



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group IV (Electronic Commerce)  
Sixty-second session  
Vienna, 22–26 November 2021**

## **Annotated provisional agenda**

### **I. Provisional agenda**

1. Opening of the session and scheduling of meetings.
2. Adoption of the agenda.
3. Draft instrument on the use and cross-border recognition of identity management and trust services.
4. Other business.

### **II. Composition of the Working Group**

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.



### III. Annotations to agenda items

#### Item 1. Opening of the session and scheduling of meetings

3. The sixty-second session of the Working Group will be held at the Vienna International Centre in Vienna from 22 to 26 November 2021. Arrangements will be made to allow delegations to participate in person and remotely, in line with the decision of the Commission on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease (COVID-19) pandemic. Details of those arrangements will be posted on the Working Group web page: [https://uncitral.un.org/working\\_groups/4/electronic\\_commerce](https://uncitral.un.org/working_groups/4/electronic_commerce).

#### Item 3. Draft instrument on the use and cross-border recognition of identity management and trust services

##### (a) Background information

4. At its forty-eighth session, in 2015, the Commission requested the secretariat to conduct preparatory work on legal aspects of identity management (“IdM”) and trust services, including through the organization of colloquiums and expert group meetings, for future discussion at the Working Group level.<sup>1</sup> The Commission asked the secretariat to share the result of such preparatory work with Working Group IV, with a view to seeking recommendations on the exact scope, possible methodology and priorities for the consideration of the Commission at its forty-ninth session.<sup>2</sup>

5. At its forty-ninth session, in 2016, the Commission had before it a note by the secretariat on legal issues related to IdM and trust services (A/CN.9/891), which summarized the discussions during the UNCITRAL Colloquium on Legal Issues Related to Identity Management and Trust Services, which was held in Vienna on 21–22 April 2016.<sup>3</sup> The Commission agreed that the topic of IdM and trust services should be retained on the work agenda of the Working Group.<sup>4</sup>

6. At its fifty-fourth session (Vienna, 31 October–4 November 2016), the Working Group engaged in discussions on legal issues related to IdM and trust services as well as on contractual aspects of cloud computing. The Working Group agreed that its future work on IdM and trust services should be limited to the use of IdM systems for commercial purposes and that it should not take into account the private or public nature of the IdM service provider. The Working Group also agreed that, while work on IdM could be taken up before work on trust services, the identification and definition of terms relevant for IdM and trust services should take place simultaneously given the close relationship between the two. It was further agreed that focus should be placed on multi-party IdM systems and on the identification of natural and legal persons, without excluding consideration of two-party IdM systems and the identification of physical and digital objects, when appropriate. In addition, it was agreed that the Working Group should continue its work by further clarifying the goals of the project, specifying its scope, identifying applicable general principles and drafting necessary definitions (A/CN.9/897, paras. 118–120 and 122).

7. After completing work on the Model Law on Electronic Transferable Records at its fifty-fourth session, the Working Group focused its attention on the topics of legal issues related to IdM and trust services and contractual aspects of cloud computing. At its fifty-fifth session (New York, 24–28 April 2017), the Working Group discussed, among other things, the objectives, general principles, and scope of its work on IdM and trust services (A/CN.9/902, paras. 29–85).

8. At its fiftieth session, in 2017, the Commission reaffirmed the mandate given to the Working Group at its forty-ninth session (see para. 5 above). The secretariat was

<sup>1</sup> *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 354–355 and 358.

<sup>2</sup> *Ibid.*, para. 358.

<sup>3</sup> *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 228.

<sup>4</sup> *Ibid.*, paras. 235–236.

requested to consider convening expert group meetings. States and international organizations were invited to share their expertise.<sup>5</sup> Accordingly, the secretariat convened an expert group meeting on legal aspects of IdM and trust services in Vienna on 23 and 24 November 2017.

9. At its fifty-sixth session (New York, 16–20 April 2018), the Working Group identified the following issues as relevant for its discussion of legal aspects of IdM and trust services: scope of work; general principles; definitions; mutual recognition requirements and mechanisms; certification of IdM and trust services; levels of assurance for IdM and trust services; liability; institutional cooperation mechanisms; transparency; obligation to identify; data retention; and supervision of service providers (A/CN.9/936, paras. 61–94).

