

Model Code of Conduct for Electronic Business

Electronic Commerce Platform Netherlands
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Foreword

You have before you the new version of the Model Code of Conduct for Electronic Bussiness (“Model Code of Conduct”). It may serve as an example or as a source of inspiration for organisations in drafting codes of conduct for e-business. The Model Code of Conduct may also serve as a checklist in assessing the degree to which contracts, general terms and conditions, regulations etc. help to increase mutual trust in e-business.

In 1998, ECP.NL conducted a study into the legal problems of e-business 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 of Conduct for Electronic Commerce (Draft version 3.0), which was published in November 1999. The standards outlined in the above-mentioned version were drafted after consultation with Dutch representatives of all parties involved, including the business community and scientific research organisations, government agencies and consumer organisations.

At the time, in drafting the model Code of Conduct for Electronic Commerce (Draft version 3.0), particular attention was focused on a range of existing initiatives in this field, both national and international. This Dutch initiative was presented as a model to a number of relevant international organisations such as the OECD (Organisation for Economic Co-operation and Development), the United Nations and the European Commission. Partly as a result, a number of these organisations have placed the subject of self-regulation in electronic commerce on their agendas, taking the ECP.NL Model Code of Conduct as an example. In the meantime, the “Centre for Trade Facilitation and Electronic Business” of the United Nations (UN/CEFACT) adopted the “Recommendation regarding E-commerce self-regulatory instruments” [*Aanbeveling inzake e-commerce zelfregulerings-instrumenten*] which included the Model Code of Conduct for Electronic Commerce (Draft version 3.0) as an example.

On the basis of experience gained since the publication of the Model Code of Conduct for Electronic Commerce (Draft version 3.0) in November 1999 and the developments in national and international legislation and policy frameworks, ECP.NL decided to update the existing version.

This version of the Model Code of Conduct will apply for a period of at least two years. During this period, the various lessons learned by those using this version will be reviewed and, if necessary, the model will be adjusted accordingly. The increasing number of international discussions may again contribute towards further refinement of the Model Code of Conduct.

This Model Code of Conduct is, therefore, a dynamic and flexible instrument. Electronic Commerce Platform Nederland (ECP.NL) is the national research and co-ordination centre for e-business in the Netherlands. ECP.NL is a partnership of users, merchants, intermediary organisations, government agencies and educational institutions. They work as a single body on matters of public information, requirements, technology and standards, and international co-ordination relating to e-business. It is ECP.NL’s mission to increase the competitiveness of the Dutch business community by encouraging the development of the digital economy.

Further information on ECP.NL and various advisory groups that helped to develop the Model Code of Conduct is included in Annex IV.

Leidschendam, October 2001

1. Introduction

1.1 Trust is the key to e-business

E-business offers important opportunities for the economy, job market, the development of new services and new forms of co-operation between and within businesses and industry sectors, and, last but not least, for consumers. Many organisations and consumers remain reluctant to conduct business electronically, for example via the Internet. One important reason for this is the fact that they do not sufficiently trust the security of systems, the unknown other party, the reliability of data and the degree of legal protection. Hence, creating an adequate level of trust is essential to the optimal development of the digital economy. Devising a legal framework that promotes transparency, both by means of legislation and self-regulation, will help to create legal certainty and trust among consumers, the business community and the government.

1.2 Instruments for building trust

A good transborder legal infrastructure assures legal and technical interoperability, thereby enabling the creation of legal security above all. Several regulatory initiatives have been developed both on a world-wide and a regional level to harmonise various legal aspects that are relevant to e-business.

Examples at a world-wide level are the “UNCITRAL Model Law on Electronic Commerce” and at a European level the “E-commerce Directive” yet to be implemented, the “Electronic Signatures Directive” and the “Copyright in the Information Society Directive”. As per 1 February 2001, the “Distance Selling Directive” was implemented in Dutch legislation in the form of the Distance Sales Act (*Wet “Koop of Afstand”*). The new Personal Data Protection Act (*Wet bescherming persoonsgegevens*), which became effective on 1 September 2001, serves to implement the European Privacy Directive in Dutch legislation.

At a national level, there was already a largely adequate legal framework. The White Paper on Legislation on the Electronic Highway issued by the Ministry of Justice in 1998 has already confirmed that, broadly speaking, the Dutch legislative system is sufficiently equipped to support electronic transactions. By implementing the EU directives, the national legal framework will be strengthened further.

The White Paper entitled “Legislation on the Electronic Highway” and other government papers also indicate 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 merchants (the business community) to make a considerable effort itself to create sufficient trust. One way to do this is to state that merchants will conform to a code of practice. Such practice may be defined by legislation, but it may also be indicated by means of contracts or by endorsement of a code of conduct or a “statement” about the manner in which an organisation deals with e-business.

Ultimately self-regulation in combination with legislation can create an effective level of trust. Businesses that conduct e-business and are committed to a code of conduct can be challenged by customers to comply with that code. It cannot be ruled out that the standardisation based on the Model Code of Conduct will become so generally accepted that it will also be enforceable at law.

