Final Report
of the Experts' Group on Digital Tokens – ETR Workstream

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Final Report of the Experts' Group on Digital Tokens – ETR Workstream

I. Background, Mandate and Chronology of the Work of the Experts' Group on Digital Tokens

1 The private international law (PIL) issues raised by digital tokens were brought before the Council on General Affairs and Policy (CGAP) in a proposal for a normative project first put to the Permanent Bureau (PB) by an HCCH Member,[1] following the broadly shared view at the inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference) that study of the PIL aspects of digital tokens was both timely and desirable.[2]

2 At its 2024 meeting, "[r]ecognising the importance of avoiding fragmentation among legal instruments developed by different intergovernmental organisations on related subject matters, including the UNIDROIT Principles on Digital Assets and Private Law", CGAP mandated the PB, in partnership with relevant subject-matter experts and Observers, to study the PIL implications of digital tokens.[3]

3 An online kick-off meeting for the exploratory study was held on 15 May 2024, attended by 25 subject-matter experts identified by HCCH Members and representatives of nine Observers.[4] Two working meetings were further held for the exploratory study, the first on 10 to 14 June 2024,[5] and the second on 7 to 9 October 2024.[6] On the basis of the outcomes of that study, CGAP "noted the outcomes of the study on the PIL issues relating to digital tokens, including the proposal for next steps",[7] and "mandated the establishment of an Experts' Group (EG) to study the PIL issues raised by digital tokens",[8] as well as, "mandated the PB to coordinate with UNCITRAL, UNIDROIT, and other relevant institutions".[9] Securities, central bank digital currencies (CBDCs) and carbon credits were excluded from the mandate, those subjects being addressed in other HCCH work.

4 The Secretary General convoked the Experts' Group on Digital Tokens and invited Members to designate their respective delegates to participate in the EG.[10] Relevant international and non-governmental organisations were invited to participate as Observers.

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1 "Proposal for a Normative Project: Private International Law Issues Relating to Digital Tokens", Prel. Doc. No 5B REV of March 2024 (Prel. Doc. No 5B REV), para. 1, available on the HCCH website (www.hcch.net) under "Governance" => "Council on General Affairs and Policy" => "Archive (2000-2025)".

2 "Proposal for Joint Work: HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens", Prel. Doc. No 3C of January 2023 (Prel. Doc. No 3C CGAP 2023), available on the HCCH website (www.hcch.net) (see path indicated in note 1).

3 "Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (5-8 March 2024)", C&D No 12 of CGAP 2024, available on the HCCH website (www.hcch.net) (see path indicated in note 1).

4 "Report on Exploratory Work: Digital Tokens Project", Prel. Doc. No 4 of November 2024 (Prel. Doc. No 4 CGAP 2025), available on the HCCH website (www.hcch.net) (see path indicated in note 1), para. 3.

5 Held in person at the premises of the PB in The Hague, with the possibility for remote participation, attended by 33 participants in total, representing 13 HCCH Members, seven Observers and members of the PB, including four volunteer participants. "Report of the First Working Meeting of the Digital Tokens Project of 10 to 14 June 2024", para. 1.

6 Held in person at the premises of the PB in The Hague, with the possibility for remote participation, attended by 41 participants in total, representing 14 HCCH Members, seven Observers and members of the PB, including four volunteer expert participants. "Report of the Second Working Meeting of the Digital Tokens Project of 7 to 9 October 2024", para. 1.

7 "Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (4-7 March 2025)", C&D No 14 of CGAP 2025, available on the HCCH website (www.hcch.net) (see path indicated in note 1).

8 *Ibid.*, No 15, available on the HCCH website (www.hcch.net) (see path indicated in note 1).

9 *Ibid.*, No 16, available on the HCCH website (www.hcch.net) (see path indicated in note 1).

10 "Convocation of the Experts' Group on Digital Tokens", Focused Circular No 26(25), 18 March 2025, available on the Secure Portal of the HCCH website (www.hcch.net) under "Governance" => "Circulars".