10. At its fifty-first session, in 2018, on the recommendation of the Working Group (A/CN.9/936, para. 95), the Commission requested the Working Group to conduct work with a view to preparing a text aimed at facilitating cross-border recognition of IdM and trust services, on the basis of the principles and issues identified by the Working Group at its fifty-sixth session (see para. 9 above).<sup>6</sup>

11. At its fifty-seventh session (Vienna, 19–23 November 2018), the Working Group continued its consideration of the issues that it had identified at its fifty-sixth session (A/CN.9/965, paras. 10–129).

12. At its fifty-eighth session (New York, 8–12 April 2019), the Working Group had before it a set of draft provisions on the cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.157) accompanied by explanatory remarks (A/CN.9/WG.IV/WP.158). The Working Group considered the draft provisions on scope of application, recognition and reliability of IdM systems and trust services, types of trust services to be covered, and obligations and liability of IdM and trust service providers (see A/CN.9/971, paras. 13–153).

13. Among other deliberations on the draft provisions, the Working Group requested the secretariat to prepare concrete proposals, in consultation with relevant experts, on matters relating to the reliability of IdM systems, for consideration by the Working Group at its fifty-ninth session (A/CN.9/971, para. 67). Further to that request, the secretariat convened an expert group meeting in Vienna on 22–23 July 2019 to discuss standards and procedures that qualify an IdM system for legal recognition, as well as other matters covered in the draft provisions, notably the reliability of IdM systems, and the obligations and liability of IdM service providers.

14. At its fifty-second session, in 2019, the Commission expressed its satisfaction with the progress made by the Working Group and encouraged the Working Group to continue its work on the basis of a revised set of provisions to be prepared by the secretariat.<sup>7</sup> The Commission also noted that, at this early stage of the project, the Working Group should work towards an instrument that could apply to both domestic and cross-border use of IdM- and trust services, and that the outcome of the work had implications for matters beyond commercial transactions.<sup>8</sup>

15. At its fifty-ninth session (Vienna, 25–29 November 2019), the Working Group had before it a revised set of draft provisions on the cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.160), which incorporated the deliberations of the Working Group at its fifty-eighth session, as well as the outcome of the secretariat's consultations with experts (see para. 13 above). The Working Group conducted a complete read-through of the draft provisions, focusing on those relating to trust services (A/CN.9/1005, paras. 10–122). The Working Group also held preliminary discussions on the form of the instrument, with a strong preference being

<sup>5</sup> Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 127.

<sup>6</sup> Ibid., *Seventy-third Session, Supplement No. 17* (A/73/17), para. 159.

<sup>7</sup> Ibid., *Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 175.

<sup>8</sup> Ibid., para. 172.

expressed for the instrument taking the form of a model law as opposed to a convention (*ibid.*, para. 123).

16. At its fifty-third session, in 2020, the Commission again expressed its satisfaction with the progress made by the Working Group and encouraged the Working Group to finalize its work and submit it for consideration and possible adoption by the Commission at its fifty-fourth session, in 2021.<sup>9</sup>

17. At its sixtieth session (Vienna, 19–23 October 2020), the Working Group had before it a set of draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.162), which incorporated the deliberations of the Working Group at its fifty-ninth session. The Working Group conducted a complete second reading of the draft provisions (A/CN.9/1045, paras. 16–138), which it approved for its further consideration subject to agreed modifications. The Working Group also agreed to the possibility of holding informal consultations to discuss outstanding topics.

18. Informal consultations were held remotely with delegates and observers on 15 to 17 March 2021 to discuss liability, the relationship of the draft provisions with existing UNCITRAL texts, cross-border recognition, and definitions and other terminological issues.

19. At its sixty-first session (New York, 6–9 April 2021), the Working Group had before it a revised set of draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.167), which incorporated the deliberations of the Working Group at its sixtieth session. The Working Group was informed of the outcome of the informal consultations and, in view of the limitations (including reduced meeting times) arising from the hybrid format of the session, proceeded to focus its deliberations on the issues discussed during the consultations (A/CN.9/1051, paras. 13–67). At the close of deliberations, the Working Group noted that resolution on several draft provisions was still pending and recommended to the Commission that it continue consideration of pending matters at its sixty-second session (*ibid.*, para. 11).