1.3 Functions of the Model Code of Conduct

The Model Code of Conduct provides a generic framework with the key priority items for a code of conduct designed to increase trust in e-business. The Model Code of Conduct also contains concrete specimen provisions.

The generic nature of the Model Code of Conduct makes it suitable as a starting point in drafting a technology-independent code of conduct for e-business focusing on the need of individual organisations or a certain industry sector. Concrete specimen provisions have therefore been included. The Model Code of Conduct may also serve as a checklist in assessing the degree to which contracts, general terms and conditions, regulations etc. help to increase the mutual trust in e-business.

The Model Code of Conduct focuses on actual practice and has been drawn up in accordance with applicable law. The Model Code of Conduct also contains additional rules regarding a number of subjects.

The Model Code of Conduct provides information where its contents overlap statutory regulations. The applicable statutory rules are outlined for users of the Model Code of Conduct and placed in the context of e-business among rules regarding related subjects.

The Model Code of Conduct has a supplementary function if it contains rules that have not or not yet been laid down in legislation. That may be the case in particular where, deliberately or otherwise, the legislator has not provided for particular matters or if statutory rules are being prepared but are not yet applicable (e.g. European Directives that have not yet been adopted or implemented). In the latter cases, the Model Code of Conduct anticipates new legislation.

1.4 Principles

As indicated above, the objective of this Model Code of Conduct 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 code of conduct, 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 honoured? Reliability of e-business is conditional on participants themselves being responsible for the development and maintenance of reliable information and communication systems. This principle is further supported by a reliable organisation and protection of any information exchanged.
- **Transparency:** “what we say is what we do.” To all customers 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:** customers should have a defined degree of certainty that confidential information is indeed treated as such. The right to privacy must be assured.

1.5 Structure of the Model Code of Conduct

The Model Code of Conduct contains the most important priority items for a code of conduct for e-business as well as some specimen provisions. The priority items have been set forth in a framework. This does not mean that the Model Code of Conduct contains a complete list of all priority items 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-business. In that case it may be considered adding such existing rules to the code of conduct, either to give these rules a binding character, or to the extent they are already binding on any other account, to make the customers familiar with their contents. To provide information to the parties involved, the parties may also wish to include in a code of conduct rules other than the statutory rules already incorporated. From the point of view of supplementing existing rules, it might be considered, in drawing up a code of conduct, that a provision should be added to cover subjects that currently are not addressed in the Model Code of Conduct, such as the liability of the merchant in respect of the consequences of failures in electronic communication.

The priority items as set out in the Model Code of Conduct are broadly perceived, both in their mutual context and in their formulation, as a complete set of rules to which a party conducting e-business should as a minimum commit itself in order to generate sufficient trust among customers. ECP.NL recommends that the complete set of priority items be incorporated in a code of conduct.

In addition to priority items the Model Code of Conduct also contains a number of specimen provisions suitable for use as building blocks for drafting a code 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. Representatives of industry sectors should define this priority item for themselves in an appropriate way when drafting the code of conduct. One 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. Priority items for drafting a code of conduct for e-business

2.1 General

2.1.1 Announcement

Merchants shall announce that they will comply with the rules of the code of conduct.

□ *Specimen provision:*

We will state as fully as possible, in a way appropriate to e-business, that we endorse and comply with this code of conduct.

Explanatory note:

The party conducting e-business, hereinafter referred to as the “Merchant”, that endorses the code of conduct should clearly communicate its commitment to comply with this code of conduct to its (potential) market. This has been laid down as an obligation in the E-commerce Directive, for Article 10 of the E-commerce Directive provides that, unless professional parties have agreed otherwise, merchants of “services of the information society” shall indicate which codes of conduct they endorse and provide information about the manner in which such codes may be consulted electronically.

2.1.2 Definitions

Defining certain terms occurring several times in the Model Code of Conduct increases the clarity and readability of the code of conduct.

□ *Specimen provision:*

Definitions:

In this code of conduct the following terms shall have the meanings assigned to them below:

1. e-business: all activities, communications and transactions having a business purpose or background that are performed electronically.
2. customer: where this code of conduct refers to “customers” this shall also denote potential customers, as well as any other addressees or persons or organisations with whom we conduct e-business.
3. (.....)

Explanatory note:

The aim of using definitions is to lay down the meaning of terms frequently used in a code of conduct in a uniform manner, thus increasing the consistency as well as the accessibility of the document.

The definition of e-business matches the definition used by ECP.NL and the Ministry of Economic Affairs, and is technology-independent. Moreover, it is not directed only at providing services but it is also applicable to other types of business transactions and communications. This definition covers the broadest possible range of application. It should be noted that, due to this broad definition, the scope of the Model Code of Conduct is broader than the scope of the E-commerce Directive. For instance, the E-commerce Directive does not apply to gambling activities whereby money is staked, such as lotteries and bets. Such activities *are* covered by the scope of the Model Code of Conduct. As will be discussed in further detail in the next section, in drawing up a code of conduct, its scope deserves special attention.

