



# eUCP

## VERSION 2.0

## Introduction eUCP Version 2.0

On 6th June 2017, the ICC Banking Commission provided a press release announcing the launch of a Working Group to anticipate and accompany the digitalisation of trade finance. One core activity was to evaluate existing ICC rules in order to assess e-compatibility and ensure they are 'e-compliant', i.e. enabling banks to accept data vs. documents. It was identified that this was required in order to accommodate evolving practices and technologies.

A Drafting Group was established, co-chaired by David Meynell and Gary Collyer, with the initial aim of reviewing the e-compatibility of existing ICC rules. As a result of this review, a mandate was received from the ICC Banking Commission Executive Committee to:

- Update the existing version 1.1 of eUCP in order to ensure continued digital compatibility.
- Draft eURC in order to ensure continued digital compatibility for presentation of electronic records under Collections.

The eRules have been intentionally developed with version numbers in order that they can be updated regularly without impacting upon other existing ICC rules, thereby reducing the time required to develop any potential identified revision.

The initial drafts of eUCP version 2.0 and eURC version 1.0 were sent to ICC National Committees (NC's) on 25th September 2017, with a deadline of 27th November 2017 for response. At the request of a number of ICC NC's, based upon a communications issue, it was decided to extend the deadline to 28th February 2018. Pursuant to feedback on the original drafts, work commenced on a 2nd draft, which was subsequently distributed to ICC NC's on 20th March 2018, with a deadline of 25th May 2018 for response. A 3rd draft of the rules was sent out on 20th July 2018, providing a deadline of 28th September 2018 for response. The 4th of the rules was disseminated on 6th November 2018, indicating a deadline of 4th January 2019 for feedback. At that stage, and following a thorough review of all comments received to date, it was considered to be an appropriate time to draft a final version of the rules. These were consequently sent to ICC NC's on 31st January 2019, specifying that the deadline for voting would be 22nd March 2019. It is worth commenting that this timeframe was only 16 months after distribution of the original drafts and included an enforced 3-month extension, as mentioned above. During the course of the first four drafts, almost 2,000 comments were received from ICC NC's. For the purposes of transparency and clarity, every comment received an individual response. As a valuable reference source, the 'ICC Guide to the eUCP' (ICC Publication No. 639) and the work of the

authors, Professor James E. Byrne and Dan Taylor, has been gratefully acknowledged.

For the first time in the history of the ICC Banking Commission, a new approach was introduced for the ICC rules voting process, via the Simply Voting platform. This initiative provided an online voting system to be used for the approval of the revised eUCP and new eURC rules.

Each NC was requested to choose one designated representative with the right to cast the vote on its behalf and the platform was opened for voting from 11th until 22nd March 2019. NC's were invited to vote on the revised eUCP and new eURC separately by choosing 'YES' or 'NO' to the following options:

- Does your National Committee approve the Uniform Customs and Practice for Documentary Credits (UCP 600) Supplement for Electronic Presentation (eUCP) Version 2.0?
- Does your National Committee approve the Uniform Rules for Collections (URC 522) Supplement for Electronic Presentation (eURC) Version 1.0?

Voting result:

- Votes received from 49 NC's, plus one further NC vote after the voting deadline had passed.
- The eUCP received 100% approval with two countries abstaining.
- The eURC received 97.5% approval (on a weighted basis) with one county voting 'no' and two countries abstaining.
- Based upon the above, both sets of rules will come into force from 1st July 2019.

It was recognised in the introduction to the initial ICC Guide to the eUCP (ICC Publication no. 639) that the likely end of the evolution to electronic presentations is automated compliance checking systems in the documentary credit field. This is all too apparent when looking at evolving technology and digital trade finance, with the advent of the Internet of Things, Distributed Ledger Technology, Smart Contracts, Artificial Intelligence, and Machine Learning.

The content of the eRules will be continually monitored in order to ensure applicability. The support of trade practitioners will be an essential element moving forward. These rules provide many benefits in advancing the documentary credit in a digital environment and ensuring the continued relevance of this valuable instrument in mitigating trade risk.