20. At its fifty-fourth session, in 2021, the Commission heard that, despite the reduced meeting times, the Working Group had made significant progress towards completion of the instrument. The Commission expressed its satisfaction with the progress made and encouraged the Working Group to finalise its work and to submit it for consideration by the Commission at its fifty-fifth session, in 2022.<sup>10</sup>

#### **(b) Documentation**

21. The Working Group will have before it a note by the secretariat containing draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.170), which have been revised to incorporate the modifications agreed by the Working Group at its sixty-first session. It will also have before it, as requested at the sixty-first session (A/CN.9/1051, para. 11), a note by the secretariat containing draft explanatory materials on the provisions (A/CN.9/WG.IV/WP.171). Additional submissions by States or by the secretariat may be expected.

22. The Working Group may wish to refer to the following background documents:

(a) *UNCITRAL texts on electronic commerce*: United Nations Convention on the Use of Electronic Communications in International Contracts; UNCITRAL Model Law on Electronic Commerce with Guide to Enactment; UNCITRAL Model Law on Electronic Signatures with Guide to Enactment; UNCITRAL Model Law on Electronic Transferable Records with Explanatory Note; Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods;

<sup>9</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 41 and 51(d).

<sup>10</sup> *Ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, chap. IX.

(b) *Reports of previous sessions of the Working Group considering the topic:* Report of Working Group IV (Electronic Commerce) on the work of its fifty-fourth (A/CN.9/897), fifty-fifth (A/CN.9/902), fifty-sixth (A/CN.9/936), fifty-seventh (A/CN.9/965), fifty-eighth (A/CN.9/971), fifty-ninth (A/CN.9/1005), sixtieth (A/CN.9/1045) and sixty-first sessions (A/CN.9/1051);

(c) *Submissions by States and international organizations:*

(i) Possible future work in the area of electronic commerce – legal issues related to IdM and trust services – Proposal by Austria, Belgium, France, Italy and Poland (A/CN.9/854);

(ii) Overview of IdM – Background paper submitted by the Identity Management Legal Task Force of the American Bar Association (A/CN.9/WG.IV/WP.120);

(iii) Submissions by the Russian Federation (A/CN.9/WG.III/WP.136 and A/CN.9/WG.IV/WP.141);

(iv) Proposal by Austria, Belgium, France, Italy, the United Kingdom and the European Union (A/CN.9/WG.IV/WP.144);

(v) Submissions by the United States (A/CN.9/WG.IV/WP.145 and A/CN.9/WG.IV/WP.165);

(vi) Submission by the United Kingdom (A/CN.9/WG.IV/WP.146);

(vii) Submission by Germany (A/CN.9/WG.IV/WP.155 and Add.1);

(viii) Submissions by the World Bank on the draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.163 and A/CN.9/WG.IV/WP.168, respectively);

(d) *Notes by the secretariat:*

(i) Legal issues related to IdM and trust services (A/CN.9/891);

(ii) Definitions of terms and concepts relevant to IdM and trust services (A/CN.9/WG.IV/WP.150);

(iii) Legal issues related to IdM and trust services (A/CN.9/WG.IV/WP.153 and A/CN.9/WG.IV/WP.154);

(iv) Draft provisions on the cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.157) with explanatory remarks (A/CN.9/WG.IV/WP.158);

(v) Draft provisions on the cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.160);

(vi) Draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.162) with a synthesis of comments submitted by States and international organizations on those draft provisions (A/CN.9/WG.IV/WP.164 and Add.1); and

(vii) Draft provisions on the use and cross-border recognition of IdM and trust services (A/CN.9/WG.IV/WP.167).

23. UNCITRAL documents are posted on the Working Group web page: [https://uncitral.un.org/working\\_groups/4/electronic\\_commerce](https://uncitral.un.org/working_groups/4/electronic_commerce).