2.1.3 Scope of the code of conduct for e-business

Merchants shall clearly indicate the scope of the code of conduct.

□ *Specimen provision:*

Unless explicitly stated otherwise, the code of conduct is applicable in its entirety to all our e-business activities.

Explanatory note:

Due to the broad definition of the term “e-business” as included in section 2.1.2, the code of conduct is given a broad scope. The scope of a code of conduct may be wider than the statutory provisions applicable to activities in a particular industry sector. For instance, a code of conduct may contain provisions regarding certain consumer rights that are not necessary in business-to-business (B2B) or business-to-government (B2G) relationships frequently occurring in the industry sector in question. This may mean that a Merchant commits to more, and also undertakes more obligations, than is necessary according to applicable law. Cf. also section 2.1.4. Subsequently, the Merchant should review the code of conduct for any conflicts with any other applicable codes of conduct and general terms and conditions used by it. Where necessary, a provision regarding the order of ranking should be added to the code of conduct, so that it will be clear which rules will prevail in the event of a dispute.

2.1.4 Specific aspects relating to consumers

Merchants shall pay particular attention to consumer relations.

□ *Specimen provision:*

We shall ensure that consumers’ wishes, questions and problems regarding our goods and/or services are answered within 14 days and are then effectively dealt with without delay. If a consumer has placed an electronic order with us, we shall acknowledge its receipt electronically as soon as possible.

Explanatory note:

In legislation, consumers are often offered more protection than a party acting in its professional capacity. From this point of view it is necessary that, in e-business, particular attention is paid to the relationship with consumers. The specimen provision contains an obligation which a Merchant may assume in addition to its present statutory obligations. The passage on acknowledgement of receipt of an order has been derived from Article 11 of the E-commerce Directive.

2.1.5 Enforcement

Merchants shall make adequate arrangements for enforcement of the code of conduct.

Explanatory note:

The term “enforcement” refers to measures to promote compliance with the code of conduct. No specimen provision has been included for the priority item “enforcement”. However, a number of possible enforcement mechanisms are mentioned below. Merchants should define this priority item for themselves in an appropriate way when drafting their individual code of conduct.

It is important that the authority of a code of conduct for e-business is determined by the level of enforcement. This enforcement may be based in part on the legal context in which the businesses conduct e-business and in part on a set of self-regulatory instruments; the latter might involve a certification system, a specific code of conduct disputes committee and/or a code of conduct registration system, either with or without disciplinary rules. One could also think of compiling a register, which would make it possible to check who has endorsed the code of conduct. Another option would be to introduce internal complaints procedures and to align with mechanisms for the settlement of disputes used within the professional group or sector concerned. Several practical examples of enforcement structures for e-business codes of conduct are already known.

Many industry sectors, such as the IT and travel industry, have alternative procedures to settle legal disputes between merchants and buyers. These procedures are jointly referred to as Alternative Dispute Resolution (ADR). If the parties have a long-standing relationship, the settlement of disputes shall preferably be aimed at limiting the consequences of the dispute and at reconciling the parties. In general, the parties will profit from a quick and informal settlement. Similar procedures may also be effective in enforcing codes of conduct for e-business.

2.2 Reliability

2.2.1 *Reliable information*

Merchants shall ensure to the extent possible that the information provided by them is correct and complete.

□ *Specimen provision:*

We shall ensure to the extent possible that the substance of all information originating from ourselves - including information on our own organisation, partnerships, products and services - supplied by means of our e-business activities, is complete and correct.

Explanatory note:

Providing correct and complete information is one of the keys to increasing trust in e-business. This standard must not only apply to information about providing products and services but also to information about the Merchant's organisation. It is of vital importance, when attempting to build trust, that the customer knows with whom it is doing business.

Dutch legislation provides for several standards which must be satisfied in providing information. Specifically for B2C relationships, additional information obligations have been incorporated in the Distance Sales Act which entered into force on 1 February 2001. As regards publication, a strict standard has been incorporated; the information in question must be provided in a clear and comprehensible manner, whereby the commercial purpose must be shown unambiguously. The E-commerce Directive further extends the contents and scope of the statutory information obligations. See also section 2.3.1.

The obligation described in the specimen provision is an obligation to perform to the best of one's ability. This is reasonable in view of the degree to which the Merchant depends on third parties in providing information, such as product information.

2.2.2 Recognition of electronic communication

Merchants shall state that they will recognise electronic communication and that, consequently, they will not contest such electronic communication as evidence in legal proceedings for form's sake only.

□ *Specimen provision:*

Should we receive information electronically, we shall not dismiss the validity, any legal effects and/or any 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. This means, *inter alia*, should it be intended to conclude an agreement by means of electronic communication, that 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. Furthermore, should in the course of legal proceedings 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:

In general, Dutch law imposes no formal requirements on the conclusion of agreements. As a rule, they need not be concluded in writing and, consequently, they may also, in principle, be concluded electronically, unless the law provides otherwise or if the parties have agreed otherwise. A provision to the effect that electronic communication will be recognised may contribute towards building trust on the part of the customer.

