



General Assembly

Distr.: General
5 April 2021

Original: English

**United Nations Commission on
International Trade Law**
Fifty-fourth session
Vienna, 29 June–16 July 2021

Legal issues related to the digital economy (including dispute resolution) – progress report

Note by the Secretariat

Contents

	<i>Page</i>
I. About this note	2
II. Developing a legal taxonomy of emerging technologies and their applications	2
III. Update on exploratory work on online platforms	3
IV. Update on preparatory work on data transactions	4
A. Introduction	4
B. Data provision contracts – a possible “CISG for data”?	4
C. Data processing contracts	5
V. Next steps	5



I. About this note

1. This note reports on the progress made by the secretariat in its exploratory and preparatory work on legal issues related to the digital economy since the fifty-third session of the Commission, and invites the Commission to consider the next steps in the project. It follows on from the progress report (“first progress report”) that was considered by the Commission at that session ([A/CN.9/1012](#)).¹
2. This note is supplemented by four addenda:
 - (a) The first three addenda ([A/CN.9/1064/Add.1](#), [A/CN.9/1064/Add.2](#) and [A/CN.9/1064/Add.3](#)) contain a revised draft of the legal taxonomy of emerging technologies and their applications, which are introduced below (paras. 4-9);
 - (b) The fourth addendum ([A/CN.9/1064/Add.4](#)) contains a report on activities of the secretariat in relation to dispute resolution in the digital economy (DRDE) and presents a proposal for taking work forward on that topic.
3. This note complements the note by the secretariat contained in [A/CN.9/1065](#), which presents a proposal for legislative work arising from exploratory work on the topic of artificial intelligence (AI) and automation.

II. Developing a legal taxonomy of emerging technologies and their applications

4. The first progress report provides background information on the development of the legal taxonomy.²
5. At its fifty-third session, the Commission had before it a preliminary draft of the legal taxonomy that addressed three topics:
 - (a) AI/automation (draft section contained in [A/CN.9/1012/Add.1](#));
 - (b) data transactions (draft section contained in [A/CN.9/1012/Add.2](#)); and
 - (c) digital assets (draft section contained in [A/CN.9/1012/Add.3](#)).
6. As explained in the first progress report, the preliminary draft taxonomy did not address distributed ledger technology as a stand-alone topic.³ It also treated so-called “smart contracts” through the prism of automation, and thus in the section of the preliminary draft taxonomy on AI/automation.⁴
7. The Commission took note of the preliminary draft and requested the secretariat to continue to develop the legal taxonomy in cooperation and coordination with relevant international organizations, notably the International Institute for the Unification of Private Law (Unidroit) and the Hague Conference on Private International Law (HCCH).⁵ It was suggested that the taxonomy should serve as a “map to guide future work”.⁶
8. Since the fifty-third session, work on the taxonomy has progressed in three respects. First, further work on the section on digital assets has been deferred in favour of collaboration with Unidroit on its ongoing project on digital assets and private law, which will itself be guided by a legal taxonomy of digital assets. Second, the sections on AI/automation and data transactions have been revised to reflect

¹ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 67–76.

² [A/CN.9/1012](#), paras. 4, 10–12.

³ [A/CN.9/1012](#), paras. 14–15.

⁴ *Ibid.*, paras. 16–18.

⁵ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 76.

⁶ *Ibid.*, para. 75.

further research and intervening developments. Third, a new section on online platforms has been prepared.

9. A revised draft of the taxonomy is contained in the addenda to this note:

- (a) [A/CN.9/1064/Add.1](#) contains the revised section on AI/automation;
- (b) [A/CN.9/1064/Add.2](#) contains the revised section on data transactions;
- (c) [A/CN.9/1064/Add.3](#) contains the new section on online platforms.

III. Update on exploratory work on online platforms

10. In its first progress report, the secretariat put forward a workplan for addressing specific legal issues identified in the course of its exploratory work. Among other things, the workplan identified online platforms for further exploratory work.

