



**Responses of the AEDM/ Spain's MLA
To the
CMI Questionnaire on Domestic Legislation for Electronic Bills of Lading**

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Standing Committee on Carriage of Goods

Part I: Questions for all jurisdictions.

Part II: Questions for those jurisdictions that already have legislation that regulates electronic bills of lading.

Part III: Questions for those jurisdictions that plan to enact legislation that regulates electronic bills of lading.

Section IV: Questions for those jurisdictions that neither have nor plan to enact legislation that regulates electronic bills of lading.

I.

I.1 Are electronic bills of lading already used in practice in your jurisdiction?

There is not much information available about *electronic bills of lading (hereinafter, e-BsL)*. However, *although regulated in the Spanish Shipping Act 14/2014 -as will be mentioned further below-, BsL are not frequently used in Spain by shipping companies and is in most situations limited to containerized cargoes and the commodities trade.*

I.2 If the answer to I.1 is Yes, which platforms are frequently used (BOLERO, essDOCs, WAVE, etc.)?

Acceptance depends quite much on the requirements of banks, cargo insurers, brokers and protection and indemnity Clubs, both for shipowners and cargo owners. Moreover, not all Customs are familiar with electronic transport documents.

Having said that, the most popular platforms in Spain are: Bolero International Ltd, E-Title Authority Pte, GlobalShare S.A. (platform edoxOnline), CargoX, WAVE (app WAVE), TradeLens (TradeLens eBL), MineHub and essDOCS (platform CargoDocs).

I.3 If the answer to I.1 is No, do you think current or future legislation on electronic bills of lading will or would change the situation?

I.4 Are transport documents other than bills of lading or their electronic version used in practice in your jurisdiction?

Yes.

I.5 If the answer to I.4 is Yes, what kind of documents (including electronic version) are used?

Sea waybills, dock's receipts, mate's receipts or delivery orders are frequently used. However, their electronic versions are quite rare in practice (with some exceptions regarding sea waybills). *See comments as in I.1.*

In the import-export business, parties sometimes exchange a digital copy of the original paper BsL to speed up the exchange process (e.g., to set payment milestones), but as against the carrier the paper original is needed in these cases to claim delivery of the goods at destination.

System-Seawaybills (SWB) are frequently used. They are not printed. Customers can also request shipping lines to issue a BL not to be printed. It will be "issued" in the Carrier's systems with the possibility to be printed in paper (for transfer) at any time. Customer could request express release to the Shipping Line only when the Shipper has been paid. If the BL had not been printed (what we would call "original") then there will

be no need to surrender that “original” to the Carrier.

1.6 Do you think current or future legislation on electronic bills of lading will or would change the situation? For example, if (paper) bills of lading are currently not often used, would the situation be changed by the possible legislation on electronic bills of lading?

Spain has legislation on electronic Bills of Lading in our Shipping Act. Although these rules apply since about 8 years ago, the use of electronic bills of lading is very uncommon. Legislation for these purposes is needed, but it does not seem to be enough by itself to foster the use of digital BsL.

II

If your jurisdiction already has legislation that enables the use of electronic bills of lading, please answer the following questions.

II.1 Please specify the legislation. (Name of the statute, official or unofficial citations, paragraph or article numbers, year of enactment/implementation, etc.)

Ley 14/2014, de 24 de julio, de Navegación Marítima (Shipping Act 2014; Official Gazzette no. 51 of Friday 28th February 2020). In particular, the use of electronic bills of lading is contained in articles 262-266, Sub-Section 2 (On electronic bills of lading), Section 5 (On the bill of lading), Chapter II (On Charter Parties), Title IV (On Contracts For Use Of Ships).

The articles on electronic bills of lading deal on¹:

¹ What follows is an unofficial translation of the articles ruling on electronic bills of lading:

Article 262. Issue.

- 1. A bill of lading may be issued in electronic form when the shipper and the carrier have so agreed in writing before loading the goods on board.*
- 2. The contract between the shipper and the carrier shall determine the system of issuance and transfer of the bill; the system to guarantee the security of the medium and the intangibility of the content; the means to identify the holder of the bill; the means to record the delivery of the goods; and the means to evidence loss of validity or effectiveness of the bill of lading.*

- Legal regime of the e-BsL
- Rules on the issuance of the document
- Substitution of a bill of lading in paper format
- Substitution of an electronic bill of lading, and
- Effects of substitution.

II.2 (a) Is the legislation referred to in II.1 based on the UNCITRAL Model Law on Electronic Transferable Records (MLETR)?

The legislation referred to in II.1 is not based on the UNCITRAL Model Law on Electronic Transferable Records (2017), as the MLETR was approved on July 13th 2017, while the Spanish Shipping Act was enacted on September 25th 2014 (see [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic transferable records/status](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic%20transferable%20records/status))

Article 263. Substitution of a bill of lading in paper format.

