



# General Assembly

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**United Nations Commission  
on International Trade Law  
Working Group IV (Electronic Commerce)  
Fifty-fourth session  
Vienna, 31 October-4 November 2016**

## **Annotated provisional agenda**

### **I. Provisional agenda**

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Draft Model Law on Electronic Transferable Records.
5. Legal issues related to identity management and trust services.
6. Contractual aspects of cloud computing.
7. Technical assistance and coordination.
8. Other business.
9. Adoption of the report.

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

1. The Working Group is composed of all States members of the Commission, which are the following: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czech Republic (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan



(2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019). The term of the membership expires on the last day prior to the beginning of the annual session of the Commission in the year indicated in parentheses.

2. Member States not members of the Commission, non-Member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, 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**

3. The fifty-fourth session of the Working Group will be held at the Vienna International Centre in Vienna, from 31 October to 4 November 2016. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 31 October 2016, when the session will be opened at 10.00 a.m.

4. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,<sup>1</sup> the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

#### **Item 2. Election of officers**

5. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairperson and a Rapporteur.

#### **Item 4. Draft Model Law on Electronic Transferable Records**

##### **(a) Background information**

6. At its forty-second session, in 2009, the Commission requested the Secretariat to prepare a study on electronic transferable records in the light of proposals received at that session (A/CN.9/681 and Add.1, and A/CN.9/682).<sup>2</sup>

7. At its forty-third session, in 2010, the Commission had before it additional information on the use of electronic communications for the transfer of rights in goods, with particular regard to the use of registries for the creation and transfer of

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<sup>1</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.

<sup>2</sup> *Ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 343.

rights (A/CN.9/692, paras. 12-47). At that session, the Commission requested the Secretariat to convene a colloquium on relevant topics, namely, electronic transferable records, identity management, electronic commerce conducted with mobile devices and electronic single window facilities, and to report on the discussions held at that colloquium.<sup>3</sup>

8. At its forty-fourth session, in 2011, the Commission had before it a note by the Secretariat (A/CN.9/728 and Add.1) summarizing the discussions at the colloquium on electronic commerce (New York, 14-16 February 2011).<sup>4</sup> After discussion, the Commission mandated the Working Group to undertake work in the field of electronic transferable records.<sup>5</sup> It was recalled that such work would be beneficial not only for the generic promotion of electronic communications in international trade, but also to address some specific issues such as assisting in the implementation of the Rotterdam Rules.<sup>6</sup>

9. In addition, the Commission agreed that work regarding electronic transferable records might include certain aspects of other topics such as identity management, use of mobile devices in electronic commerce and electronic single window facilities.<sup>7</sup> However, as to the extension of the mandate of the Working Group to such topics as discrete subjects (and not incidental to electronic transferable records), the Commission agreed to discuss it at a future session.<sup>8</sup>

10. At its forty-fifth session (Vienna, 10-14 October 2011), the Working Group began its work on various legal issues relating to the use of electronic transferable records, including possible methodology for future work by the Working Group (A/CN.9/737, paras. 14-88). It also considered the work of other international organizations on this subject (A/CN.9/737, paras. 89-91).

11. At the forty-fifth session of the Commission, in 2012, there was general support for the Working Group to continue its work on electronic transferable records and the need for an international regime to facilitate the cross-border use of electronic transferable records was emphasized.<sup>9</sup> In that context, the desirability of identifying and focusing on specific types of or specific issues related to electronic transferable records was mentioned.<sup>10</sup> After discussion, the Commission reaffirmed the mandate of the Working Group relating to electronic transferable records.<sup>11</sup>

12. At its forty-sixth session (Vienna, 29 October-2 November 2012), the Working Group continued its examination of the legal issues relating to the use of electronic transferable records. At the outset, the Working Group confirmed the desirability of continuing work on electronic transferable records and the potential usefulness of guidance in that field. It was widely felt that generic rules based on a functional

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<sup>3</sup> Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 250.

