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FROM PAPER TO DIGITAL

The Legal Landscape of Electronic Bills of Lading in Germany

Svenja Breckwoldt

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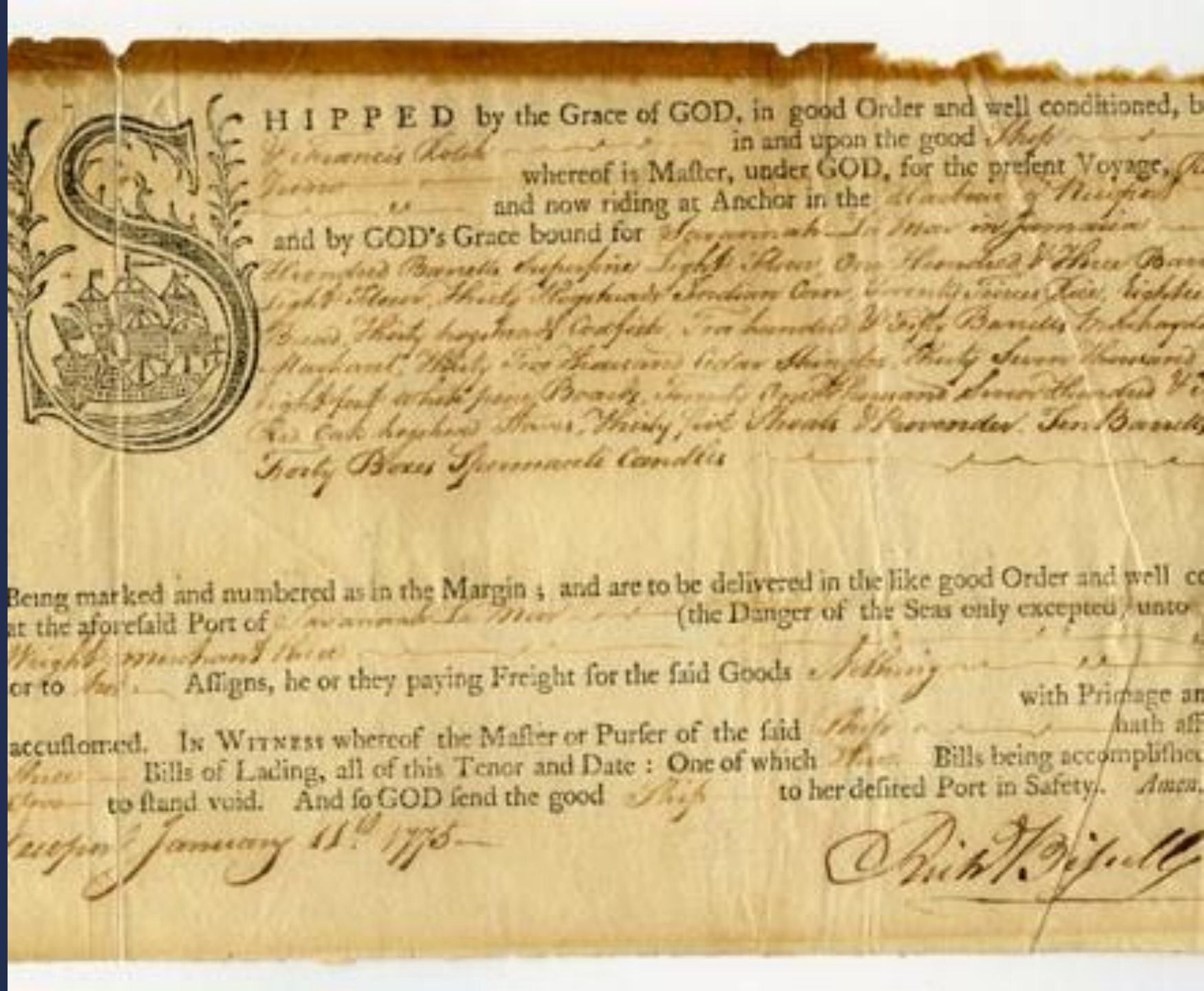
BILL OF LADING UNDER GERMAN LAW



SHIPPED by the Grace of GOD, in good Order and well conditioned, b
in and upon the good
whereof is Master, under GOD, for the present Voyage,
and now riding at Anchor in the
and by GOD's Grace bound for

Being marked and numbered as in the Margin ; and are to be delivered in the like good Order and well co
at the aforesaid Port of (the Danger of the Seas only excepted) unto
or to Assigns, he or they paying Freight for the said Goods with Primage an
accustomed. In Witness whereof the Master or Purser of the said hath aff
Bills of Lading, all of this Tenor and Date : One of which Bills being accomplished
to stand void. And so GOD send the good to her desired Port in Safety. Amen.