5 To date, the EG has met four times.

6 At its first meeting from 16 to 18 June 2025,[11] the EG organised its work into two workstreams:[12] one on PIL rules for electronic transferable records (ETRs) within the meaning of the UNCITRAL Model Law on Electronic Transferable Records (MLETR) (ETR Workstream), and one on PIL rules for other digital tokens (Tokens Workstream). The EG agreed to keep the two workstreams separate so that the former would remain fully aligned with the MLETR. The EG agreed that its examination would not be confined to the law applicable to proprietary aspects, but would extend holistically to all relevant PIL questions and characterisations. The Tokens Workstream had an initial focus on priority use cases, including Bitcoin, stablecoins, and commodity-backed tokens.[13] Following clarifications requested from CGAP in 2025, the EG also agreed that securities may be discussed in general terms to the extent necessary to determine whether the exclusion from its mandate holds.[14]

7 At its second meeting from 18 to 20 November 2025,[15] by consensus, the EG appointed Professor Neil Cohen (United States of America) as its Chair.[16] The EG adopted for both workstreams a common method: to identify the traditional rules that remain adequate, those that ask the right questions but require adjustment, and those that do not function and may require replacement.[17] The EG considered the continuation of its work desirable, timely and feasible, and recommended that CGAP authorise further work in 2026, including the development of draft provisions concerning ETRs and continued examination of PIL questions arising in relation to other digital tokens.[18]

8 CGAP approved the continuation of the EG's work, including two further meetings and intersessional work in 2026, with the EG to report to CGAP 2027.[19] Interventions at CGAP supported the overall direction of the project and emphasised the need to identify specific legal problems, to delimit targeted PIL issues and to work towards concrete deliverables, while recalling the relevance of safeguards and of the interaction between PIL and cross-border regulatory regimes. CGAP invited the EG to identify the deliverables to be proposed for consideration at CGAP 2027.[20]

9 At its third meeting from 28 April to 1 May 2026, **the EG confirmed by consensus that an instrument on the PIL aspects of ETRs is desirable and feasible, and agreed by consensus that work towards a binding instrument is the most desirable outcome of the ETR Workstream**.[21]

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11 Held in person at the premises of the PB in The Hague, with the possibility for remote participation, attended by 53 delegates and other experts, representing 18 HCCH Members and 8 Observers, as well as members of the PB.

12 "Report of the First Working Meeting of the Experts' Group on Digital Tokens of 16 to 18 June 2025", para. 5. The report is available in the Secure Portal which can be found here.

13 Report of the First Working Meeting, paras. 63-69.

14 Report of the First Working Meeting, para. 8.

15 Held online, attended by 55 participants in total, representing 17 HCCH Members, eight Observers and members of the PB.

16 "*Aide- mémoire* of the second meeting of the Experts' Group on Digital Tokens prepared by the Chair" (AM2), November 2025, para. 1. The aide-mémoire is available in the Secure Portal which can be found here.

17 AM2, paras. 1, 4, 32.

18 AM2, para. 67.

19 Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (March 2026)", C&D Nos 13 – 14 of CGAP 2026, available on the HCCH website (www.hcch.net) under "Governance" => "Council on General Affairs and Policy".

20 "Aide- mémoire of the third meeting of the Experts' Group on Digital Tokens prepared by the Chair" (AM3), November 2025, paras. 5-6. The aide-mémoire is available in the Secure Portal which can be found here.

21 AM3, paras. 84 and 93.

10 At its fourth meeting from 26 to 29 October 2026,[22] the EG considered Draft One of possible provisions for a PIL framework relating to ETRs.[23] It reaffirmed its earlier consensus that developing an instrument on the PIL aspects of ETRs is desirable and feasible and that work towards a binding instrument is the most desirable outcome. The EG agreed that an updated draft should serve as a basis for possible future work, without prejudging matters on which agreement had not been reached, and identified guiding items for consideration by a possible future Working Group.[24] The EG accordingly recommended that CGAP establish a Working Group to develop a PIL instrument concerning ETRs. It further agreed that the Final Report, accompanied by Draft Two of the proposed ETR provisions and the consolidated list of issues identified for further consideration, would be submitted to CGAP to support the proposed future work.

