



## BACKGROUND

The new eRules came into force on 1 July 2019, and an article-by-article analysis has been made available<sup>1</sup>. Pursuant to feedback received at the October 2019 Banking Commission meeting in Paris, further handling guidance is also provided below in respect of the utilisation of the eRules.

## INTRODUCTION

The focus of the eRules is concentrated upon the presentation of electronic records under the eUCP and the eURC, alone or in combination with paper documents, and not to issuance of an eUCP credit or an eURC collection instruction. With respect to the eUCP, this decision was based on the fact that documentary credits had, for many years, already been issued electronically. In addition, there was concern that any rules surrounding issuance could encumber present and evolving practices of electronic issuance, whilst additionally endangering the technological neutrality of the rules. The principles on which the eRules have been based are the underlying principles in the UCP and URC and standard practice currently existing for eCommerce transactions. As such, most of these principles are reflected in the definitions contained in eUCP Article e3 and eURC Article e4.

## PREPARATIONS FOR USAGE OF BOTH SETS OF ERULES

### Legal

It should be noted that there is no conflict between most eCommerce laws and the eRules. The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, which is the most influential text, does not create any problems with respect to the eRules. The only recognised issue that has surfaced to date relates to potential requirements for a greater degree of security with regard to electronic signatures and authentication than is imposed by the eRules or an eUCP credit or an eURC collection instruction. Where there is a mandatory requirement under local electronic commerce law for a higher degree of authenticity than would be required under the eRules, local electronic commerce law may impose additional requirements on an electronic presentation. It is strongly advised that internal legal advice is actively sought for the transition to electronic presentations under eUCP credits and for eURC collection instructions. A review of customer agreements may be required in order to ensure that issues such as formats for electronic records, authentication and electronic signature requirements are covered. In working with the eRules, it is necessary to consider each applicable legal system with respect to the eUCP & eURC definitions to determine:

- > whether local law defers to a system of private rules such as the eUCP or eURC where the undertaking is subject to them, and,
- > whether this deference extends to the internal definitions used in the eUCP or eURC even if they differ from those used in the definitional section of the law, and,
- > whether there is any substantive conflict between the eUCP or eURC definitions and those contained in the local law.

### Technology

Obviously, a major element of the transition to acceptance of the eRules will require the involvement of the technology area of a bank. This area must provide the data processing systems capability to deal with all

---

<sup>1</sup> <https://iccwbo.org/media-wall/news-speeches/icc-banking-commission-releases-new-erules-use-electronic-documents/>

aspects of eUCP credits and eURC collection instructions. In this regard, it must ensure that internal systems can process the necessary formats required, authenticate messages, and execute electronic signatures. An analysis of system needs should be conducted, as well as preparation of an overall project plan for implementation of any required system changes to accommodate electronic presentations.

## **Risk Management**

It is recommended that a thorough review of internal 'risk management' policies be completed in order to account for changes in processing practices for eUCP credits and eURC collection instructions, as well as any additional risks deemed relevant to transaction processing.

## **Operations**

Once the above work has been completed, all staff that will handle presentations under eUCP credits and/or eURC collection instructions must be properly trained in the eUCP and eURC, as well as being cognisant of internal technology changes related to the processing of electronic records.

## **Sales and Customer Relations**

It should be ensured that contact and liaison is maintained with clients in order to understand and appreciate any potential plans or requirements they may have in this regard. Institutions may wish to consider a specific strategy for approaching customers as to their interest and preparedness for eUCP credits and eURC collection instructions. In addition, helping clients understand the benefits of using the eRules will be of great advantage. Such benefits include:

- > 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

## **SPECIFIC PREPARATIONS FOR USAGE OF THE EUCP**

Listed below are a few generic issues that require consideration when handling documentary credits subject to the eUCP. This list is not comprehensive and other matters may require attention.

### **Applicant**

As an applicant for an eUCP credit, there are a number of issues that must be considered. As a first step, the decision to allow presentation of electronic records must be made jointly with the beneficiary of any proposed credit. The applicant must be assured that the beneficiary can present any necessary electronic records in the format required, and that this format is also acceptable to the issuing bank. The applicant must also be able to fulfil any requirements for authentication of electronic records or digital signatures and determine if its bank is prepared to issue a credit subject to eUCP, and in formats that are mutually compatible. The applicant should review any changes relating to eUCP credits in their reimbursement agreement with the issuing bank. It is essential to ascertain that the electronic records required are sufficient to clear any merchandise and are acceptable to the customs authorities.