Dutch law is based on a system of open evidence. This means that evidence may also be provided by information generated by computer systems (e.g. log data of a system), and electronic messages such as e-mail. The admissibility of e-mail as evidence, however, does not say anything about its value as evidence. The basic rule in Dutch law is free evidential value: the court is free in the appreciation of the evidence.

2.2.3 Reliable systems and organisation

In e-business, Merchants shall assure the reliability of systems and the organisation.

□ *Specimen provision:*

In e-business we shall do our utmost to set up and design our organisation and our systems in a reliable manner, using generic and accessible standards to the extent possible. This means, *inter alia*, that we shall ensure that our e-business activities are integrated within our organisation 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 also ensure that the information and communication systems used in the context of our e-business 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 reasonable standards.

Explanatory note:

In the specimen provision, the starting point is that the Merchant assumes responsibility for creating and maintaining a reliable organisation and systems. Without a contractually deviating arrangement, the responsibility for the organisation and systems rests with the Merchant. In this specimen provision this responsibility is repeated to promote the customer's trust and worked out in further detail in several more concrete obligations.

In ensuring reliable systems, a fair assessment of the actual costs shall and may be made; there is no absolute standard for reliability. The assessment will include weighing up risks and justified interests. The costs should not be so large as to nullify the economics of e-business. Furthermore, it should be realised that absolute security of information and communication systems is not a reality, and that organisational aspects remain at all times subject to 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 Merchant. The necessity to choose such third parties with due diligence and to make good arrangements will be clear.

The obligation described in the specimen provision is an obligation to perform to the best of one's ability.

2.2.4 Electronic signatures

Merchants shall indicate how they will deal with electronic signatures, including:

- 1. what reliable forms and technologies they accept and use for electronic signatures;**
- 2. the verification procedure for electronic signatures;**
- 3. the quality standards imposed on contracted third parties;**
- 4. the division of responsibility with respect to the confidentiality of keys and codes used.**

□ *Specimen provision:*

We shall indicate in a timely and logical way, accessible to the customer, what forms and technologies for electronic signatures we accept and/or use based on which such electronic signatures are put on a par with a written signature. When using an electronic signature, 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 an electronic signature shall be responsible for the careful handling, and confidentiality of codes and/or keys.

Explanatory note:

In the context of e-business, the parties may use electronic signatures. The European Electronic Signatures Directive defines an electronic signature as follows: "data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication". In using the electronic signature, the customer may wonder whether the electronic signature used is reliable and what value should be assigned to it. In order to promote the customer's trust in electronic signatures and the underlying technology, Merchants should include rules on electronic signatures in their codes of conduct.

The specimen provision is a supplement to the Electronic Signatures Directive.

2.3 Transparency

2.3.1 Optimal transparency of information

Merchants shall indicate what information they will supply to customers, and when and how they will provide such information, with respect to:

- 1. the Merchant's identity;**
- 2. the transaction procedure;**
- 3. prices and other information regarding products and services offered;**
- 4. the applicable terms and conditions.**

□ *Specimen provision:*

We shall do our utmost to ensure that the customer can have access in good time to all relevant information relating to the content and terms of a given (intended) electronic transaction, with due observance of the method of e-business. In particular, with due observance of the method of e-business and before an agreement has been concluded, we shall at any rate provide the following information, whereby we shall also indicate how this information will be provided:

A. The Merchant's identity

1. identity and full business address, Trade Register registration number and VAT number, if any;
2. telephone number, address for electronic communication, and the geographical address (of the place of business) to which any complaints may be addressed;
3. where the Merchant's activities are subject to an authorisation scheme, the particulars of the relevant supervisory authority;
4. as concerns the regulated professions, (i) any professional body or similar institution with which we are registered, (ii) the professional title and the Member State where it has been granted, and (iii) a reference to the applicable professional rules and the means to access them;
5. the codes of conduct to which we have subscribed and information on how those codes can be consulted electronically;

B. The transaction procedure

6. the different technical steps to follow to conclude the agreement;
7. whether or not the concluded agreement will be filed by us and whether it will be accessible;
8. the technical means for identifying and correcting input errors prior to the conclusion of the agreement;
9. the languages offered for the conclusion of the agreement;
10. the period for which the offer or the price remains valid;
11. information on the delivery dates of products or the provision of services;
12. whether, when, and how a confirmation of receipt will be sent for the transactions concerned;
13. where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently, the requirements for terminating the agreement;
14. the arrangements for invoicing, payment, delivery or performance;
15. whether, and how the customer can return the ordered products or services, if they do not satisfy the terms of the agreement, and information on the repayment, if any, of the purchase sum;
16. the possibility for the customer to exercise his right of withdrawal, if any, the conditions for exercising this right;

C. Prices and other information with respect to the products and services offered

17. the main characteristics of the products or services;
18. the price of the products or services offered, including all taxes;
19. any other additional costs and liabilities, such as special communication rates, costs of delivery, insurance, reimbursement of expenses, etc., and for whose account these will be;
20. any relevant information regarding certification of the services or products offered; and information regarding the body from which such qualification has been obtained;

D. Applicable terms and conditions

21. the contents of agreement and the applicable general terms and conditions;
22. any other applicable warranties;
23. applicable law;
24. which possibilities are in place to settle disputes.