11. At the fifty-third session of the Commission, broad support was expressed for work to continue in accordance with the workplan, while a range of points were raised to inform that work.⁷ Among other things, the Commission requested the secretariat to “organize colloquiums to refine the scope of the topics identified in the workplan and any other topics identified by the secretariat in its ongoing exploratory work (including dispute resolution and online platforms)”.⁸

12. Since the fifty-third session, the secretariat has focussed exploratory work on online platforms. As noted above (para. 8), it has prepared a new section of the legal taxonomy on online platforms, which documents its exploratory work on the topic so far. The section has been prepared in consultation with experts and in coordination with Unidroit and the HCCH. On 8 to 9 March 2021, the secretariat convened an expert group meeting, attended remotely by 23 legal experts, to advance work on the new section. The deliberations of the expert group were guided by a discussion paper prepared by the secretariat, on which experts were also invited to submit written comments following the meeting. The draft was subsequently revised to take into account the deliberations of the expert group and the comments received from individual experts.

13. The exploratory work of the secretariat has also been informed by its activities in relation to DRDE (as reported in [A/CN.9/1064/Add.4](#)), as well as the webinar on the digitalization of international trade, held on 30 March 2021 in cooperation with the Ministry of Economic Development of the Russian Federation and the International Comparative and Law Research Center (as reported in [A/CN.9/1081](#)), which featured a panel dedicated to e-commerce platforms.

14. The feedback received by the secretariat in the course of its various activities reinforce the preliminary observations made in the first progress report⁹ and echo several themes that emerge from the draft taxonomy of online platforms, namely:

- (a) Online platforms are drivers of trade in the digital economy;
- (b) Recent law reform initiatives within several jurisdictions, aimed at rebalancing the relationship between e-commerce platform operators and users, pursue principles of general application to business-to-business relations, such as fairness and transparency;
- (c) The types of online platforms that engage the areas of commercial law covered by existing UNCITRAL texts – namely e-commerce platforms facilitating electronic transactions, supply chain platforms facilitating electronic transferable records and other paperless trade initiatives, and dispute resolution platforms

⁷ Ibid, paras. 70–75.

⁸ Ibid, para. 76.

⁹ [A/CN.9/1012](#), para. 34.

facilitating the online settlement of commercial disputes – deserve particular attention;

(d) While online platforms differ in size, function and operation, they raise novel legal issues that warrant further exploration with a view to identifying possible areas for future work by the Commission.

IV. Update on preparatory work on data transactions

A. Introduction

15. The workplan put forward by the secretariat in its first progress report identified the rights and obligations of parties to data transactions for commercial purposes as a topic for preparatory work towards a new legislative text.

16. Since the fifty-third session of the Commission, the secretariat has continued preparatory work on the topic. As noted above (para. 8), it has revised the section of the legal taxonomy on data transactions to reflect further research and intervening developments. In doing so, it has focussed on identifying the rights and obligations that could be the subject of harmonized rules.

17. To that end, the secretariat has distinguished two main types of contracts for data transactions:

(a) *Data provision contracts* – contracts essentially involving a data provider providing data to a data recipient, including by giving the data recipient access to data, or access to a data source;

(b) *Data processing contracts* – contracts essentially involving a service provider processing data for the recipient (including data provided by the recipient) and providing the recipient with access to the processed data. Data processing services include data scraping, cloud-based services, data analytics, data platform services, and electronic transmission services.

18. While the basic structure of data provision contracts resembles contracts for the supply of goods (whether in exchange for money or for accessing services), data processing contracts are essentially contracts for the supply of services. The distinction between the two types of contracts might be relevant in determining the sequence of further work on the topic of data transactions, as outlined below.

B. Data provision contracts – a possible “CISG for data”?

19. As documented in the revised draft taxonomy, the secretariat has examined the relevance of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as a possible source of inspiration for dealing with data provision contracts in order to provide a comprehensive and global approach to data contracting. The secretariat has observed that not all the rights and obligations of the parties under the CISG are adapted to address the particular needs of the parties to data provision contracts. It has also observed that, rather than focusing on terms such as a “sale” or “licence”, data provision contracts should be examined primarily by reference to the rights and obligations of the parties. Nevertheless, at a high level, the CISG – with its provisions dealing with contract formation, the rights and obligations of the parties, and remedies for breach of contract – may offer a blueprint or a methodology for an eventual legislative text dealing with data provision contracts.

20. As elaborated in the revised draft taxonomy, several areas for possible harmonized rules have been identified by the secretariat in its further preparatory work, including:

(a) Rules on delivery of data by the data provider to the data recipient;

- (b) Rules on conformity of the data delivered by the data provider, including in terms of its quality and format;
- (c) Rules on the use of data by the parties (including interaction with limitations deriving from other legal regimes, including copyright, trade secrets, and personal data protection); and
- (d) Rules on remedies in the event of breach of contract.