II. Development of the Electronic Transferable Records Workstream

A. Objectives, scope and relationship with the MLETR

11 The ETR Workstream was established to develop PIL rules complementing the MLETR, Article 19 of which preserves existing PIL rules but neither determines connecting factors nor provides a mechanism for cross-border recognition. As the HCCH cannot amend the MLETR, any deliverable would necessarily be a standalone instrument that does not purport to amend or contradict it, and would not override or alter domestic substantive law.[25] There was agreement that a purpose of the work is to promote the use of ETRs while at the same time preserving existing PIL frameworks. The EG also agreed that the work should address ETRs across jurisdictions with different approaches to ETRs, including jurisdictions that have adopted the MLETR, jurisdictions with other legislative frameworks for ETRs, and jurisdictions that have not adopted specific ETR legislation.[26]

12 The EG considered both legal interoperability between MLETR and non-MLETR jurisdictions through PIL rules and a global recognition system based on minimum common standards to be valuable, without prioritising one over the other.[27] At its third meeting it identified a possible international cooperation mechanism drawing, *mutatis mutandis*, on the model of the Apostille Convention, facilitating reliance across jurisdictions on recognised attributes of an ETR without regulating the substantive law governing it.[28]

B. Jurisdiction

13 The EG noted consensus that existing jurisdictional frameworks may already suffice for disputes involving ETRs, whether based on party autonomy or default rules, and that a future instrument need not restate them.[29] At its third meeting, the EG agreed to retain baseline jurisdiction provisions and agreed by consensus that a choice-of-court agreement should not be denied effect solely because it is concluded in electronic form. At its fourth meeting, the EG agreed by consensus to delete draft Article 8(3) and (4), without replacement, thereby leaving jurisdiction in the absence of a valid choice of court agreement to be determined by the law of the forum, and agreed that the

22 Held in person at the premises of the PB in The Hague, with the possibility for remote participation, with the attendance confirmed by 56 delegates and other experts, representing 16 HCCH Members and 8 Observers, as well as members of the PB.
23 "Aide-mémoire of the fourth meeting of the Experts' Group on Digital Tokens prepared by the Chair" (AM4), October 2026, para. X. The aide-mémoire is now available in the Secure Portal.
24 AM4, paras. 51, 52 and 53.
25 Report of the First Meeting, para. 53; AM2, paras 14–15; AM3, para. 72.
26 AM3, paras. 42, 84.
27 AM2, paras. 9, 13.
28 AM3, para. 72.
29 AM2, para. 24.

instrument should facilitate the transition from paper to electronic records without altering jurisdictional outcomes, should not create a parallel PIL regime or address system-operator liability, and should distinguish disputes concerning the ETR as a document from disputes concerning the system as infrastructure.[30] The treatment of exclusive and non-exclusive choice of court agreements, including agreements designating the courts of non-Contracting States, remained for further consideration, as did the implications for parallel proceedings.

C. Applicable Law

14 The EG agreed that applicable law for ETRs must be analysed by reference to two constraints: functional equivalence, avoiding different outcomes solely by reason of electronic form; and the transferable nature of ETRs, which raises continuity and third-party concerns beyond ordinary bilateral contracts.[31] It agreed that party autonomy for ETRs should not exceed that available for the equivalent paper instrument.[32] Support was expressed for functional equivalence as a guiding principle for determining the law applicable to ETRs, particularly in relation to party autonomy. The EG agreed that the electronic form of a transferable record should neither expand nor restrict the scope of party autonomy applicable to its paper-based equivalent. Accordingly, the EG agreed by consensus to proceed with Option B of draft Article 12.[33] The overarching point of alignment was that the instrument should not alter substantive outcomes solely because a record is electronic, nor create a parallel, technology-specific conflicts regime.[34]

15 At its fourth meeting, the EG agreed that functional equivalence could provide the underlying methodological direction for the proposed framework, while leaving to a possible future Working Group the determination of where its implications should be expressed through specific provisions and where a general interpretative principle would suffice. This agreement did not prejudge the formulation or placement of any particular provision.[35]

16 The EG also considered the law applicable to proprietary and third-party effects of ETRs, particularly the scope and operation of draft Article 14. Different views were expressed concerning whether the proposed framework should address proprietary interests in the ETR itself, the proprietary effects relating to rights or assets embodied in or evidenced by it, or both. The EG discussed the role of control, including whether it could perform a function analogous to possession for the purposes of applying existing connecting factors, or whether distinct connecting factors would be required. While the EG reaffirmed functional equivalence as a guiding consideration, no common position emerged concerning the scope or content of draft Article 14. These questions were identified for further consideration by a possible Working Group.