Explanatory note:

In e-business the parties conduct remote transactions. 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 e-business it is therefore important for customers to be confident of having simple access to the information needed in order to take a well-considered decision.

The specimen provision is partly a repetition of the obligations that already exist pursuant to the Distance Sales Act, which entered into force on 1 February 2001. In transactions with consumers, the majority of the information obligations are mandatory by nature and, consequently, the specimen provision has been included partly for explanation purposes.

It is also of relevance that the Distance Sales Act prescribes that information must be provided in good time and in advance, in a clear and understandable manner and that the commercial objective must be shown unambiguously. In addition, on performance, some of the information must also be provided in good time on durable media. Here, the term “durable media” shall be taken to mean in writing, or any other data carrier accessible to the consumer, including the hard disk of a PC used by the consumer. This means, for instance, that this obligation can be satisfied by offering one of the following options to the consumer: downloading, printing, or the automatic sending of an e-mail containing the information to an e-mail address designated by the consumer.

Part of the list included in the specimen provision is supplementary by nature, as the scope of the Distance Sales Act is restricted to agreements entered into with consumers, and this Act has several exceptions (*inter alia*, for financial services). The information obligations set forth in Articles 5 and 10 of the E-commerce Directive have also been included in the specimen provision. The relevant information does not need to be provided pursuant to the European E-commerce Directive in every situation; for certain information it is enough to make it easily, directly and permanently accessible. To ensure the accessibility of the Model Code of Conduct, this distinction was not made; instead, the Code upholds the stricter standard that information must be provided. It is noted that when applying certain communication technologies, such as SMS or WAP, technical constraints might impede compliance with the aforementioned higher standards. A possible solution could be to adjust the specific information obligations as described in the specimen provisions when applying these technologies, bearing in mind the statutory minimum standards.

No general provision has been concluded with regard to what law is applicable to e-business. For use between parties in the Netherlands, transactions are in principle governed by Dutch law. However, if more than one legal system may apply, it will make sense to investigate which law will be applicable before concluding a transaction. Dutch International Private Law assumes that the businesses themselves are, in principle, free to choose the law they wish. This choice should be made explicitly.. In addition to making a choice of law, the parties also have, with due observance of a number of restrictions, the authority to choose a forum.

2.3.2 Identifiable advertisements

Merchants shall ensure that their advertisements are identifiable and that their origin can be traced.

□ *Specimen provision:*

Our advertisements 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 advertisements originating from third parties, we shall ensure that that material is identifiable as such and as originating from those third parties. If we make special offers such as discounts, bonuses or gifts related to products offered by us, such offers shall be clearly recognisable as such. We shall also clearly and unambiguously communicate the conditions applicable to these offers. If we run contests and/or games related to the products offered by us, these contests and/or games shall be recognisable as such. We shall also indicate the conditions of participation clearly and unambiguously.

Explanatory note:

The content of this specimen provision is set forth in Article 6 of the E-commerce Directive. Please note that with respect to special offers such as discounts, bonuses or gifts, the conditions subject to which these offers can be taken up must be easily met. The above shall also apply with respect to contests and/or games.

Should Merchants apply an opt-in or opt-out facility, they shall give clear information about it.

□ *Specimen provision opt-out:*

Should recipients of advertisements that we transmit by electronic mail explicitly notify us or 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 advertisements we shall indicate the way in which this can be simply and rapidly done.

□ *Specimen provision opt-in:*

We shall send no advertisements by electronic mail unless the addressee of such material has explicitly notified us beforehand that he/she wishes to receive that material. We shall indicate the way in which that can be simply and rapidly done.

Explanatory note:

For customers who prefer not to receive advertisements, Merchants could consider setting up a system to enable them 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 advertisements to be transmitted to parties unless they have explicitly stated that they wish to receive them. If such a system is available to them, Merchants can include a relevant rule in their codes of conduct. In the Netherlands, instead of the specimen provision proposed in this Model Code of Conduct, the Dutch Code of Advertising could be invoked. The E-commerce Directive contains a statutory obligation to consult and respect “opt-out” registers.

2.4 Confidentiality and privacy

2.4.1 Privacy

Merchants shall respect the privacy of customers and indicate the way in which they will do so.
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□ *Specimen provision:*

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 shall process personal data in a proper and careful manner and in accordance with the law, which means, *inter alia*, that we will:

