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**United Nations Commission on  
International Trade Law**  
**Working Group IV (Electronic Commerce)**  
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## **Draft Provisions on the Use and Cross-border Recognition of Identity Management and Trust Services – synthesis of comments submitted by States and international organizations**

**Note by the Secretariat**

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## V. Synthesis of comments on chapter III (trust services)

### A. Article 13 – Legal recognition of trust services

#### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
<p>1. Is the first bracketed text in the chapeau acceptable? Would the purpose of the provision be better expressed by referring instead to the results of the use of a trust service?</p>	<p><i>Choice of bracketed text</i></p> <p>(a) The first bracketed text is preferable<sup>1</sup> as the use of a trust service merely assures the “envelope” of a data message, but not the veracity of its content.<sup>2</sup></p> <p>(b) The text of the first bracketed text is unclear.<sup>3</sup></p> <p>(c) The second bracketed text is preferable,<sup>4</sup> since the concept of “qualities of a data message” needs to be clarified.<sup>5</sup></p> <p><i>Reference to the results of the use of a trust service</i></p> <p>(d) Article 13 should refer to the results of the use of a trust service.<sup>6</sup> Accordingly, the provision should open with the following words: “The result deriving from use of a trust service...”.<sup>7</sup></p> <p>(e) Article 13 states that a trust service may be provided in electronic form. As the purpose of a trust service is to verify electronic data, this provision would appear to be tautological and unnecessary.<sup>8</sup></p>

#### 2. Synthesis of other comments on article 13

<i>Issue</i>	<i>Synthesis of comments</i>
<p>1. Purpose of article 13</p>	<p>(a) If the purpose of article 13 is to make clear that a third party may provide a trust service, that should be clarified. As drafted, the provision confuses the legality of using a trust service with the issue of whether a third party may provide a trust service.<sup>9</sup></p> <p>(b) Article 13 goes beyond the scope of article 25 of the eIDAS Regulation (legal effects of electronic signatures) and the benefit of broadening its scope to include all trust services is unclear.<sup>10</sup></p>

<sup>1</sup> Denmark, Lebanon, Singapore, CIETAC.

<sup>2</sup> Singapore.

<sup>3</sup> United States.

<sup>4</sup> UINL, Ukraine.

<sup>5</sup> United Kingdom.

<sup>6</sup> EU, Switzerland, Ukraine, CIETAC.

<sup>7</sup> EU.

<sup>8</sup> United States.

<sup>9</sup> United States.

<sup>10</sup> Denmark.

## B. Article 14 – Obligations of trust service providers

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should the obligation in article 14(1)(b) be formulated along the lines of article 6(f)?	<p>(a) No.<sup>11</sup> The current formulation is clearer.<sup>12</sup></p> <p>(b) Yes.<sup>13</sup></p> <p>(c) The term “policies and practices” should be used in article 14(1)(b) and article 6(f).<sup>14</sup></p> <p>(d) Article 14(1)(b) and article 6(f) should refer to “rules” in addition to “policies and practice”.<sup>15</sup></p> <p>(e) Relying parties should also be given access to the rules governing the IdM service, including on policies and practice.<sup>16</sup></p> <p>(f) Article 14(1)(b) should oblige the trust service providers to « rendre ses politiques et ses pratiques transparentes, précises et facilement accessibles aux abonnés ». <sup>17</sup></p>

### 2. Synthesis of other comments on article 14

<i>Issue</i>	<i>Synthesis of comments</i>
1. Party autonomy	(a) The draft provisions should clarify how article 14 interacts with contractual obligations of the trust service provider. If the intent of article 14(2) is to impose obligations for breaches or losses of integrity that are not covered by contract (i.e., because it refers to impact on the trust service itself), that should be made clear. <sup>18</sup>
2. Scope	(a) Given the importance of data security and integrity, additional safeguards should be explored. <sup>19</sup>
3. Consequences for failure to comply with obligations	<p>(a) The draft provisions should clarify the consequences for failure to comply with the obligations in article 14, assuming they are distinct from contractual obligations.<sup>20</sup></p> <p>(b) The consequences arising from losses due to integrity breach could be further discussed.<sup>21</sup></p>
4. Reference to certificates	(a) Article 14(1)(b) should be modified to read: “When a certificate exists, bind the specific data message with the certificate and manage the certificate”. <sup>22</sup>

<sup>11</sup> Lebanon, Senegal, Ukraine, UINL.

<sup>12</sup> Lebanon, UINL.

<sup>13</sup> CIETAC.

<sup>14</sup> EU.

