[DE] Publication of a Bill on transactions handled electronically

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Increasingly, transactions are being handled electronically, not least because of the so-called "new media". Declarations of intention are being transmitted more and more frequently by electronic media. In certain areas of transactions the application of modern communications techniques has in fact become inescapable (eg tele-banking, on-line messages, tele-shopping, video-on-demand).

Having acknowledged the existence of an electronic form of declaration of intention, it is necessary to create a secure legal framework. For this purpose the Federal Law Society has published a bill aimed at adapting or updating the existing provisions to technological developments in the field of electronically-handled transactions. The bill starts out from the fact that the electronic form - like the written form - can be determined just as well by law as by legal act. The first part of the proposal covers amendments to the provisions on the transmission and setting aside of declarations of intention (§§ 120, 126a, 127, 130, 147 of the Civil Code - BGB). An electronic declaration of intention is classified as a declaration of intention between absent parties. Erroneous transmission justifies annulment in the same way as wrong delivery. The reason given for this is that with electronic media the transmission stage is technically complex and often passes through several hands; errors in transmission of several kinds are possible and cannot be totally prevented, even by using electronic security features. Furthermore, by analogy with the legally prescribed written form, regulations on a prescribed electronic form are included.

The second part of the bill gives a series of amendments to legislation on civil proceedings, such as the possibility of submitting written matter in electronic form or presenting electronic documents. As well as the Federal Law Society, the Federal Ministry is also currently dealing with the matter. At cooperation level a first preliminary draft has been drawn up, although it has not yet been published officially. It is anticipated that regulations on electronically-handled transactions will be included in the forthcoming "Act on Information and Communication Services" (see also in this issue -"GERMANY: Framework for a federal "Act on Information and Communication Services"), drawn up mainly by the Federal Ministry for Training, Science, Research and Technology.

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Entwurf eines Gesetzes über den Elektronischen Rechtsverkehr vom 20. September 1995 erarbeitet von der Bundesnotarkammer.

Bill on transactions handled electronically, dated 20 September 1995, drawn up by the Federal Chamber of Notaries.

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