Existing ICC rules, such as UCP 600 & URC 522, whilst being invaluable

in a paper world, provide limited protection when applied to electronic transactions. It is inevitable that traditional trade instruments will, over time, inexorably move towards a mixed ecosystem of paper and digital, and, ultimately, to electronic records alone.

In this respect, it is important the market recognise that the new rules provide many benefits in advancing traditional trade solutions in a digital environment:

- Safeguarding applicability and guaranteeing relevance in a constantly evolving digital trade world
- Extending the mitigation of risk from a paper environment to the electronic milieu
- Explicitly and unambiguously supporting the usage of electronic records
- Conformity and congruence as opposed to divergent local, national and regional practice
- Shared understanding of terminologies and objectives
- Confidence in a set of independent and trusted contractual rules
- Uniformity, consistency and standardisation in customs and practice
- Enabling and supporting trade finance between regions and countries regardless of underlying economic and judicial structures

Development of the eRules would have been impossible without the ongoing support of the ICC Banking Commission Secretariat and individual ICC National Committees. Thank you to all involved, with specific acknowledgement to David Bischof, Olivier Paul, and Laura Straube. Particular thanks are given to the eRules Drafting Group, details of which are provided below. I also extend my gratitude to my co-chair, Gary Collyer. Without his input, this work would not have proved possible. Last, but far from least, a reminder that this publication would not be in existence were it not for the groundbreaking initial efforts of Jim Byrne and Dan Taylor.

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# **UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS FOR ELECTRONIC PRESENTATION (EUCP) VERSION 2.0**

## **Preliminary Considerations**

The mode of presentation to the nominated bank, confirming bank, if any, or the issuing bank, by or on behalf of the beneficiary, of electronic records alone or in combination with paper documents, is outside the scope of the eUCP.

The mode of presentation to the applicant, by the issuing bank, of electronic records alone or in combination with paper documents, is outside the scope of the eUCP.

Where not defined or modified in the eUCP, definitions given in UCP 600 will continue to apply.

Before agreeing to issue, advise, confirm, amend or transfer an eUCP credit, banks should satisfy themselves that they can examine the required electronic records in a presentation made thereunder.

## ARTICLE e1

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### Scope of the Uniform Customs and Practice for Documentary Credits (UCP 600) Supplement for Electronic Presentations (“eUCP”)

- a. The eUCP supplements the Uniform Customs and Practice for Documentary Credits (2007 Revision, ICC Publication No. 600) (“UCP”) in order to accommodate presentation of electronic records alone or in combination with paper documents.
- b. The eUCP shall apply where the credit indicates that it is subject to the eUCP (“eUCP credit”).
- c. This version is Version 2.0. An eUCP credit must indicate the applicable version of the eUCP. If not indicated, it is subject to the latest version in effect on the date the eUCP credit is issued or, if made subject to the eUCP by an amendment accepted by the beneficiary, the date of that amendment.
- d. An eUCP credit must indicate the physical location of the issuing bank. In addition, it must also indicate the physical location of any nominated bank and, if different to the nominated bank, the physical location of the confirming bank, if any, when such location is known to the issuing bank at the time of issuance. If the physical location of any nominated bank and/or confirming bank is not indicated in the credit, such bank must indicate its physical location to the beneficiary no later than the time of advising or confirming the credit or, in the case of a credit available with any bank, and where another bank willing to act on the nomination to honour or negotiate is not the advising or confirming bank, at the time of agreeing to act on its nomination.

## ARTICLE e2

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### Relationship of the eUCP to the UCP

- a. An eUCP credit is also subject to the UCP without express incorporation of the UCP.
- b. Where the eUCP applies, its provisions shall prevail to the extent that they would produce a result different from the application of the UCP.
- c. If an eUCP credit allows the beneficiary to choose between presentation of paper documents or electronic records and it chooses to present only paper documents, the UCP alone shall apply to that presentation. If only paper documents are permitted under an eUCP credit, the UCP alone shall apply.