D. Draft Two of Possible Provisions for a Future Instrument on the PIL Aspects of ETRs

17 The EG considered Draft One of possible provisions for a PIL framework relating to ETRs, prepared on the basis of the discussions at its third meeting and intersessional comments received from EG members. Draft One provided a concrete basis for assessing the desirability and feasibility of possible future work and for identifying substantive questions requiring further examination. The EG agreed with the proposed approach to documenting the outcomes of its work for consideration by CGAP, including an updated draft of possible provisions and a record of outstanding questions.

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30 AM3, paras. 59, 61, 63–64, AM4, paras. 32-36 and 44.

31 AM3, para. 65.

32 AM2, para. 28.

33 AM4, para. 38.

34 AM3, para. 71.

35 AM4, para. 36.

It was understood that the updated draft would serve as a basis for possible future work without prejudging the resolution of matters on which agreement had not been reached. A clean version of the updated text, designated as Draft Two, is appended to this Final Report. Provisions not examined in detail, including the functions of Chapters IV and V and their relationship with the applicable-law provisions, remain open for further consideration.[36] The preparation of Draft Two, reflecting the EG's consideration of specific provisions and the identification of outstanding issues, provides a substantive basis for recommending that the development of a possible binding instrument proceed to the Working Group stage, subject to CGAP's determination.

18 The EG also reviewed the consolidated list of issues identified for further consideration under the ETR workstream, prepared by the PB on the basis of discussions across its meetings. The list records outstanding questions and differing approaches without prejudging their resolution or implying agreement on any particular solution. Together with Draft Two, it is intended to provide a structured basis for the future Working Group's consideration of the technical and policy questions requiring further examination.

III. Desirability and Feasibility of Future Work

A. Electronic Transferable Records

19 **The EG confirmed by consensus at its third meeting that an instrument on the PIL aspects of ETRs is desirable and feasible, and that work towards a binding instrument is the most desirable outcome.**[37] Uncertainty as to the PIL treatment of ETRs, and differences among national approaches, including MLETR-based, other legislative, partial, sector-specific and hybrid regimes, as well as jurisdictions without specific ETR legislation, are obstacles to the cross-border use of ETRs, including as collateral. At its fourth meeting, the EG reaffirmed its earlier consensus concerning the desirability and feasibility of developing an instrument on the PIL aspects of ETRs and that work towards a binding instrument is the most desirable outcome. It noted that consideration of Draft One had provided a concrete basis for advancing the work and identifying substantive questions requiring further examination.[38]

20 The EG identified functional equivalence, the identification of appropriate electronic equivalents for existing connecting factors, the distinction between rights in an ETR and rights embodied in or evidenced by it, applicability across MLETR and non-MLETR jurisdictions, and coherence with relevant international instruments as guiding considerations for possible future work. Their translation into specific PIL rules would require further technical and policy consideration.

21 The EG considered that the development and examination of Draft One had demonstrated the feasibility of advancing work towards a PIL instrument on ETRs, notwithstanding the substantive questions remaining for resolution. Its discussions had identified both guiding considerations capable of informing the future framework and matters requiring further technical and policy decisions. The EG recalled that its mandate was to assess the desirability and feasibility of future work, rather than to resolve all questions concerning the content of a possible instrument. It accordingly concluded that the ETR workstream had reached a stage at which further work could appropriately be undertaken by a Working Group, building on Draft Two and the consolidated list of issues identified for further consideration.

36 AM4, para. 50.
37 AM3, paras. 37, 56, 84.
38 AM4, para. 51.

IV. Relationship with Existing Instruments and Initiatives

A. Internal Coordination

22 The EG has kept its two workstreams under separate agenda items while maintaining coherence between their respective approaches, particularly where similar PIL questions arise.[39] At its fourth meeting, the EG also discussed the relationship between its work and the proposed future work on digital payments.[40] It agreed on the importance of ensuring coherence between the workstreams while avoiding duplication.