## **Issuing Bank**

From the perspective of the issuing bank there are a number of aspects that need consideration when preparing to issue eUCP credits and process presentations of electronic records. Refer above: 'Preparations for usage of both sets of eRules'.

## **Nominated Bank**

Depending on its role in an eUCP credit, a nominated bank (advising, confirming, other nominated bank) should ensure it is prepared to act in the nominated capacity under an eUCP credit. In particular, it is important to review the credit to ensure that the specified format and any authentication or digital signature requirements are feasible.

## **Beneficiary**

Before assenting to accept a credit subject to the eUCP, the beneficiary should have in place an agreement with the applicant in respect of the electronic records to be submitted and the format for such records. By default, they must be records that the beneficiary (or issuing party) is capable of producing in the requisite format, and that the nominated bank is capable of accepting in the specified format. The beneficiary should assure itself that any requirements for authentication of electronic records or electronic signatures can be fulfilled. If it is not able to comply with any requirement for presentation of electronic records, the beneficiary should immediately take steps to have a credit amended.

## **SPECIFIC PREPARATIONS FOR USAGE OF THE EURC**

Listed below are a few generic issues that require consideration when handling collection instructions subject to the eURC. This list is not comprehensive and other matters may require attention.

### **Principal**

The principal should have in place an agreement with the drawee in respect of the electronic records to be submitted and the format for such records. By default, they must be records that the principal is capable of producing in the requisite format, and that the remitting bank is capable of accepting in the specified format. The principal should assure itself that any requirements for authentication of electronic records or electronic signatures can be fulfilled.

### **Remitting, collecting, and presenting banks**

From the perspective of a bank there are a number of aspects that need consideration when preparing to handle eURC collection instructions and process presentations of electronic records. Refer above: 'Preparations for usage of both sets of eRules'. Depending on its role in an eURC collection instruction, a bank should ensure that it is prepared to act in the required capacity. In particular, it is important to review the collection instruction to ensure that the specified format and any authentication or digital signature requirements are feasible.

### **Drawee**

The decision to allow presentation of electronic records must be made jointly with the principal. The drawee must be assured that the principal can present any necessary electronic records in the format required, and that this format is also acceptable to any collecting and presenting banks. It is essential to ascertain that the electronic records required are sufficient to clear any merchandise and are acceptable to the customs authorities.

## OTHER ISSUES

### Format

The eRules necessitate that an eUCP credit or eURC collection instruction state the format of a required or permitted electronic record. Should this not be the case, the relevant banks take on any resultant risk. In view of the fact that data processing systems are unlikely to be able to access all formats, it is essential that any data received is readable by the relevant data processing system(s). As a result, if a credit or collection instruction fails to specify the required format, then the electronic records can be presented in any format. The direct consequence of this situation would be that banks would be in a position to disallow a presentation on the basis that they are unable to read the format of the electronic records.

### Electronic Address

Although the eUCP and the eURC do not define or explain the meaning of 'electronic address', the term signifies the precise electronic location or a proprietary system to which an electronic record can be sent. It would include a URL, an email address, or an address on a dedicated system. It was decided that there was no need to provide a definition, as any relevant requirements would be within the terms of the credit or collection instruction.

### Authentication

In the digital world, there is a greater deal of focus on the authentication of data. Although used extensively throughout eUCP and eURC, it is deliberate that 'authentication' is not defined. The basis for this approach is the conviction that any purported definition would either unnecessarily duplicate the definition of 'electronic record' or, even worse, provide a specific link to existing technology. As referenced in the 'ICC Guide to the eUCP' (version 1.0), authentication is that process of screening incoming data as to identity, source, and error that is preliminary to it being deemed to have been presented.

### Electronic Signature

While the method of authenticating a document differs when it is electronic, 'signing' an electronic message serves the same functions as does signing a paper document. Current and evolving technology allows for numerous commercially reasonable techniques for digital signatures. The UNCITRAL Model Law on Electronic Commerce provides an excellent guide to this process. Various national laws may also impose specific requirements for digital signatures.