## ARTICLE e3

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### Definitions

- a. Where the following terms are used in the UCP, for the purpose of applying the UCP to an electronic record presented under an eUCP credit, the term:
  - i. **Appear on their face** and the like shall apply to examination of the data content of an electronic record.
  - ii. **Document** shall include an electronic record.
  - iii. **Place for presentation** of an electronic record means an electronic address of a data processing system.
  - iv. **Presenter** means the beneficiary, or any party acting on behalf of the beneficiary who makes a presentation to a nominated bank, confirming bank, if any, or to the issuing bank directly.
  - v. **Sign** and the like shall include an electronic signature.
  - vi. **Superimposed, notation or stamped** means data content whose supplementary character is apparent in an electronic record.
- b. The following terms used in the eUCP shall have the following meaning:
  - i. **Data corruption** means any distortion or loss of data that renders the electronic record, as it was presented, unreadable in whole or in part.
  - ii. **Data processing system** means a computerised or an electronic or any other automated means used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part.
  - iii. **Electronic record** means data created, generated, sent, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not, that is:
    - capable of being authenticated as to the apparent identity of a sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered, and
    - capable of being examined for compliance with the terms and conditions of the eUCP credit.

- iv. **Electronic signature** means a data process attached to or logically associated with an electronic record and executed or adopted by a person in order to identify that person and to indicate that person's authentication of the electronic record.
- v. **Format** means the data organisation in which the electronic record is expressed or to which it refers.
- vi. **Paper document** means a document in a paper form.
- vii. **Received** means when an electronic record enters a data processing system, at the place for presentation indicated in the eUCP credit, in a format capable of being accepted by that system. Any acknowledgement of receipt generated by that system does not imply that the electronic record has been viewed, examined, accepted or refused under an eUCP credit.
- viii. **Re-present** or **re-presented** means to substitute or replace an electronic record already presented.

## ARTICLE e4

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### Electronic Records and Paper Documents v. Goods, Services or Performance

Banks do not deal with the goods, services or performance to which an electronic record or paper document may relate.

## ARTICLE e5

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### Format

An eUCP credit must indicate the format of each electronic record. If the format of an electronic record is not indicated, it may be presented in any format.

## ARTICLE e6

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### Presentation

- a. i. An eUCP credit must indicate a place for presentation of electronic records.
- ii. An eUCP credit requiring or allowing presentation of both electronic records and paper documents must, in addition to the place for presentation of the electronic records, also indicate a place for presentation of the paper documents.
- b. Electronic records may be presented separately and need not be presented at the same time.
- c. i. When one or more electronic records are presented alone

or in combination with paper documents, the presenter is responsible for providing a notice of completeness to the nominated bank, confirming bank, if any, or to the issuing bank, where a presentation is made directly. The receipt of the notice of completeness will act as notification that the presentation is complete and that the period for examination of the presentation is to commence.

- ii. The notice of completeness may be given as an electronic record or paper document and must identify the eUCP credit to which it relates.
  - iii. Presentation is deemed not to have been made if the notice of completeness is not received.
  - iv. When a nominated bank, whether acting on its nomination or not, forwards or makes available electronic records to a confirming bank or issuing bank, a notice of completeness need not be sent.
- d. i. Each presentation of an electronic record under an eUCP credit must identify the eUCP credit under which it is presented. This may be by specific reference thereto in the electronic record itself, or in metadata attached or superimposed thereto, or by identification in the covering letter or schedule that accompanies the presentation.
- ii. Any presentation of an electronic record not so identified may be treated as not received.
- e. i. If the bank to which presentation is to be made is open but its system is unable to receive a transmitted electronic record on the stipulated expiry date and/or the last day for presentation, as the case may be, the bank will be deemed to be closed and the expiry date and/or last day for presentation shall be extended to the next banking day on which such bank is able to receive an electronic record.
- ii. In this event, the nominated bank must provide the confirming bank or issuing bank, if any, with a statement on its covering schedule that the presentation of electronic records was made within the time limits extended in accordance with sub-article e6 (e) (i).
  - iii. If the only electronic record remaining to be presented is the notice of completeness, it may be given by telecommunication or by paper document and will be deemed timely, provided that it is sent before the bank is able to receive an electronic record
- f. An electronic record that cannot be authenticated is deemed not to have been presented.