<sup>4</sup> Information about the colloquium is available at the date of this document from [www.uncitral.org/uncitral/en/commission/colloquia/electronic-commerce-2010.html](http://www.uncitral.org/uncitral/en/commission/colloquia/electronic-commerce-2010.html).

<sup>5</sup> *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 238.

<sup>6</sup> Ibid., para. 235.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., para. 239.

<sup>9</sup> Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 83.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., para. 90.

approach should be developed encompassing various types of electronic transferable records (A/CN.9/761, paras. 17-18). Thereafter, the Working Group considered various legal issues that arise during the life cycle of electronic transferable records (A/CN.9/761, paras. 24-89). As to future work, broad support was expressed for the preparation of draft provisions on electronic transferable records to be presented in the form of a model law, without prejudice to the decision on the form of its work to be made by the Commission (A/CN.9/761, paras. 90-93).

13. At its forty-seventh session (New York, 13-17 May 2013), the Working Group began its consideration of the draft provisions as presented in document A/CN.9/WG.IV/WP.122. It was expressed that the rules enabling the use of electronic transferable records would interact with general provisions on the use of electronic transactions, and that further harmonization of those general provisions would be highly desirable (A/CN.9/768, para. 15). As to future work, it was noted that although it was premature to discuss the final form of work, the draft provisions were largely compatible with different outcomes that could be achieved (A/CN.9/768, para. 112).

14. At its forty-sixth session, in 2013, the Commission took note of the progress being made by the Working Group with respect to electronic transferable records.<sup>12</sup> Recognizing that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission reaffirmed the mandate of the Working Group relating to electronic transferable records.<sup>13</sup>

15. At its forty-eighth session (Vienna, 9-13 November 2013), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.124 and its addendum. The Working Group also took into consideration the legal issues related to the use of electronic transferable records as presented in document A/CN.9/WG.IV/WP.125.

16. At its forty-ninth session (New York, 28 April-2 May 2014), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.128 and its addendum. The Working Group focused on the discussion on the concepts of original, uniqueness, and integrity of an electronic transferable record based on principles of functional equivalence and technological neutrality.

17. At its forty-seventh session, in 2014, the Commission took note of the Working Group's key discussions at its forty-eighth and forty-ninth sessions.<sup>14</sup> Noting that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission reaffirmed the mandate of the Working Group to develop a legislative text on electronic transferable records.<sup>15</sup>

18. At its fiftieth session (Vienna, 10-14 November 2014), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.130 and its addendum. The Working Group agreed to proceed with the preparation of a draft model law on electronic transferable records,

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<sup>12</sup> Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 223-226.

<sup>13</sup> Ibid., paras. 227 and 230.

<sup>14</sup> Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 141.

<sup>15</sup> Ibid., para. 149.

subject to a final decision to be made by the Commission (A/CN.9/828, para. 23). It was suggested that the draft Model Law should provide for both electronic equivalents of paper-based transferable documents or instruments and for transferable records that existed only in an electronic environment. It was further suggested that priority should be given to the preparation of provisions dealing with electronic equivalents of paper-based transferable documents or instruments, and that those provisions should be subsequently reviewed and adjusted, as appropriate, to accommodate the use of transferable records that existed only in an electronic environment (A/CN.9/828, para. 30).

19. At its fifty-first session (New York, 18-22 May 2015), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.132 and Add.1. The Working Group focused its discussion on the notions of electronic transferable records and of control as functional equivalent of possession.

20. At its forty-eighth session, in 2015, the Commission took note of the Working Group's key discussions at its fiftieth and fifty-first sessions. Bearing in mind that a UNCITRAL model law on electronic transferable records would be accompanied by explanatory materials, the Commission encouraged the Working Group to finalize the current work in order to submit its results at the Commission's forty-ninth session.<sup>16</sup>

21. At that same session, the Commission instructed the Secretariat to conduct preparatory work on identity management and trust services, cloud computing and mobile commerce, including through the organization of colloquia and expert group meetings, for future discussion at the Working Group level following the current work on electronic transferable records. The Commission also asked the Secretariat to share the result of that 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. If the current work of the Working Group was concluded prior to the next session of the Commission, the Working Group could take up the subjects mentioned above.<sup>17</sup>

22. At its fifty-second session (Vienna, 9-13 November 2015), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.135 and Add.1. The Working Group proceeded with its deliberations of the notions of electronic transferable records and of control as functional equivalent of possession as well as of a general reliability standard.