<sup>15</sup> Switzerland.

<sup>16</sup> Singapore, United Kingdom.

<sup>17</sup> Niger.

<sup>18</sup> United States.

<sup>19</sup> Dominican Republic.

<sup>20</sup> United States.

<sup>21</sup> Dominican Republic.

<sup>22</sup> China.

## C. Article 15 – Obligations of subscribers

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Do relying third parties have rights and obligations that should be reflected in the draft provisions (e.g., to notify breaches they are aware of)?	<p><i>See positions on question 1 for article 8.</i></p> <p>(a) The draft provisions should confer rights, but not impose obligations, on third parties.<sup>23</sup></p> <p>(b) Third parties have obligations under the draft provisions only to the extent that they have countervailing rights (which remains to be verified).<sup>24</sup></p> <p>(c) A relying third party should have the obligation to notify subscribers if it knows that the trust service has been compromised, etc.<sup>25</sup></p> <p>(d) The draft provisions should impose an obligation (i) to use the trust service only in accordance with the conditions of the trust service provider, and (ii) not to use the trust service for purposes and activities that are prohibited by law.<sup>26</sup></p>

### 2. Synthesis of other comments on article 15

<i>Issue</i>	<i>Synthesis of comments</i>
1. Consequences for failure to comply with obligations	(a) The draft provisions should clarify the consequences for failure to comply with the obligations in article 15. <sup>27</sup>

## D. Article 16 – Electronic signatures

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should the reliability standard of the method referred to in article 16 be qualified as “reliable as appropriate” to better reflect the varying standards for offline identification?	<p>(a) The standard “as reliable as appropriate” should not be used.<sup>28</sup></p> <p>(b) The standard “as reliable as appropriate” would need to be defined.<sup>29</sup></p> <p>(c) It is not necessary to qualify the reliability standard because appropriateness is addressed in article 24.<sup>30</sup></p> <p>(d) The standard should be “as reliable as appropriate”<sup>31</sup> to better reflect the varying standards for offline identification.<sup>32</sup></p>

<sup>23</sup> CIETAC.

<sup>24</sup> United States.

<sup>25</sup> Singapore.

<sup>26</sup> United Kingdom.

<sup>27</sup> United States.

<sup>28</sup> Denmark (also for article 17), Ukraine (also for article 17).

<sup>29</sup> Senegal (also for article 17), UINL (also for article 17).

<sup>30</sup> EU (also for article 17), UK (also for article 17).

<sup>31</sup> Singapore (also for article 17), Switzerland.

<sup>32</sup> Lebanon, CIETAC.

## 2. Synthesis of other comments on article 16

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope	(a) Articles 16-20 address the validity of a data message (such as an e-signature) and not the use of a trust service to validate the data message. Because these provisions are not concerned with trust services, they do not belong in this instrument. <sup>33</sup>

## E. Article 17 – Electronic seals

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should the reliability standard of the method referred to in article 17 be qualified as “reliable as appropriate” to better reflect the varying standards for offline identification?	<i>See positions on question 1 for article 16.</i>

### 2. Synthesis of other comments on article 17

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope	<i>See position on issue 1 for article 16.</i>
2. Clarification on “any person”	(a) The person referred to in the chapeau of paragraph 3 may be a natural or a legal person. <sup>34</sup>

## F. Article 18 – Electronic timestamps

### 1. Synthesis of comments in response to specific questions

*The template contained no specific questions on article 18.*

### 2. Synthesis of other comments on article 18

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope	<i>See position on issue 1 for article 16.</i>
2. Reference to time zone	(a) The requirement to indicate the time and date should also specify the time zone by using the notion of Universal Coordinated Time (UTC) in line with the standard RFC 3161. <sup>35</sup>
3. Clarification on “any person”	<i>See position on issue 2 for article 17.</i>

<sup>33</sup> United States.

<sup>34</sup> El Salvador.

<sup>35</sup> Colombia.