## ARTICLE e7

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### Examination

- a. i. The period for the examination of documents commences on the banking day following the day on which the notice of completeness is received by the nominated bank, confirming bank, if any, or by the issuing bank, where a presentation is made directly.
- ii. If the time for presentation of documents or the notice of completeness is extended, as provided in sub-article e6 (e) (i), the time for the examination of documents commences on the next banking day following the day on which the bank to which presentation is to be made is able to receive the notice of completeness, at the place for presentation.
- b. i. If an electronic record contains a hyperlink to an external system or a presentation indicates that the electronic record may be examined by reference to an external system, the electronic record at the hyperlink or the external system shall be deemed to constitute an integral part of the electronic record to be examined.
- ii. The failure of the external system to provide access to the required electronic record at the time of examination shall constitute a discrepancy, except as provided in sub-article e7 (d) (ii).
- c. The inability of a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank, to examine an electronic record in a format required by an eUCP credit or, if no format is required, to examine it in the format presented is not a basis for refusal.
- d. i. The forwarding of electronic records by a nominated bank, whether or not it is acting on its nomination to honour or negotiate, signifies that it has satisfied itself as to the apparent authenticity of the electronic records.
- ii. In the event that a nominated bank determines that a presentation is complying and forwards or makes available those electronic records to the confirming bank or issuing bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when a specified hyperlink or external system does not allow the issuing bank or confirming bank to examine one or more electronic records that have been made available between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.

## **ARTICLE e8**

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### **Notice of Refusal**

If a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank, provides a notice of refusal of a presentation which includes electronic records and does not receive instructions from the party to which notice of refusal is given for the disposition of the electronic records within 30 calendar days from the date the notice of refusal is given, the bank shall return any paper documents not previously returned to that party, but may dispose of the electronic records in any manner deemed appropriate without any responsibility.

## **ARTICLE e9**

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### **Originals and Copies**

Any requirement for presentation of one or more originals or copies of an electronic record is satisfied by the presentation of one electronic record.

## **ARTICLE e10**

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### **Date of Issuance**

An electronic record must provide evidence of its date of issuance.

## **ARTICLE e11**

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### **Transport**

If an electronic record evidencing transport does not indicate a date of shipment or dispatch or taking in charge or a date the goods were accepted for carriage, the date of issuance of the electronic record will be deemed to be the date of shipment or dispatch or taking in charge or the date the goods were accepted for carriage. However, if the electronic record bears a notation that evidences the date of shipment or dispatch or taking in charge or the date the goods were accepted for carriage, the date of the notation will be deemed to be the date of shipment or dispatch or taking in charge or the date the goods were accepted for carriage. Such a notation showing additional data content need not be separately signed or otherwise authenticated.

## ARTICLE e12

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### Data Corruption of an Electronic Record

- a. If an electronic record that has been received by a nominated bank acting on its nomination or not, confirming bank, if any, or the issuing bank, appears to have been affected by a data corruption, the bank may inform the presenter and may request it to be re-presented.
- b. If a bank makes such a request:
  - i. the time for examination is suspended and resumes when the electronic record is re-presented; and
  - ii. if the nominated bank is not a confirming bank, it must provide any confirming bank and the issuing bank with notice of the request for the electronic record to be re-presented and inform it of the suspension; but
  - iii. if the same electronic record is not re-presented within 30 calendar days, or on or before the expiry date and/or last day for presentation, whichever occurs first, the bank may treat the electronic record as not presented.

## ARTICLE e13

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### Additional Disclaimer of Liability for Presentation of Electronic Records under eUCP

- a. By satisfying itself as to the apparent authenticity of an electronic record, a bank assumes no liability for the identity of the sender, source of the information, or its complete and unaltered character other than that which is apparent in the electronic record received by the use of a data processing system for the receipt, authentication, and identification of electronic records.
- b. A bank assumes no liability or responsibility for the consequences arising out of the unavailability of a data processing system other than its own.

## ARTICLE e14

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### Force Majeure

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business, including but not limited to its inability to access a data processing system, or a failure of equipment, software or communications network, caused by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, cyberattacks, or by any strikes or lockouts or any other causes, including failure of equipment, software or communications networks, beyond its control.