23 Coordination with other HCCH work has formed part of the project from the outset. CBDCs, securities and carbon credits were excluded from the mandate because they are addressed in other HCCH work, the PB being responsible for coordination and alignment.[41] During the exploratory phase, participants agreed to share the discussion of stablecoins with the Experts' Group on CBDCs.[42] The EG has also had regard to the separate work on parallel proceedings and to the need for compatibility with the 2005 Choice of Court and 2019 Judgments Conventions.[43]

B. External Coordination

24 The ETR Workstream has proceeded in close coordination with UNCITRAL. At its fifty-eighth session, the UNCITRAL Commission noted that the HCCH work complementing Article 19 of the MLETR was complementary to its stocktaking exercise.[44] At the fourth meeting, the PB and the UNCITRAL Secretariat updated the EG on cooperation across three interconnected areas: secured transactions and security rights in the context of digital developments; digital payments; and digital tokens and digital platforms. The EG also received an update on developments in UNCITRAL Working Group IV concerning digital trade and ETRs and welcomed the continued cooperation between the two Organisations.

25 The EG considered the relationship between draft Article 14 and the DAPL Principles, particularly in circumstances where an ETR might also fall within the scope of those Principles.[45] A representative of UNIDROIT raised concerns regarding the possibility of divergent applicable-law approaches. Other participants referred to Commentary 3.7 of the DAPL Principles, which addresses the relationship with legal frameworks governing ETRs, including those based on the MLETR. The representative of the UNCITRAL Secretariat also drew attention to the relevance of that Commentary. Different views were expressed concerning whether the proposed provisions would give rise to inconsistency and, if so, how any such inconsistency should be addressed. The EG identified the interaction between the respective frameworks as a matter warranting further examination, having regard to their distinct scope and objectives, and the importance of ensuring coherence without prejudging the development of appropriate PIL solutions.[46]

26 The EG has also benefited from the participation of the Bank for International Settlements, the World Bank Group and regional and professional organisations, including ASADIP, EAPIL, ELI, CNUE and UINL.[47]

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39 Report of the First Meeting, para. 5; AM3, para. 32.
40 AM4, paras 5-6.
41 Prel. Doc. No 4 of 2024, para. 34.
42 Prel. Doc. No 4 of 2024, Annex II, para. 21(b).
43 Report of the First Meeting, paras 80, 103.
44 Prel. Doc. No 5 of CGAP 2026, para. 10.
45 AM4, para 45.
46 C&D No 12 of CGAP 2024.
47 Prel. Doc. No 5 of CGAP 2026, Annexes II, IV.

V. Proposed Programme and Modalities of Future Work

27 The EG proposed that future work on the PIL aspects of ETRs proceed through the establishment of a Working Group, using Draft Two of the proposed provisions and the consolidated list of issues identified for further consideration as its starting point. The Working Group would further develop and refine a PIL framework complementing the MLETR, with a binding instrument identified by the EG as the most desirable outcome

28 The proposed programme of work would include further examination of the scope and definitions of the instrument, including its application across different national approaches to ETRs; the implementation of functional equivalence; jurisdiction and choice of court agreements; party autonomy and applicable law; and the treatment of proprietary and third-party effects, including the relationship between control, possession and relevant connecting factors. It would also encompass the examination of provisions not considered in detail by the EG, including those concerning recognition, enforcement and international cooperation, as appropriate.

29 The Working Group would be invited to take account of the guiding considerations identified by the EG, particularly the importance of avoiding divergent PIL outcomes based solely on the electronic form of a transferable document or instrument, preserving applicable substantive law and maintaining coherence with existing international instruments and initiatives. Draft Two and the accompanying list of issues would provide a basis for further deliberations without prejudging the resolution of outstanding questions or the final content of the instrument.

VI. Recommendations to CGAP

30 On the basis of the foregoing, the EG reaffirmed its consensus that the development of a PIL instrument concerning ETRs is desirable and feasible, and that work towards a binding instrument is the most desirable outcome. The EG accordingly recommends that CGAP:

a. **Take note of the Final Report** of the EG concerning the PIL aspects of ETRs, accompanied by Draft Two of the proposed ETR provisions and the consolidated list of issues identified for further consideration; and

b. **Establish a Working Group** to develop a PIL instrument concerning ETRs, building on the work undertaken by the EG, with a binding instrument identified as the most desirable outcome. Draft Two of the proposed ETR provisions and the consolidated list of issues identified for further consideration could serve as the basis for the Working Group's future work, without prejudging the resolution of outstanding substantive questions.

Annexes

I. Draft Convention on Private International Law Aspects of Electronic Transferable Records (ETRs): Draft **Two** Provisions

II. Issues Identified for Further Consideration in Possible Future Work on the PIL Aspects of Electronic Transferable Records