1. collect personal data for specified, explicit and legitimate purposes;
2. regard personal data to be confidential information which shall be processed only in the framework of our normal business activities to the extent permitted by law, including in the event that:
 - a) the customer has unambiguously given his consent or, to the extent prescribed by law, has given its explicit consent; or
 - b) processing the data is necessary for the performance of a contract concluded or to be concluded with the Merchant; or
 - c) processing the data is necessary for compliance with a legal obligation to which the controller is subject; or
 - d) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party to whom the data are disclosed, except where such interests are overridden by the interests or the fundamental rights and freedoms of customers, in particular the right to protection of privacy
3. not further process personal data in a way that is incompatible with the purposes for which they were collected;
4. unless we have other statutory obligations, not store personal data any longer than necessary for the purpose for which they were collected;
5. only process personal data in so far as they are adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed, and that we will take the necessary measures to ensure that personal data are correct and accurate;
6. take appropriate technical and organisational measures to protect personal data against loss or any form of unlawful processing;
7. inform the customer in good time of our identity and the purpose of the processing and provide further information to guarantee proper and careful processing, unless the customer already has this information;
8. honour requests by customers to access or correct their data, provided that such requests are submitted at reasonable intervals;
9. if, at the customer's request, we have corrected, supplemented or deleted personal data, we shall notify third parties to which such data may have been supplied as soon as possible of such correction, supplement or deletion, unless this proves impossible or requires a disproportionate effort.

Explanatory note:

In this Article the Merchant undertakes to respect and comply with any national and international legislation applicable to e-business. This will apply in any case to the processing of personal data. 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. The Personal Data Protection Act serves to implement the directive. In certain cases (for example where Directive 97/66/EC of the European Parliament and 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.

Where the specimen provision refers to “controller”, it means the natural person or legal entity that will determine the purpose and the means for processing personal data. In many cases this will be done by the Merchant.

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

With respect to the processing of personal data concerning a person's religious or philosophical beliefs, race, political opinions, health, sex life etc., a specific, stricter standard shall apply. Where these special personal data are processed with the consent of the person involved, such consent must even be given explicitly.

In connection with the duty of information towards the person involved, on which basis he can give his unambiguous or explicit consent to process his personal data, the purpose underlying the data processing or any other relevant information may be included in a privacy statement which can be used by the Merchant to indicate how it wishes to define its privacy policy. Such a privacy statement must be clearly identifiable to the person involved.

Pursuant to Chapter 3 of the Personal Data Protection Act, a Merchant can have its code of conduct reviewed for privacy aspects by the Personal Data Protection Committee [*College bescherming persoonsgegevens*].

2.4.2 Confidential information

Merchants shall indicate that they will respect the confidentiality of confidential information received from the customer, and that they will take appropriate measures to ensure this confidentiality.

□ *Specimen provision:*

Should we receive information from a customer 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

Merchants shall indicate that information, products or services offered by them carry intellectual property rights. Merchants shall respect intellectual property rights of third parties.

□ *Specimen provision:*

We shall respect the intellectual property rights of third parties. Should we, in conducting e-business, offer information, products and/or services carrying third-party rights by electronic means, we shall report this explicitly and make every reasonable effort to ensure that these intellectual property rights are respected and that obligations arising therefrom are duly honoured. If we become aware of infringement of such rights by third parties, we shall as far as reasonably possible notify the proprietor concerned.

Explanatory note:

Intellectual property rights play an important role in e-business. The form and content of web sites, software, databanks, pictures, trademarks, and commercial offers of information, products or services are often protected by intellectual property rights (copyright, trade mark law, etc.). To protect the interests of the owner of the intellectual property rights, it is of relevance that the customer is adequately informed of the existence of such intellectual property rights, and the nature and substance thereof (what is allowed, what is not). Of course, this also applies to the interests of Merchants themselves.

Annex I Summary of priority items

General

- Merchants shall announce that they will comply with the rules of the code of conduct.
- Defining certain terms occurring several times in the Model Code of Conduct increases the clarity and readability of the code of conduct.
- Merchants shall clearly indicate the scope of the code of conduct.
- Merchants shall pay particular attention to consumer relations.
- Merchants shall make adequate arrangements for enforcement of the code of conduct.

Reliability

- Merchants shall ensure to the extent possible that the information provided by them is correct and complete.
- Merchants shall state that they will recognise electronic communication and that, consequently, they will not contest such electronic communication as evidence in legal proceedings for form's sake only.
- In e-business, Merchants shall assure the reliability of systems and the organisation.
- Merchants shall indicate how they will deal with electronic signatures, including:
 1. what reliable forms and technologies they accept and use for electronic signatures;
 2. the verification procedure for electronic signatures;
 3. the quality standards imposed on contracted third parties;
 4. the division of responsibility with respect to the confidentiality of keys and codes used.

Transparency

- Merchants shall indicate what information they will supply to customers and, when and how they will provide such information, with respect to:
 1. the Merchant's identity;
 2. the transaction procedure;
 3. prices and other information regarding products and services offered;
 4. the applicable terms and conditions;
- Merchants shall ensure that their advertisements are identifiable and that their origin can be traced.
- Should Merchants apply an opt-in or opt-out facility, they shall give clear information about it.

Confidentiality and privacy

- Merchants shall respect the privacy of customers and indicate the way in which they will do so.
- Merchants shall indicate that they will respect the confidentiality of confidential information received from the customer, and that they will take appropriate measures to ensure this confidentiality.
- Merchants shall indicate that information, products or services offered by them carry intellectual property rights. Merchants shall respect intellectual property rights of third parties.