23. At its fifty-third session (New York, 9-13 May 2016), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.137 and Add.1.

24. At its forty-ninth session, in 2016, the Commission agreed that priority should be given to completing the preparation of the draft Model Law on Electronic Transferable Records and the accompanying explanatory note, so that they could be finalized and adopted by the Commission at its next session. It was generally felt that the topics of identity management and trust services as well as of cloud computing should be retained on the work agenda and that it would be premature to

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<sup>16</sup> Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 231.

<sup>17</sup> Ibid., para. 358.

prioritize between the two topics. The Commission confirmed its decision that the Working Group could take up work on those topics upon completion of the work on the draft Model Law on Electronic Transferable Records. In that context, the Secretariat, within its existing resources, and the Working Group were asked to continue to update and conduct preparatory work on the two topics including their feasibility in parallel and in a flexible manner and report back to the Commission so that it could make an informed decision at a future session, including the priority to be given to each topic. In that context, it was mentioned that priority should be based on practical needs rather than on how interesting the topic was or the feasibility of work.<sup>18</sup>

**(b) Documentation**

25. The Working Group will have before it notes by the Secretariat presenting the draft Model Law on Electronic Transferable Records accompanied by comments to be considered or used in an explanatory note (A/CN.9/WG.IV/WP.139 and its addenda).

26. A limited number of the following background documents will be made available at the session:

- UNCITRAL Model Law on Electronic Commerce with Guide to Enactment;
- UNCITRAL Model Law on Electronic Signatures with Guide to Enactment;
- United Nations Convention on the Use of Electronic Communications in International Contracts;
- Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods;
- Draft provisions on electronic transferable records (A/CN.9/WG.IV/WP.135 and Add.1);
- Report of Working Group IV (Electronic Commerce) on the work of its fifty-second session (A/CN.9/863);
- Draft provisions on electronic transferable records (A/CN.9/WG.IV/WP.137 and Add.1);
- Report of Working Group IV (Electronic Commerce) on the work of its fifty-third session (A/CN.9/869);
- Legal Issues Related to Identity Management and Trust Services (A/CN.9/891);
- Possible future work in the area of electronic commerce — legal issues related to identity management and trust services — Proposal by Austria, Belgium, France, Italy and Poland (A/CN.9/854);
- Overview of identity management — Background paper submitted by the Identity Management Legal Task Force of the American Bar Association (A/CN.9/WG.IV/WP.120);

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<sup>18</sup> Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 235 and 353.

- Online dispute resolution for cross-border electronic commerce transactions: Submission by the Russian Federation (A/CN.9/WG.III/WP.136); and
- Possible future work in the area of electronic commerce — Contractual issues in the provision of cloud computing services — Proposal by Canada (A/CN.9/856).

27. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Group Documents" section of the UNCITRAL website.

#### **Item 7. Technical assistance and coordination**

28. The Working Group will hear an oral report of technical assistance and coordination activities undertaken by the Secretariat, including those related to the promotion of UNCITRAL texts on electronic commerce.

#### **Item 8. Other business**

29. The Working Group will hear an oral report of the activities undertaken in furtherance of the mandate received from the Commission with respect to topics selected for future work of the Working Group.<sup>19</sup>

30. The fifty-fifth session of the Working Group is scheduled to be held in New York from 24 to 28 April 2017.

#### **Item 9. Adoption of the report**

31. The Working Group may wish to adopt, at the close of its session, on Friday, 4 November 2016, a report for submission to the fiftieth session of the Commission scheduled to be held in Vienna, from 3 to 21 July 2017. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting (on Friday afternoon) and subsequently incorporated into the report.

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<sup>19</sup> Ibid.