C. Data processing contracts

21. Unlike data provision contracts, which are concerned with data transactions along the “data value chain”, data processing contracts are concerned with data transactions to support business operations of the party receiving the data processing services. Accordingly, data processing contracts engage different business needs and raise different legal issues, many of which have been touched on by the secretariat in its *Notes on the Main Issues of Cloud Computing Contracts*.¹⁰

22. Building on past work on cloud computing, and as elaborated in the revised draft taxonomy, several areas for possible harmonized rules have been identified by the secretariat, including:

- (a) Rules on data security and data integrity;
- (b) Rules on data portability; and
- (c) Rules on the use of data by the parties.

23. In considering the topic of cloud computing at its fifty-second session, the Commission heard that, despite a rapidly evolving cloud services environment, it is possible to address core issues in manner that can be expected to remain relevant.¹¹ For the time being, it is proposed that priority be given to preparatory work on data provision contracts. It is possible that work on data provision contracts will inform further consideration of the topic and identify commonalities between the two topics.

V. Next steps

24. At its fifty-fourth session, the Commission is invited to consider the next steps in the project.

25. With regard to **online platforms**:

(a) Section III of [A/CN.9/1064/Add.4](#) presents a proposal for exploring legal issues related to dispute resolution platforms for consideration by the Commission;

(b) As for other aspects of online platforms, including e-commerce platforms and supply chain platforms, the Commission may wish to request the secretariat to continue its exploratory work on legal issues, in accordance with the workplan put forward in [A/CN.9/1012](#), with a view to formulating concrete proposals for international harmonization or legislative guidance. In that regard, one line of enquiry that may crystallize into a concrete proposal for future work involves the analysis of common rules and principles of general application to business-to-business relations that are pursued in the various law reform initiatives and proposals regarding e-commerce platforms (including those documented in the online platforms section of the legal taxonomy), further taking into account that, in the platform economy, the line between consumers and business users becomes more blurred. Moreover, information compiled on use cases for online platforms will likely provide a useful resource for possible future work on other topics addressed in the legal taxonomy,

¹⁰ *Notes on the Main Issues of Cloud Computing Contracts*, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09103_eng.pdf.

¹¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 141.

particularly in view of the role played by online platforms in hosting data transactions, automated contracting and dispute resolution, as recognized by the Commission at its fifty-third session.¹² It will also likely provide an opportunity to monitor the implementation of UNCITRAL texts in the platform economy, including the UNCITRAL Model Law on Electronic Transferable Records. In addressing that proposal for future work, the Commission may wish to decide on a logical sequence or on the need to pursue some aspects of the work in parallel with other issues related to the digital economy.

26. With regard to **other aspects of DRDE**, sections II and IV of [A/CN.9/1064/Add.4](#) present proposals for further exploratory and preparatory work on technology-related dispute resolution and to stocktake developments in dispute resolution, respectively, for consideration by the Commission.

27. With regard to **AI and automation**, as noted above (para. 3), [A/CN.9/1065](#) presents proposals for legislative work on AI and automated contracting for consideration by the Commission.

28. With regard to **data transactions**, the Commission may wish to request the secretariat to continue its preparatory work in accordance with the workplan put forward in the first progress report and the priority areas identified in section IV above.

29. With regard to **other topics**, the Commission may wish to request the secretariat to continue its exploratory work on legal issues related to the digital economy in general, and in particular to continue to refine the scope of the remaining topics identified in the workplan put forward in the first progress report.

30. Finally, with regard to the **legal taxonomy**, the Commission contemplated at its fifty-third session that the taxonomy would be approved at the fifty-fourth session and published.¹³ Since then, the section of the taxonomy on digital assets has been deferred (see para. 8 above), and it is possible that the analysis of additional topics identified by the secretariat in its ongoing exploratory work could benefit from the methodology used in the taxonomy, which in turn could result in new sections of the taxonomy being developed. In view of those developments, the Commission may wish to take note of the work done on the legal taxonomy and authorize its publication as a Secretariat product that can continue to be updated in cooperation and coordination with relevant international organizations. The Commission may therefore request the Secretariat to continue to monitor the development of digital trade and to update the taxonomy with additional topics if and when relevant.

¹² *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 75.

¹³ *Ibid.*, para. 91(d)(i).