## G. Article 19 – Electronic archiving

### 1. Synthesis of comments in response to specific questions

*The template contained no specific questions on article 19.*

### 2. Synthesis of other comments on article 19

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope	<i>See position on issue 1 for article 16.</i>
2. Reference to time zone	<i>See position on issue 2 for article 18.</i>

## H. Article 20 – Electronic registered delivery services

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should article 20 specify that additional functions of an electronic delivery service are (a) to assure the integrity of the data message and (b) to identify the sender and/or the recipient?	<p>(a) Article 20 should specify these additional functions.<sup>36</sup> This ensures greater equivalence with offline registered delivery services.<sup>37</sup> It also enables a single trust service provider to provide the whole electronic registered delivery service (including identity and integrity).<sup>38</sup> Moreover, formulating the article in terms of an obligation of results would be desirable.<sup>39</sup></p> <p>(b) The additional function of assuring integrity seems already to be taken into account in article 20.<sup>40</sup></p> <p>(c) Article 20 should not specify these additional functions.<sup>41</sup></p>

### 2. Synthesis of other comments on article 20

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope	<i>See position on issue 1 for article 16.</i>
2. Reference to time zone	<i>See position on issue 2 for article 18.</i>
3. Clarification on “any person”	<i>See position on issue 2 for article 17.</i>

## I. Article 21 – Website authentication

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should there be a reference to the presumption of reliability and	(a) Such a reference should be made in article 21. <sup>42</sup>

<sup>36</sup> Denmark, EU, Lebanon, Singapore, Switzerland, United Kingdom, CIETAC, UINL.

<sup>37</sup> EU, Singapore.

<sup>38</sup> EU.

<sup>39</sup> Lebanon.

<sup>40</sup> Senegal.

<sup>41</sup> Ukraine.

<sup>42</sup> EU, CIETAC.

<i>Question</i>	<i>Synthesis of comments</i>
proof of reliability for website authentication?	(b) Such a reference could be made in article 21. <sup>43</sup> (c) It is sufficient for such reference to be made in an explanatory document. <sup>44</sup> (d) Such a reference should not be made. <sup>45</sup>

## 2. Synthesis of other comments on article 21

<i>Issue</i>	<i>Synthesis of comments</i>
1. Scope and purpose	(a) Identifying the owner of the domain does not prove the authenticity of the website itself. <sup>46</sup> (b) The purpose of article 21 is unclear. Website certificates are already governed by international standards and supervisory bodies. Requirements on the identification of domain owners and proof of reliability are already well described for website certificates. <sup>47</sup>

## J. Article 22 – Object authentication

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Is it desirable to deal with the identification of objects as a trust service, or should the provision be limited to linking objects with the persons controlling them (“object tracing”)?	(a) It is desirable to deal with the identification of objects as a trust service. <sup>48</sup> (b) The provision should be limited to linking objects with persons. <sup>49</sup>

### 2. Synthesis of other comments on article 22

<i>Issue</i>	<i>Synthesis of comments</i>
1. Desirability of addressing the identification of objects as a trust service.	(a) The identification of objects should be excluded from scope. <sup>50</sup> (b) Article 22 should provide guidance on any requirements on how to bind the authentication mechanism to the object or should be omitted. <sup>51</sup>
2. Desirability of addressing the identification of objects as an IdM issue	(a) The identification of objects is an IdM issue and not a trust service. <sup>52</sup> (b) It is a highly relevant matter and further provisions, definitions and guidance would be beneficial,

<sup>43</sup> Lebanon, Switzerland.

<sup>44</sup> Switzerland.

<sup>45</sup> Ukraine, UINL.

<sup>46</sup> United States.

<sup>47</sup> Denmark.

<sup>48</sup> Lebanon, CIETAC.

<sup>49</sup> Senegal, Singapore, Switzerland, Ukraine, UINL.

<sup>50</sup> EU, United States.

<sup>51</sup> United Kingdom.

<sup>52</sup> Denmark, United States.

<i>Issue</i>	<i>Synthesis of comments</i>
	particularly given the importance of objects connected to the Internet of Things. <sup>53</sup>

## K. Article 23 – Reliability standard for trust services

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should an explicit reference to “between the parties” be inserted in article 23(1)(h) (as it is in article 10(1)(d))?	<p>(a) The words “between the parties” should be inserted.<sup>54</sup></p> <p>(b) An agreement between the parties should help in determining the reliability of the trust service.<sup>55</sup></p> <p>(c) An agreement between the parties should not be a factor for determining reliability. The reliability of IdM systems should be determined according to common standards in order to guarantee fair competition among trust service providers.<sup>56</sup></p> <p><i>See also positions (b), (c) and (f) on question 1 for article 10 for a synthesis of comments on article 10(1)(d).</i></p>

### 2. Synthesis of other comments on article 23

<i>Issue</i>	<i>Synthesis of comments</i>
1. “Recognized international standards and procedures” for reliability (Article 23(1)(b))	<i>See issue 2 for article 10</i>
2. Auditing of trust services (article 23(1)(f))	(a) It should be clarified whether the “independent body” carrying out the audit will be a State body or an international body to be established for the purpose. <sup>57</sup>
3. Voluntary schemes (article 23(1)(g))	(a) It is necessary to define (i) who is in charge of establishing such schemes, (ii) the standards by which they are established, and (iii) who is responsible for controlling compliance with the requirements of the scheme. <sup>58</sup>

<sup>53</sup> Denmark.