1. A bill of lading in paper form may be replaced by another in electronic form, with prior written agreement between the legitimate holder of the bill and the carrier, with the content established in the preceding Article.

2. In performance of the terms agreed, the legitimate holder of the bill of lading in paper form shall deliver the bill to the carrier. If two or more original copies exist, the delivery shall include all those that have been delivered. Simultaneously, the carrier shall issue the bill of lading in electronic form, in which it shall record the fact and date of the substitution, the identity of the legitimate holder and that the replaced bill of lading is rendered with no effect.

Article 264. Legal regime.

An electronic bill of lading shall be subject to the same regime and have the same effects as the bill issued in paper form, with no further specialties other than those contained in the contract for its issuance.

Article 265. Substitution of an electronic bill of lading.

1. An electronic bill of lading may be replaced by a paper one, with prior written agreement between the legitimate holder of the bill and the carrier.

2. In performance of the terms agreed, the carrier shall deliver the legitimate holder the bill of lading in paper form, recording the fact and date of the replacement of the electronic bill of lading, the identity of the legitimate holder and that the replaced bill of lading is rendered with no effect.

Article 266. Effects of substitution.

From the time of the replacement, the replaced bill of lading, whatever the new form is, shall be considered annulled for all legal purposes.

The Preamble of the Spanish Act only refers to “latest conventions and specially the Rotterdam Rules”. **The provisions on e-BsL, however, are to a very short extent based on the Rotterdam Rules of 2008. Compared to the Rotterdam Rules, the Spanish provisions are rather partial and lack detail.** Final Provision n.1 establishes that in the event of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, signed on 23rd September 2009 (Rotterdam Rules) comes into force, the Government shall submit to Parliament a bill to introduce the necessary amendments to this Act.

This being said, and besides on the EU relevant legal instruments, the provisions of the Spanish Shipping Act should also be interpreted in light of the principles reflected in the UNCITRAL Model Law on Electronic Commerce of 1996 and on the Rotterdam Rules, as they share some basic general principles with them, and particularly the principles of non-discrimination, functional equivalence and technology neutrality.

(b) If the answer to question (a) is Yes, is it a simple adoption of the MLETR or are there changes or additions to it? If there are changes or additions, please specify them (including the reason for the changes or additions, if possible).

(c) If the answer to question (a) is No, please describe the legislation. Is there any other basis for the legislation? Why did your jurisdiction not follow the MLETR?

For the sake of giving a summary of what the provisions of the Spanish Shipping Act state, we may say that, in essence, they provide for the following:

- The BL may be issued in electronic form. For this purpose, however, the written agreement of both parties (shipper and carrier) is needed. Such agreement must be previous to the loading of the goods onboard the vessel (Art. 262, par. 1 SSA)
- The parties' agreement must at least include (Art. 262, par. 2 SSA):
 - o The specification of the procedure for the issuance and the transfer of the BL;
 - o The system or method to ensure the security of the record and the intangibility of its contents;
 - o The manner in which the holder of the bill of lading can identify itself as such (as the holder);
 - o The manner in which delivery of the goods is to be confirmed; and

- The manner in which the e-BL loses its validity and effect.
- The carrier and the holder of a paper BL may agree to replace it for an e-BL. For that purpose, the agreement of the parties must meet all requirements laid down in the two previous paragraphs. For the replacement, the holder must surrender the paper BL to the carrier (or all originals, of more than one has been issued), upon which the carrier must issue the e-BL, with the specification of the fact that it is issued to replace the paper document, the date, the identity of the lawful holder, as well as the statement that the paper BL is rendered with no effect (Art. 263 SSA);
- An e-BL that meets the foregoing conditions is otherwise subject to the same rules, and has the same effects of a paper BL under the SSA, except for what the contract for the issuance may state (Art. 264 SSA);
- An e-BL may be replaced with a paper BL, if the carrier and the lawful holder of the BL so agree in writing. For the replacement, the carrier shall issue and deliver to the e-BL's lawful holder a paper BL, which must state the fact that it is issued to replace an e-BL, the date, the identity of the lawful holder, as well as the fact that the replaced e-BL is rendered with no effect (Art. 265 SSA);
- In any case, upon the time of the replacement, the replaced BL (whether in paper or in electronic form) is deemed surrendered and deprived of any effect for all relevant legal purposes (Art. 266 SSA).

These rules should also be interpreted in light of Regulation (EU) n° 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation), adopted on July 23, 2014; the Act 34/2002, of 11th July, on Services of the Information Society and Electronic Commerce; and the Act 6/2020, of 11 November, on the regime of certain aspects of electronic trust services, particularly for those aspects concerning the reliable identification of the holder of the e-BL.

II.3 Does the legislation referred to in II.1 cover only bills of lading (or similar documents of title) or does it also cover other documents?

The above referred provisions of the Spanish Shipping Act only address electronic BsL. However, Art. 267 SSA states that a multimodal BL is subject to the same rules that apply

to maritime BsL². It is doubtful whether such reference does also include the provisions on maritime e-BsL, but there is no reason to believe that it does not.

