



Digitalisation of International Trade:

The Legal Status of Electronic Transferable Records in Sweden

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Introduction

International trade relies on a wide range of documents and records to facilitate the movement and transport of goods. These include among others bills of lading, certificates of origin, invoices, packing lists, and customs declarations. A single transaction requires an average of 36 different documents in 240 copies, which are transferred between approximately 30 different parties. It is estimated that around four billion such documents are in circulation globally at any given moment. Less than 1% of these were in electronic form as of 2022¹, with the remainder being physical paper documents. While progress has been made since, electronic documents are estimated to still make up less than 5 %.² As a result, administration becomes inefficient, costly, and time-consuming due to the difficulty of automating processes and the need for physical paper documents to be exchanged between parties. Manual processing also poses significant risks of errors, discrepancies, or even outright falsifications and fraud.

To address this issue, the International Chamber of Commerce (ICC) launched the ICC Digital Standards Initiative (DSI) in 2020.³ Based in Singapore, the initiative aims to promote the development of a globally harmonised, digitised trading environment. This requires common technical standards and data formats, as well as legal reforms to grant electronic documents the same legal status as physical documents.

The purpose of this overview is to provide a summary of the legal status of electronic transferable records in Sweden and to describe the extent to which changes are necessary in Swedish law to enable the digitalisation of the administrative side of international trade.



On average, **1** single transaction requires **36** different documents in **240** copies, which are transferred between **30+** different parties.

International and European Legislation

The ICC DSI's legal reform work is inspired by the UNCITRAL Model Law on Electronic Transferable Records (MLETR)⁴, adopted in 2017. The MLETR is based on principles of non-discrimination, technology neutrality, and functional equivalence. The idea is that as long as electronic documents fulfill the same requirements as physical transferable records, including the ability

1 WTO-ICC Standards Toolkit for Cross-border Paperless Trade (2022), https://www.wto.org/english/res_e/booksp_e/standtoolkit22_e.pdf

2 "Global Adoption of MLETR: Are We Approaching the Turning Point for Digital Trade", Trade Finance Global & ICC DSI Monthly Column July 2024, <https://www.tradefinanceglobal.com/posts/monthly-tfg-icc-dsi-column/>

3 ICC Digital Standards Initiative, <https://www.dsi.iccwbo.org/>

4 UNCITRAL Model Law on Electronic Transferable Records, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_transferable_records

to ensure that the document is unique and identifiable as an original, and to ascertain the holder's identity, then they should be treated equally from a legal perspective. In the United Kingdom, the Electronic Trade Documents Act⁵, inspired by the MLETR, was adopted and came into force on 20 September 2023. Legal reform has also taken place in France, where a new law was adopted in June 2024, enabling the use of electronic trade documents.⁶ Similar legislative changes are also ongoing in Germany. In addition, in July this year, more than ninety countries (among them Sweden) agreed on an Agreement on Electronic Commerce within the WTO, where they commit to endeavouring to adopt or maintain a legal framework that takes into account the model law.⁷

In 2014, the EU adopted the eIDAS Regulation⁸, which aims to harmonise laws and facilitate digital transactions to promote trade within the EU. EIDAS enables businesses to digitally sign, track, and verify the ownership of documents, thereby allowing electronic documents to be examined in the same way as their physical counterparts. The regulation also requires European authorities to recognise electronic identification issued in other Member States.

Swedish Law

Current Swedish legislation does not define what an electronic transferable record is or how such a document should be designed. Among the laws relevant to international trade and connected purposes, the following are noteworthy:

- The Maritime Act (Sjölagen 1994:1009), which regulates bills of lading, states that they may be issued to a specific person, a specific person or order, or to holder. Chapter 13, Section 46 states that the required signature may be produced by mechanical or electronic means.
- The Bills of Exchange Act (Växellagen 1932:130), which regulates bills of exchange.
- The Promissory Notes Act (Skuldebrevslagen 1936:81), which defines promissory notes as written promises to pay a sum of money. The Act regulates two types of promissory notes: non-negotiable promissory notes, which are issued to a specific person and constitute proof of the existence of a debt relationship, and negotiable promissory notes, which are issued to the holder or a specific person or order.
- Debt instruments according to Chapter 6 of the Central Securities Depositories and Financial Instruments Accounts Act (Lag 1998:1479 om värdepapperscentraler och kontoföring av finansiella instrument); Section 5 equates possession with registration in an account in the central securities depository (CSD) register, and Chapter 4, Section 19(2) states that payment of principal and interest shall be recorded in the CSD account.