<sup>54</sup> Lebanon, Senegal, Switzerland, Ukraine, United Kingdom, CIETAC.

<sup>55</sup> Singapore.

<sup>56</sup> EU.

<sup>57</sup> El Salvador.

<sup>58</sup> EU.

## L. Article 24 – Designation of reliable trust services

### 1. Synthesis of comments in response to specific questions

*The template contained no specific questions on article 24.*

### 2. Synthesis of other comments on article 24

<i>Issue</i>	<i>Synthesis of comments</i>
1. Determination and regulation of designating entity	(a) Additional provisions are needed regarding the designating person, organ or authority (compare article 17 of the eIDAS Regulation). <sup>59</sup>
2. “Recognized international standards and procedures” for determining reliability (article 24(3))	<i>See issue 2 for article 10.</i>
3. “Level of reliability” (article 24(3))	(a) The definition and scope of levels of reliability, as well as how they are established, need to be clarified. <sup>60</sup>

## M. Article 25 – Liability of trust services providers

### 1. Synthesis of comments in response to specific questions

*See positions on questions for article 12.*

### 2. Synthesis of other comments on article 25

<i>Issue</i>	<i>Synthesis of comments</i>
1. Information requirements (article 25(3)(b))	(a) The trust service provider should be required to notify the subscriber of the limitation of liability before the conclusion of the contract and the beginning of the provision of the service. <sup>61</sup>

## VI. Synthesis of comments on chapter IV (international aspects)

### A. Article 26 – Cross-border recognition of IdM and trust services

#### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. The establishment of an effective mechanism for the cross-border recognition of IdM and trust services is a core objective of this project. The main provisions that pursue that objective are: article 26, on cross-border recognition of IdM systems and trust services;	<p>(a) These provisions pursue the objective sufficiently.<sup>62</sup></p> <p>(b) There may be need for additional clarity on what constitutes a “recognised international standard”.<sup>63</sup></p> <p>(c) These provisions do not pursue the objective sufficiently. Further guidance and requirements are necessary (in the draft provisions or in an explanatory</p>

<sup>59</sup> EU.

<sup>60</sup> EU.

<sup>61</sup> EU.

<sup>62</sup> Lebanon, UINL.

<sup>63</sup> Singapore.

<i>Question</i>	<i>Synthesis of comments</i>
<p>articles 10(2) and 23(3), on the reliability of the methods used; and articles 11(4) and 24(4), on non-geographic discrimination in designating reliable IdM systems and trust services. Do these provisions sufficiently pursue this objective? If not, which additional provisions should be introduced?</p> <p>2. Are the existing provisions on cross-border recognition aligned? In particular, is it appropriate that articles 11(4), 24(4) and 26 focus on “IdM systems” and “trust services”, while articles 10(2) and 23(3) focus on the reliability of the “methods”?</p>	<p>document), particularly on determining and documenting reliability.<sup>64</sup></p> <p>(d) Article 26 is a core provision of the instrument and of the work of the Working Group. In the absence of an international mechanism supported by a binding treaty, the mechanism in article 26 represents an adequate approach for achieving cross border recognition of IdM and trust services.<sup>65</sup></p> <p>(a) It is appropriate that articles 11(4), 24(4) and 26 focus on “IdM systems” and “trust services”, while articles 10(2) and 23(3) focus on the reliability of the “methods”.<sup>66</sup> Users rely on the results of services and therefore it is appropriate to focus on “services” in articles 11(4), 24(4) and 26. As the legal effect of these services is based on the quality level of the method used, it is appropriate to focus on “methods” in articles 10(2) and 23(3).<sup>67</sup></p>

## 2. Synthesis of other comments on article 26

<i>Issue</i>	<i>Synthesis of comments</i>
<p>1. Cross-border recognition mechanisms</p>	<p>(a) It is questionable whether States would be willing automatically to accept IdM and trust services from other countries through the enactment of a model law alone, particularly in the absence of any international mechanism or recognized international standard to verify the veracity of other systems in other countries.<sup>68</sup></p> <p>(b) It would be useful to clarify whether cross-border legal recognition would take place automatically or conditional to certain requirements set forth by the foreign State.<sup>69</sup></p> <p>(c) The Working Group should consider clarifying what “recognition” entails.<sup>70</sup></p> <p>(d) Article 26 should specify how equivalence is determined and by whom. To this end, a new provision should be added as follows:</p> <p style="padding-left: 40px;"><i>“Equivalence shall be presumed if a person, organ or authority, whether public or private, specified by the enacting jurisdiction as competent has determined the equivalence for the purposes of paragraph 2”.</i><sup>71</sup></p>

<sup>64</sup> Denmark.