II.4 Does the legislation referred to in II.1 provide the standard of reliability of the system? See Article 12 of the MLETR.

The Spanish provisions on the e-BsL are rather incomplete. They require that the system agreed upon by the parties for the issuance and transfer of the document at least aims to ensure the reliability of the system in terms of security, but they do not lay down minimum reliability requirements, or any standards or references to assess reliability in this context. With this purpose, however, the provisions of the eIDAS Regulation and the Act 6/2020 should be applied.

II.5 Does the legislation referred to in II.1 specify the requirements for the use of electronic bills of lading? If yes, please identify those requirements (e.g., consent of the parties).

See response to II.2.(c) above. Besides those conditions, and by reason of the general reference that Art. 264 of the Spanish Shipping Act makes to the paper-based rules that apply to BsL, an electronic bill of lading must comply with all substantive requirements as set out for the paper document, and particularly those clarifying the minimum contents of the document.

Mandatory mentions on the bill of lading (on paper or in electronic form) consequently are (art. 248):

1. The name and surname or the company name and address, or the main establishment of the carrier.
2. The name and surname or company name and the address or main establishment of the shipper and, if the BL is nominative, those of the consignee.
3. The description of the goods provided by the shipper, stating the nature, the identifying marks, number of items and, according to the cases, the quantity or

² "The rules laid down in this Act for bills of lading shall also apply to a transport document issued by the carrier, or by an agent acting on its behalf with sufficient authority, in a combined or multimodal carriage".

weight, as well as their apparent state. If requested by the shipper, it shall include their value. If the goods are hazardous, that mention shall be recorded in a visible place on the BL.

If the goods are inside containers, loading trays or other similar resources, each container, tray or similar shall be considered as a unit, except for specification to the contrary.

If the goods may be transported on deck, this shall be specifically stated in the bill of lading.

4. The ports to load and unload goods and, in the case of multi-mode transport, the transport start and end places.
5. The date of delivery of the goods to the carrier for carriage and, if agreed, the date or deadline for delivery of the goods at the relevant location.
6. The place of issue of the bill of lading and, if more than one is delivered, the number of original copies.

The BL may also contain all the mentions or clauses that may be validly agreed by the shipper and the carrier.

On the other hand, the bill of lading shall be signed by the carrier or by the carrier's agent who is acting on its behalf with sufficient powers. If signed by the master of the ship, it shall be presumed to be signed on behalf of the carrier mentioned in the bill. Should the bill of lading not sufficiently identify the person acting as carrier, it shall be deemed to be signed on behalf of the ship-operator (art. 249). Although the Spanish Shipping Act does not contain a rule on electronic signatures, the provisions of the eIDAS Regulation and the Act 6/2020 apply for these purposes, and the eB/L must be signed electronically by or on behalf of the carrier for its valid issuance.

11.6 Does the legislation referred to in II.1 specify the rights of the holder of electronic bills of lading or the effect of transferring them? If the answer is Yes, do such provisions address specific legal situations or generally declare that the rights or effects are the same as in the case of paper bills of lading?

In order to determine the legal effects of an e-BL, including the effects of its transfer and the rights of the holder, the SSA, as stated (art. 264), refers *en bloc* to the rules on the paper BL. There are no specific rules for e-BsL in terms of effects or no detail of particular

situations, except for those relating to replacement.

I1.7 Does the legislation referred to in II.1 provide the requirements for transferring electronic bills of lading (e.g., the method of electronic “endorsement”, etc.)? If yes, please specify the requirements.

The legal regime of the bill of lading transfer is the same for both, eBsL and BsL in paper. Bills of lading may be to the bearer, to order or nominative. Bearer bills of lading shall be transferred by delivery, those to order by endorsement, and nominative ones by assignment according to the rules governing assignment of non-endorsable claims.

Art. 262.2 provides that the contract between the Carrier and the Shipper must specify the method for the transfer of the e-BL and the legitimization of the holder. It does not state requirements for transferring or evidencing the transfer, as this would depend on the platform and technology used.

In conclusion, there are no specific requirements for the transfer of e-BsL, except for the conditions stated in the answer to II.2.(c) above.

I1.8 Does the legislation referred to in II.1 distinguish between paper and electronic bills of lading? If yes, please specify how they are treated differently. See Article 36(2)(d) of the Rotterdam Rules

Besides the conditions for the issuance and transfer of e-BsL referred to above (II.2.(c)), the rules of the SSA do not distinguish between paper and e-BsL, particularly for delivery purposes.

I1.9 Does the legislation referred to in I.1 include provisions on scope of application? For example, does it apply to an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction that uses a platform specifying foreign law as the governing law?

In Spain there are no rules specifying when the Spanish law applies to an e-BL or otherwise solving conflict-of-laws situations in this particular context.