BILL OF LADING UNDER GERMAN LAW

- Sections 513 – 525 of the German Commercial Code (HGB – “CC”)

- Form of the Bill of Lading: Section 516 para. 1 CC:

*(1) The carrier must **sign the bill of lading**; reproductions of the personal signatures by means of **printing or stamp** shall be **sufficient**.*

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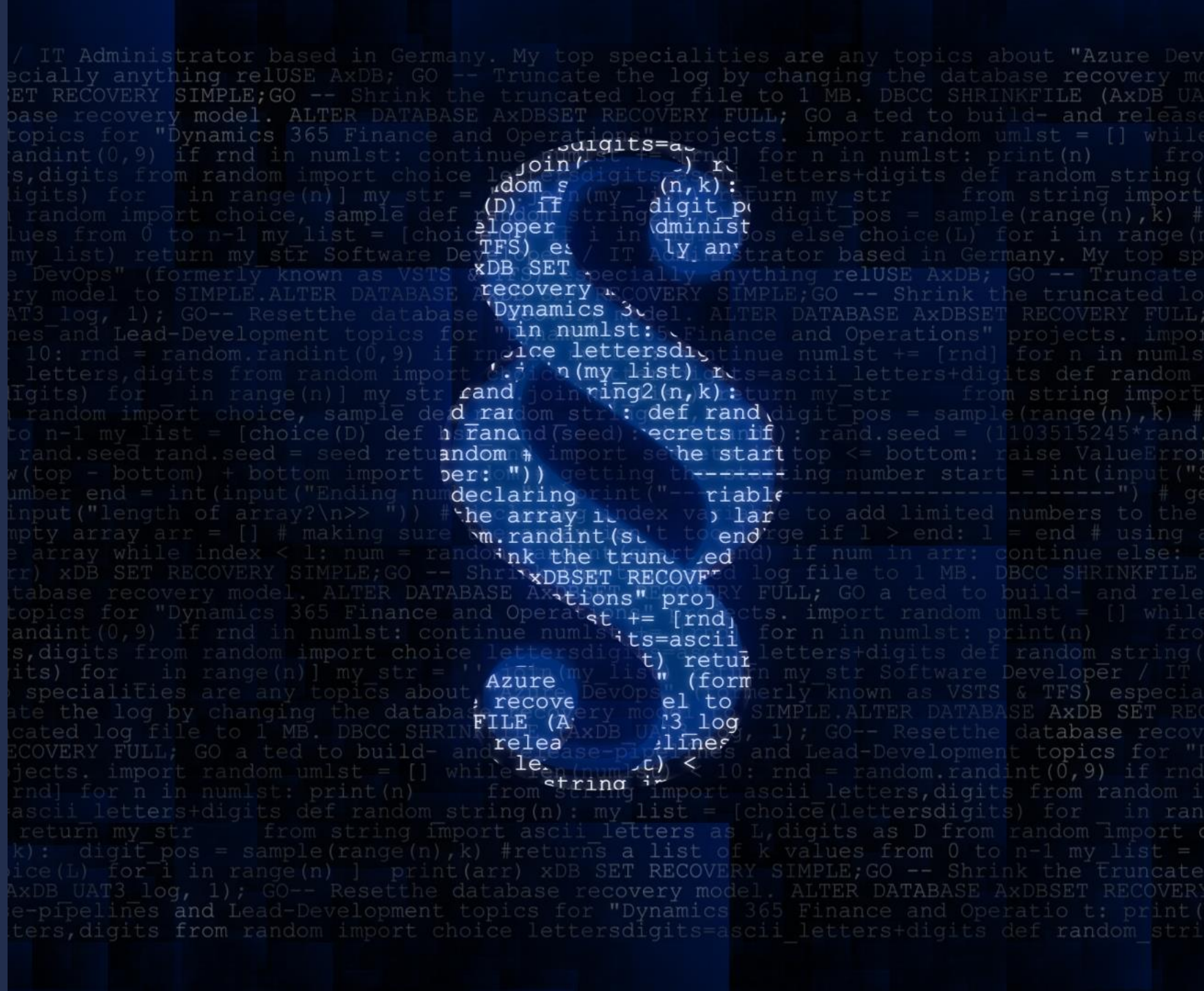
ELECTRONIC BILL OF LADING: LEGAL FRAMEWORK IN GERMANY



LEGAL BASIS FOR ELECTRONIC BILLS OF LADING: SECTION 516 OF THE GERMAN COMMERCIAL CODE

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*(1) The carrier must **sign the bill of lading**; reproductions of the personal signatures by means of **printing or stamp** shall be **sufficient**.*

*(2) An **electronic record** having the same functions as a bill of lading shall be deemed equivalent to a bill of lading, provided that the authenticity and integrity of the record are assured (**electronic bill of lading**).*

*(3) The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by **regulation**, issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the consent of the Federal Council (Bundesrat), the **details of issuing, presenting, returning and transmitting an electronic bill of lading**, as well as the particulars of the process of posting retroactive entries to an electronic bill of lading.*

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ELECTRONIC EQUIVALENTS OF TRANSPORT DOCUMENTS IN GERMAN TRANSPORT LAW

- **Consignment Note**, Section 408 para. 3, sentence 1 of the Commercial Code („Frachtbrief“)
- **Consignment Bill**, Section 443 para. 3 sentence 1 of the Commercial Code („Ladeschein“)*
- **Warehouse Warrant**, Section 475 c para. 4 sentence 1 of the Commercial Code („Lagerschein“)*
- **Bill of Lading**, Section 516 para. 2 of the Commercial Code („Konnossement“)*
- **Sea Waybill**, Section 526 para. 4 sentence 1 of the Commercial Code („Seefrachtbrief“)

* Consignment bill, warehouse warrant and bill of lading are securities (documents of title) and as such generally negotiable.