5 Electronic Trade Documents Act 2023, <https://www.legislation.gov.uk/ukpga/2023/38>

6 LOI n° 2024-537 du 13 juin 2024 visant à accroître le financement des entreprises et l'attractivité de la France. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049707573>

7 WTO Joint Statement Initiative on Electronic Commerce: Agreement on Electronic Commerce (INF/ECOM/87), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True>

8 Europaparlamentets och rådets förordning (EU) nr 910/2014 av den 23 juli 2014 om elektronisk identifiering och betrodda tjänster för elektroniska transaktioner på den inre marknaden och om upphävande av direktiv 1999/93/EG.

Bills of lading, bills of exchange, and promissory notes have traditionally been established in paper form.

The possibility of issuing an electronic transferable record has been examined in Swedish case law regarding promissory notes under the Promissory Notes Act. A key decision is "Collector's electronic promissory note" NJA 2017 p. 769, where a private individual had borrowed money from Collector Bank, and the parties had drawn up a promissory note signed by the debtor stating that payment was to be made to "Collector or order." The Swedish Enforcement Authority concluded that the payment order could not be enforced because the request concerned a negotiable promissory note, and no original promissory note had been submitted. The Supreme Court stated that an electronic document could potentially be equated with a corresponding paper document through a contractual arrangement.

However, the Court stipulated that for an electronic promissory note to be legally equivalent to its physical counterpart, the information management system must provide a corresponding possibility of control over the content of the claim. The rules in the Promissory Notes Act relating to possession of the promissory note as a unique physical document must according to the Supreme Court therefore be linked to something that can functionally correspond to such possession. Since the design of the electronic document did not seem to meet this requirement, the Court held that it was not a valid negotiable promissory note.

Shortly after the Supreme Court's judgment, the Swedish Enforcement Authority published a memorandum indicating that the Promissory Notes Act should be considered technology-neutral, provided that the digital environment can meet the protection requirements of the Act. However, the technical solutions at that time were deemed insufficient to meet the requirements of a transferable record.⁹

Neither the 2017 judgment nor the Enforcement Authority's memorandum provided criteria for how an electronic document must be designed to be considered a transferable record. The issue was raised again in a decision by the Svea Court of Appeal (23 February 2023, case no. ÖÅ 8442-22). In this case, a creditor sought enforcement of a claim under an electronic promissory note. The District Court and the Court of Appeal did not question the security of the technical solution but rejected the electronic document as a transferable record because it required an internet connection to be fully usable. This ruling highlights the difficulty in defining technology neutrality without clear criteria.

Against this background, the legal status of electronic documents as transferable records in Sweden remains uncertain. The grounds for the judgement in the 2017 Supreme Court ruling do, in principle, allow for a technology-neutral approach, but the statement has no binding effect and does not at all discuss any criteria for how an electronic document should be designed in order to be considered a transferable record.

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Without legislation that definitively establishes how electronic documents can be treated as transferable records and lays down criteria for the technical design of such documents, this uncertain legal position will persist.

⁹ Swedish Enforcement Authority (Kronofogden), 2017. Supreme Court Ruling of 2 November 2017 on Electronic Promissory Notes, Ö 5072-16, Memorandum (in Swedish), https://www.kronofogden.se/download/18.958e8ae16379721b8554dd/1530281600139/Hogsta_domstolens_dom_den_2_november_2017_rorande_elektroniska_skuldebrev.pdf

The recent enforcement case highlights how the absence of such criteria makes the task of the courts somewhat cumbersome and ultimately unpredictable, as the judgement must always be made on the basis of the circumstances of the given case. Without legislation that definitively establishes how electronic documents can be treated as transferable records and lays down criteria for the technical design of such documents, this uncertain legal position will persist. The UNCITRAL Model Law contains both a concrete description of technology neutrality and solid assessment criteria, which can be used as a model for future legislative work.



Conclusion

The Maritime Act, the Bills of Exchange Act, and the Promissory Notes Act were all written in a time when there were no alternatives to physical paper documents. Market participants argue that there are significant challenges in getting authorities to approve electronic transferable records.

Today, the technology exists that can fulfill the protection requirements for electronic transferable records to be equated with paper documents. However, the current legal status creates uncertainty, as there is no legislation or precedent unequivocally recognizing the use of electronic transferable records when a system provides equivalent control over the content of the claim as a paper document.

For Swedish legislators to keep up with legal developments among several of Sweden's key trading partners, a legal framework must be established to facilitate the use of electronic transferable records. Amendments to Swedish legislation that set out conditions for market participants to manage electronic transferable records are crucial for creating legal clarity and to enable businesses to digitise the administrative side of trade. Without such clarity, there is a risk that businesses will not adopt digital solutions for the various documents needed in international trade transactions, putting Swedish companies at a competitive disadvantage compared to foreign actors.

We therefore urge the Government to appoint an inquiry to examine the current legal status further and propose necessary legislative changes.