Annex II Summary of specimen provisions

General

Announcement

We will state as fully as possible, in a way appropriate to e-business, that we endorse and comply with this code of conduct.

Definitions

In this code of conduct the following terms shall have the meanings assigned to them below:

1. e-business: all activities, communications and transactions having a business purpose or background that are performed electronically.
2. customers: where this code of conduct refers to “customer” this shall also denote potential customers as well as any other addressees or persons or organisations with whom we conduct e-business.
3. (.....).

Scope of the code of conduct for e-business

Unless explicitly stated otherwise, the code of conduct is applicable in its entirety to all our e-business activities.

Specific aspects relating to consumers

We shall ensure that consumers’ wishes, questions and problems regarding our goods and/or services are answered within 14 days, and are then effectively dealt with without delay. If a consumer has placed an electronic order with us, we shall acknowledge its receipt electronically as soon as possible.

Enforcement

No specimen provision has been included for the priority item “enforcement”. Merchants should define this priority item for themselves in an appropriate way when drafting their individual codes of conduct. One attractive option would be to introduce internal complaints procedures and to align with mechanisms for the settlement of disputes within the professional group or sector concerned, or other suitable enforcement mechanisms.

Reliability

Reliable information

We shall ensure to the extent possible that the substance of all information originating from ourselves - including information on our own organisation, partnerships, products and services - supplied by means of our e-business activities, is complete and correct.

Recognition of electronic communication

Should we receive information electronically, we shall not dismiss the validity, any legal effects and/or any 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. This means, *inter alia*, should it be intended to conclude an agreement by means of electronic communication, that 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. Furthermore, should in the course of legal proceedings 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.

Reliable systems and organisation

In e-business, we shall do our utmost to set up and design our organisation and our systems in a reliable manner, using generic and accessible standards to the extent possible. This means, *inter alia*, that we shall ensure that our e-business activities are integrated within our organisation 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 also ensure that the information and communication systems used in the context of our e-business 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.

Electronic signatures

We shall indicate in a timely and logical way, accessible to the customer, what forms and technologies for electronic signatures we accept and/or use based on which such electronic signatures are put on a par with a written signature. When using an electronic signature, 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 careful handling, and confidentiality of codes and/or keys.

Transparency

Optimal transparency of information

We shall do our utmost to ensure that the customer can have access in good time to all relevant information relating to the content and terms of a given (intended) electronic transaction, with due observance of the method of e-business. In particular, with due observance of the method of e-business and before an agreement has been concluded, we shall at any rate provide the following information, whereby we shall also indicate how this information will be provided:

A. The Merchant's identity

1. identity and full business address, Trade Register registration number and VAT number, if any;
2. telephone number, address for electronic communication, and the geographical address (of the place of business) to which any complaints may be addressed;
3. where the Merchant's activities are subject to an authorisation scheme, the particulars of the relevant supervisory authority;
4. as concerns the regulated professions, (i) any professional body or similar institution with which we are registered, (ii) the professional title and the Member State where it has been granted, and (iii) a reference to the applicable professional rules and the means to access them;
5. the codes of conduct to which we have subscribed and information on how those codes can be consulted electronically;

B. The transaction procedure

6. the different technical steps to follow to conclude the agreement;
7. whether or not the concluded agreement will be filed by us and whether it will be accessible;
8. the technical means for identifying and correcting input errors prior to the conclusion of the agreement;
9. the languages offered for the conclusion of the agreement;
10. the period for which the offer or the price remains valid;
11. information on the delivery dates of products or the provision of services;
12. whether, when, and how a confirmation of receipt will be sent for the transactions concerned;
13. where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently, the requirements for terminating the agreement;
14. the arrangements for invoicing, payment, delivery or performance;

15. whether, and how the customer can return the ordered products or services, if they do not satisfy the terms of the agreement, and information on the repayment, if any, of the purchase sum;
16. the possibility for the customer to exercise his right of withdrawal, if any, the conditions for exercising this right;

C. Prices and other information with respect to the products and services offered

17. the main characteristics of the products or services;
18. the price of the products or services offered, including all taxes;
19. any other additional costs and liabilities, such as special communication rates, costs of delivery, insurance, reimbursement of expenses, etc., and for whose account these will be;
20. any relevant information regarding certification of the services or products offered; and information regarding the body from which such qualification has been obtained;

D. Applicable terms and conditions

21. the contents of agreement and the applicable general terms and conditions;
22. any other applicable warranties;
23. applicable law;
24. which possibilities are in place to settle disputes.

Identifiable advertisements

Our advertisements 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 advertisements originating from third parties, we shall ensure that that material is identifiable as such and as originating from those third parties. If we make special offers such as discounts, bonuses or gifts related to products offered by us, such offers shall be clearly recognisable as such. We shall also clearly and unambiguously communicate the conditions applicable to these offers. If we run contests and/or games related to the products offered by us, these contests and/or games shall be recognisable as such. We shall also indicate the conditions of participation clearly and unambiguously.