LEGAL BASIS: SECTION 516 PARA. 2 CC
REQUIREMENTS

*"An **electronic record** having the **same functions as a bill of lading** shall be deemed equivalent to bill of lading, provided that the **authenticity and integrity of the record are assured** (electronic bill of lading)."*

1. **Electronic record**
   - ≠ Paper

2. **Functional equivalence**
   - („*having the same functions as a bill of lading*")

3. **Assuration** of the **authenticity** and the **integrity** of the record
   - ("*provided that the authenticity and integrity of the record are assured*")

SECTION 516 PARA. 2 CC: **FUNCTIONAL EQUIVALENCE**

Evidence function – Section 517 CC

- Conclusion and content of contract
- Take over of the goods by the carrier
- Details and condition of the goods

Blocking function – Section 519 sentence 1 CC

- Person entitled under B/L as sole claimant
- B/L takes precedence over the sea freight contract

Legitimisation – Section 519 sentence 2, 3 CC

- Holder is entitled to receive the goods

Security (Negotiability) – Section 524 CC

- Transfer of title
- Representation of ownership

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SECTION 516 PARA. 2 CC: **ASSURATION OF THE AUTHENTICITY AND THE INTEGRITY OF THE RECORD**

- **Authenticity**: The origin of the document can be identified.
- **Integrity**: The document has not been altered.

→ At least same security as paper document required

→ IT Security

  - Forgery-proof
  - Advanced/ qualified electronic signature
  - Later entries are recognisable and traceable
  - Technical requirements for copies and their management

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SECTION 516 PARA. 3 CC:
REGULATION ON DETAILS OF ELECTRONIC BILLS OF LADING

Section 516 para. 3 CC:

Empowerment of the Federal Ministry of Justice to regulate the issuance, presentation, return, and transfer of an electronic bill of lading as well as subsequent entries

- Issuance

- Presentation

- Return

- Transfer

- Subsequent Entries

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CURRENT TECHNICAL SOLUTION: BLOCKCHAIN

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SUMMARY & OUTLOOK

SUMMARY & STATUS QUO

1. **Requirements** (Section 516 para. 2 CC)

a) Electronic record

b) Functional equivalence

c) Assuration of the authenticity and the integrity of the record

2. **Regulation** on details (Section 516 para. 2 CC):

- Outstanding
- Working group issued first draft in 2022

→ Very basic requirements

→ No details yet concerning technical aspects, issuance, transfer, …

IS IT POSSIBLE TO ISSUE AN ELECTRONIC BILL OF LADING UNDER GERMAN LAW?

Problem: No regulation yet

Few opinions in literature: Regulation is constitutive → currently no eB/Ls admissible

However: **Reasoning of the legislator** is clear:

"*To what extent the authorisation [*to issue a regulation*] will be used should, however, depend on whether suitable forms and procedures emerge in practice.*"

→ Issuance of electronic bills of ladings is possible under German law

EVALUATION OF LEGAL SOLUTION

Flexibility

Observance of the market

Creation of different technical and operational solutions

Evolving of best practice

EVALUATION OF LEGAL SOLUTION

Flexibility	No legal certainty
Observance of the market	Evidence function in court proceedings unclear
Creation of different technical and operational solutions	Hesitence of the market
Evolving of best practice	

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“Law as enabler instead of restrictor“

As much freedom as possible, but as much guidance and reliability as necessary.

CONTACT

Svenja Breckwoldt

Senior Associate
Grosse Elbstrasse 36
22767 Hamburg
+49 40 317797-57
s.breckwoldt@asd-law.com

ARNECKE
SIBETH
DABELSTEIN

FRANKFURT
Güterplatz 1
60327 Frankfurt am Main
Germany
T +49 69979885-0
F +49 69 979885-85

HAMBURG
Große Elbstraße 36
22767 Hamburg
Germany
T +49 40 317797-0
F +49 40 317797-77

BERLIN
Kurfürstendamm 54/55
10707 Berlin
Germany
T +49 30 8145913-00
F +49 30 8145913-99

LEER
Am alten Handelshafen 3A
26789 Leer
Germany
T +49 491 96071-0
F +49 491 96071-20

DRESDEN
Am Brauhaus 1
01099 Dresden
Germany
T +49 351 86659-0
F +49 351 86659-59