesting to researchers and students in the field of open EDI and electronic commerce who maintain an academic interest. This volume is also of assistance to lawyers and laymen concerned with the practical aspects of the legal issues of the application of open EDI. Some of the opinions expressed can interest legislators and policy makers in electronic commerce.

Rotterdam, June 1997

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Abbreviations

ABA	<i>American Bar Association</i>
AGBG	<i>Gezetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen</i>
AI	<i>Artificial Intelligence</i>
All ER	<i>All England Reports</i>
ANSI	<i>American National Standards Institute</i>
AVW	<i>Algemeine Voorwarden Wet</i>
Bellcore	<i>Bell Communications Research</i>
CA	<i>Certification Authority</i>
CADDIA	<i>Co-operation in Automation for Data and Documentation for Import/ Export and Agriculture</i>
CCC	<i>Customs Co-operation Council</i>
CD	<i>Co-ordinated Development</i>
CDP	<i>Cahier de Droit Prive</i>
CEC	<i>Commission of the European Communities</i>
CEN	<i>Comité Européen de Normalisation (European Organisation for Standardisation)</i>
CIREFIT	<i>Le Centre International de Recherches et d'Etudes du Droit de l'Informatique et des Télécommunications</i>
CLSR	<i>Computer Law and Security Report</i>
EA	<i>Επιτροπή Ανταγωνισμού (Competition Committee)</i>
ECA	<i>Electronic Commerce Australia</i>
ECE	<i>see, UN/ECE</i>
ECR	<i>European Court Reports</i>
EDI	<i>Electronic Data Interchange</i>
EDICA	<i>EDI Council of Australia</i>
EDICC	<i>Electronic Data Interchange Council of Canada</i>
EDIFACT	<i>see, UN/EDIFACT</i>
EDITERMS	<i>EDI Terms</i>
EEC	<i>European Economic Community</i>
EFT	<i>Electronic Funds Transfer</i>
EFTA	<i>European Free Trade Association</i>
E-MAIL	<i>Electronic mail</i>

EMEDIA	<i>European Model Electronic Data Interchange Agreement</i>
ETERMS	<i>Electronic Terms</i>
EU	<i>European Union</i>
FGIMIA	<i>Federation of Greek Industries Model Interchange Agreement</i>
FRE	<i>Federal Rules of Evidence</i>
FTP	<i>File Transfer Protocol</i>
HTML	<i>Hypertext Mark up Language</i>
HTTP	<i>Hypertext Transfer Protocol</i>
ICC	<i>International Chamber of Commerce</i>
INCAS	<i>Incoterms Advisory System</i>
Incoterms	<i>International Commercial Terms</i>
INSIS	<i>Integrated Services Inter-institutional Information Systems</i>
IP	<i>Intellectual Property</i>
IS	<i>Information Systems</i>
ISO	<i>International Standards Organisation</i>
IT	<i>Information Technology</i>
ITT	<i>International Trade Transactions</i>
ITU	<i>International Telecommunications Organisation</i>
JURICAS	<i>Juridische Advies Systemen (Legal Advice Systems)</i>
LEDIA	<i>Legal EDI Advisory system</i>
Lx	<i>Legal EDI Contracting System</i>
MAC	<i>Message Authentication Code</i>
MIT	<i>Massachusetts Institute of Technology</i>
NJB	<i>Nederlands Juristen Blad</i>
NJW	<i>Neue Juristische Wochenschrift</i>
OECD	<i>Organisation for Economic Co-operation and Development</i>
OJ	<i>Official Journal</i>
PIN	<i>Personal Identification Number</i>
PKI	<i>Public Key Infrastructure</i>
PTT	<i>Post, Telegraph & Telephones</i>
QB	<i>Queen's Bench</i>
RSA	<i>Rivest, Shamir, Adleman</i>
SME	<i>Small-Medium sized Enterprises</i>
SWIFT	<i>Society for Worldwide Interbank Financial Telecommunication</i>
TCP/IP	<i>Transmission Control Protocol/Internet Protocol</i>
TEDIS	<i>Trade Electronic Data Interchange Systems</i>
TPA	<i>Trading Partner Agreement</i>
UCC	<i>Uniform Commercial Code</i>
UCCR	<i>Uniform Commercial Code Reporter</i>
UK EDIa	<i>United Kingdom EDI association</i>

UNCID	<i>Uniform Rules of Conduct for the Interchange of Trade Data by Teletransmission</i>
UNCITRAL	<i>United Nations Commission for International Trade Law</i>
UNIDROIT	<i>Institut International pour l'Unification du Droit Prive (Institute for the Unification of Private International Law)</i>
UN/ECE	<i>see, UN/ECE WP.4</i>
UN/ECE WP.4	<i>United Nations Economic Commission for Europe, Working Party 4</i>
UN/EDIFACT	<i>United Nations Electronic Data Interchange for Administration, Commerce and Transport</i>
UNTDID	<i>United Nations Trade Data Interchange Directory</i>
USC	<i>United States Code</i>
VAN	<i>Value Added Network</i>
VAT	<i>Value Added Tax</i>
WWW	<i>World Wide Web</i>
ZIP	<i>Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis</i>

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Introduction

This research project proposes a conceptual framework for the legal regulation of open EDI. It claims that the regulation of open EDI relies upon a legal framework based on international law and supported by information technology.

This volume discusses and presents the legal problems that the emergence of open EDI has brought about for the trading partners. The first part of this research concludes that open EDI creates a unique trading environment that must be distinguished from other forms of electronic commerce. Open EDI poses a number of legal challenges that the law cannot ignore and which call for a resolution.

The second part examines these legal problems in the light of existing solutions that have been made available to address other applications of electronic commerce like closed EDI, for example. In the past, the legal problems introduced by what is often described as EDI or closed EDI have been acknowledged and there have been several efforts to address them. The second part concludes that the legal problems of open make it cumbersome and ineffective to apply the solutions perceived and designed for closed environments to open ones.

Hence, this research project discusses the principles upon which regulation for open EDI can be established and it presents a conceptual regulatory framework for the resolution of the legal problems of open EDI. The solutions proposed are based upon international law and supported by information technology. Establishing a regulatory legal framework to exercise control over legal risks of open EDI fills the present legal vacuum and contributes to the safety of the underlying commercial transactions. The third part presents an analysis of examples of possible legal instruments that elaborate on this conceptual framework and correspond to the principles of the regulation. A