Opt-out:

Should recipients of advertisements that we transmit by electronic mail explicitly notify us or 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 advertisements we shall indicate the way in which this can be simply and rapidly done.

Opt-in:

We shall send no advertisements by electronic mail unless the addressee of such material has explicitly notified that he/she wishes to receive that material. We shall indicate the way in which that can be simply and rapidly done.

Confidentiality and privacy

Privacy

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 shall process personal data in a proper and careful manner and in accordance with the law, which means, *inter alia*, that we will:

1. collect personal data for specified, explicit and legitimate purposes;
2. regard personal data to be confidential information which shall be processed only in the framework of our normal business activities to the extent permitted by law, including in the event that:
 - a) the customer has unambiguously given his consent or, to the extent prescribed by law, has given its explicit consent; or
 - b) processing the data is necessary for the performance of a contract concluded or to be concluded with the Merchant; or
 - c) processing the data is necessary for compliance with a legal obligation to which the controller is subject; or
 - d) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party to whom the data are disclosed, except where such interests are overridden by the interests or the fundamental rights and freedoms of customers, in particular the right to protection of privacy
3. not further process personal data in a way that is incompatible with the purposes for which they were collected;
4. unless we have other statutory obligations, not store personal data any longer than necessary for the purpose for which they were collected;
5. only process personal data in so far as they are adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed, and that we will take the necessary measures to ensure that personal data are correct and accurate;
6. take appropriate technical and organisational measures to protect personal data against loss or any form of unlawful processing;
7. inform the customer in good time of our identity and the purpose of the processing and provide further information to guarantee proper and careful processing, unless the customer already has this information;
8. honour requests by customers to access or correct their data, provided that such requests are submitted at reasonable intervals;
9. if, at the customer's request, we have corrected, supplemented or deleted personal data, we shall notify third parties to which such data may have been supplied as soon as possible of such correction, supplement or deletion, unless this proves impossible or requires a disproportionate effort.

Confidential information

Should we receive information from a customer 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

We respect the intellectual property rights of third parties. Should we, in conducting e-business, offer information, products and/or services carrying third-party rights by electronic means, we shall report this explicitly and make every reasonable effort to ensure that these intellectual property rights are respected and that obligations arising therefrom are duly honoured. If we become aware of infringement of such rights by third parties, we shall as far as reasonably possible notify the proprietor concerned.

Annex III References

Directives

1. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ 2000 L178;
2. Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ 1999 L 013;
3. Proposal for a Directive of the European Parliament and of the Council concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, COM/98/0468 final - COD 98/0245, OJ 1998 C 385;
4. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001 L167;
5. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ 1999 L 171;
6. Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, OJ 2000 L 275.

Legislation

7. Distance Sales Act, Act dated 21 December 2000, Bulletin of Acts, Orders and Decrees [*Staatsblad*] 2000, 617, effective date of the Royal Decree: Bulletin of Acts, Orders and Decrees 2001, 24;
8. Personal Data Protection Act, Act dated 6 July 2000, Bulletin of Acts, Orders and Decrees 2000, 302;
9. Act regarding the legal protection of databanks, Act dated 8 July 1999, Bulletin of Acts, Orders and Decrees 1999, 303;
10. Parliamentary Documents II 2000-2001, 27743, nos. 1-2, Bill with respect to the Electronic Signature Act [*Wet elektronische handtekening*].

Codes of Conduct

11. Quicklinks “self-regulation / codes of conduct” (<http://www.qlinks.net/quicklinks/selfreg.htm>);
12. Better business online, “Code of online business practices” (<http://www.bbbonline.org>);
13. Draft report on survey of electronic commerce codes of conduct in OECD countries, 6 February 2001, DSTI/ICCP (2001)1.

Annex IV ECP.NL

ECP.NL: neutral research and co-ordination centre for e-business

At the beginning of 1998 the business community (the employers' association VNO-NCW) and the government (Ministry of Economic Affairs) co-founded the national research and co-ordination centre for e-business in the Netherlands: the Electronic Commerce Platform Nederland (ECP.NL). ECP.NL is an independent partnership between parties that have an interest in the rapid introduction of e-business. These parties are users, merchants, government agencies, intermediary organisations and educational institutions. ECP.NL's objective is to develop and adopt e-business through a joint effort, not as an advancement in IT technology but as something that is strategically vital to the Dutch economy and Dutch competitiveness. Its activities involve public information, requirements, international co-ordination and the initiation and publication of relevant specimen projects.

In drafting the Code, a group of experts representing the various ECP.NL partners and other interested parties have acted as a sounding board.

ECP.NL Forum:

Professor R.E. van Esch, Rabobank, Leiden University
Professor C. Stuurman, Landwell Lawyers and Civil Law Notaries, Tilburg University
A.A.J. Reuver, IBM
K.Smit, Consumentenbond
P.W.J. de Graaf, VNO-NCW
M. Wesselink, Ministry of Justice
P.J.M. Smits, Ministry of Economic Affairs
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The ECP.NL Code of Conduct for E-Business is also available on the web site of Electronic Commerce Platform Nederland: <http://www.ecp.nl>.