<sup>65</sup> EU.

<sup>66</sup> Denmark, EU, Lebanon, United Kingdom.

<sup>67</sup> EU.

<sup>68</sup> United States.

<sup>69</sup> Argentina.

<sup>70</sup> Dominican Republic.

<sup>71</sup> EU.

<i>Issue</i>	<i>Synthesis of comments</i>
	<p>(e) The draft provisions should require the existence of an agreement between the respective States as a condition for recognition.<sup>72</sup></p> <p>(f) It must be ensured that recognition should not be mandatory in case: (a) of technical incompatibilities between solutions provided by different States in respect of the technology neutrality principle; and (b) the systems of third countries do not offer equivalent guarantees of security.<sup>73</sup></p>
2. “Same legal effect”	(a) The Working Group should consider clarifying what it means to say that a foreign IdM system or trust service has the “same legal effect”. <sup>74</sup>
3. “Substantially equivalent” level of reliability	<p>(a) The interplay between a requirement of substantial equivalence and the requirements of article 23 is not clear. In particular, it is not clear whether a trust service satisfying the requirements of article 23 is only eligible for cross-border recognition if it also satisfies the substantial equivalence requirement in Article 26.<sup>75</sup></p> <p>(b) The concept of “substantial equivalence” is preferable to requiring the “identical” level of reliability, which is not appropriate in a cross-border context.<sup>76</sup></p> <p>(c) The concept of “substantial equivalence” is not desirable as it is not precise enough and leaves room for interpretation.<sup>77</sup></p>
4. “Recognized international standards”	<p>(a) Article 26(2) should also refer to “national” standards to accommodate bilateral agreements on mapping and equivalence.<sup>78</sup></p> <p>(b) Such standards do not exist<sup>79</sup> or their identification needs clarification.<sup>80</sup></p>
5. Interaction with digital trade initiatives	(a) It is necessary to consider the progress of work at the World Trade Organization on related matters, as well as work carried out by the Organization for Economic Co-operation and Development and the Financial Action Task Force on digital identities. <sup>81</sup>

<sup>72</sup> Ukraine.

<sup>73</sup> EU.

<sup>74</sup> Argentina. See also comments submitted by the World Bank (A/CN.9/WG.IV/WP.163, p. 14).

<sup>75</sup> United States.

<sup>76</sup> Argentina.

<sup>77</sup> EU.

<sup>78</sup> United Kingdom.

<sup>79</sup> United States.

<sup>80</sup> Denmark, Singapore.

<sup>81</sup> Switzerland.

## B. Article 27 – Cooperation

### 1. Synthesis of comments in response to specific questions

<i>Question</i>	<i>Synthesis of comments</i>
1. Should article 27 apply to all entities involved in IdM and trust services? Does it fulfil a useful function, or should such activities be left to the initiative of the concerned entities?	<p>(a) Article 27 should apply to cooperation with all entities involved in IdM and trust services.<sup>82</sup></p> <p>(b) Article 27 should only apply to cooperation with entities which are specified as competent by the foreign State.<sup>83</sup></p> <p>(c) Article 27 is an essential provision that should impose a duty to cooperate.<sup>84</sup></p> <p>(d) Article 27 is a useful provision to facilitate collaboration between States.<sup>85</sup></p> <p>(e) It is questionable whether States would be willing to accept an obligation to cooperate.<sup>86</sup></p> <p>(f) A provision could be added to acknowledge that dispute resolution mechanisms might be included in relevant agreements.<sup>87</sup></p>

### 2. Synthesis of other comments on article 27

<i>Issue</i>	<i>Synthesis of comments</i>
1. “Foreign entities”	(a) Foreign entities should be limited to those entities recognised as competent by the State. <sup>88</sup>

<sup>82</sup> Denmark, Lebanon, Senegal, CIETAC, UINL.

<sup>83</sup> Argentina, Ukraine. See also comments submitted by the World Bank ([A/CN.9/WG.IV/WP.163](#), p. 14).

<sup>84</sup> Switzerland.

<sup>85</sup> Denmark, EU, Singapore.

<sup>86</sup> United States.

<sup>87</sup> EU.

<sup>88</sup> Argentina, Ukraine.