### Data Processing Systems

The rules do not provide guidelines on required data processing systems and focus principally on the electronic presentation of documents. As with all ICC rules, they cannot mandate which platforms/systems are acceptable—the rules must remain neutral in this respect. Any bank that engages in an eUCP or eURC transaction is responsible for maintaining a data processing system. This responsibility is a fundamental precondition for using the eUCP and the eURC. The term refers to any automated means (be it computerised, electronic, or any other) that is utilised for the processing and manipulation of data, for initiating an action, or for responding to data messages or performances either partially or in full.

## STANDARDS

Whilst, at this stage, there are no recommended minimum standards surrounding certain practices, the below may be useful as a guide:

### Format

- > Capable of being accepted and processed by the specific data processing systems in use for the transaction(s).
- > Identify, with sufficient specificity, the format (protocol) by which the data in an electronic record is to be arranged.

- > Format(s) of the electronic records to be agreed up-front by all parties to the transaction.
- > Formats are commonly issued in versions—unless a specific version is stated, any version of that format is acceptable.
- > The indication of a version of a format would be assumed to include any prior version of that format but not any subsequent version.
- > If a prior version of a format is not acceptable, the transaction should so state.
- > It is possible that the transaction may specify different formats for various documents. In such circumstances, the electronic record must be presented in the format specified for it.

## **Electronic Address**

- > Identifies the precise electronic location or a proprietary system to which an electronic record can be presented.
- > This can include, but is not restricted to, a URL, an email address, or an address on a dedicated system.
- > To be stated with the terms of the eUCP credit or the eURC collection instruction.
- > A bank may be open for business but is unable to receive an electronic presentation. To lessen the impact of such electronic closure, banks should have back-up systems in place and may wish to indicate alternative electronic addresses for specific transactions.

## **Authentication**

- > Parties to the transaction must agree the level and amount of security used to authenticate a message.
- > Capable of being authenticated as to the apparent identity of a sender of an electronic record.
- > Capable of being authenticated as to the apparent source of the data contained in an electronic record.
- > Capable of being authenticated with respect to the complete and unaltered character of an electronic record.
- > Take note of any applicable national laws, which may impose specific requirements for an electronic record to be authenticated.
- > The eRules are technology neutral and do not mandate any specific technology: this is to be agreed by the parties involved in a specific transaction.

## **Electronic Signature**

- > Capable of identifying the sender of an electronic record and indicating that person's authentication of the electronic record.
- > Capable of associating the sender of an electronic record with the content of the electronic record.
- > The definition for 'electronic signature' in the eRules is intended to be technology neutral and not to endorse any specific technology: the technology is to be separately agreed by the parties involved in a specific transaction.
- > Take into account the function of signature requirements in a given statutory and regulatory environment.
- > Determine the sophistication of the data processing system used by each of the parties.
- > Ensure compliance with trade customs and practice.
- > Ensure compliance with any relevant authentication procedures set forth by intermediaries.
- > The degree of acceptance or non-acceptance of the method of identification in the relevant industry or field both at the time the method was agreed upon and at the time when the data message was communicated.

## Data Processing System

- > Any bank that engages in an eRules transaction is responsible for maintaining a data processing system. This responsibility is a fundamental precondition for using the eRules in order to ensure relevance.
- > Represents a computerised or an electronic or any other automated means that is used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part.
- > Capable of processing electronic records in the format agreed by all parties to a transaction.
- > Capable of receiving, identifying, authenticating, and responding to electronic records.
- > Capable of performing minimal functions of authentication that are considered commercially acceptable.

## SWIFT MT 700

Whilst all MT700 fields must be considered for applicability when handling a transaction subject to the eUCP, the following should have an additional emphasis:

Field 40E—Indicates the rule(s) that will apply to the documentary credit. For an eUCP credit, it must indicate “EUCP LATEST VERSION”, or “EUCPURR LATEST VERSION”.

Field 46A—Unless it is unavoidable, all documentary requirements should be accommodated in this field. If a specific document has been agreed in the form of an electronic record, the appropriate information must be stated. As such, this field should mention, for a necessary electronic record, any specific requirements for the format and authentication of such record.

### ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.