Aide-mémoire of the fourth meeting of the Experts' Group on Digital Tokens prepared by the Chair

I. Opening of the meeting

1 The Chair opened the fourth meeting of the Experts' Group (EG) on Digital Tokens. EG members attending the meeting of the EG for the first time briefly introduced themselves. The EG adopted the draft Agenda.

II. Updates

A. UNCITRAL 59th Session of the Commission and Joint Work with UNCITRAL

2 The Permanent Bureau (PB) provided an update on developments arising from the 59th session of the United Nations Commission on International Trade Law (UNCITRAL), including the ongoing cooperation between the HCCH and UNCITRAL on matters relating to the digital economy. Coordination on three interconnected workstreams were reported on: secured transactions and the treatment of security rights in the context of digital assets and other digital developments; digital payments; and digital tokens/digital platforms. The PB noted the relationship between these areas and the ongoing work of the HCCH, including the work of the EG on Digital Tokens and the EG on Central Bank Digital Currencies (CBDCs). It further informed the EG of the forthcoming joint sessions co-organised by the HCCH and UNCITRAL, the first in Vienna in November 2026, and the second in The Hague in January 2027, aimed at facilitating coordination between the respective workstreams.

3 Mr Alexander Kunzelmann, Legal Officer at the UNCITRAL Secretariat, provided an update on recent UNCITRAL's ongoing work, including developments in Working Group IV (Electronic Commerce) concerning digital trade and electronic transferable records (ETRs). He highlighted efforts to promote coherence between UNCITRAL instruments, including the Model Law on Electronic Transferable Records (MLETR), and the importance of supporting their implementation. Mr Kunzelmann also provided information on arrangements for the forthcoming joint session in Vienna. The EG welcomed the continued cooperation between the two Organisations.

B. Alignment with the outcomes and possible future work in the context of the future work on CBDCs and digital payments

4 The PB provided an update on the outcomes of the sixth meeting of the EG on CBDCs, including on the completion of its work on the Explanatory Guidance and its recommendation to establish a Working Group (WG) on digital payments. It was explained that the proposed future work of the WG on digital payments would adopt a functional approach to cross-border digital payment arrangements, rather than focusing on specific payment instruments or technologies.

5 The EG discussed the relationship between its work and the proposed work on digital payments, including possible areas of overlap concerning stablecoins and other digital instruments that may

perform payment functions. It was recalled that the non-paper of the Chair of the EG on Digital Tokens, circulated to the EG ahead of the meeting, contained a proposed delineation of the possible future work and that Private International Law (PIL) issues arising from the payment function would fall within the proposed WG on digital payments, while other transactional relationships and issues concerning digital tokens, including proprietary and custody-related matters, could remain relevant to the Digital Tokens' work.

6 The EG agreed on the importance of ensuring coherence between the workstreams while avoiding duplication. The PB recalled that any recommendations concerning future work would be considered by the Council on General Affairs and Policy (CGAP), which would determine the appropriate institutional arrangements, taking into account the scope, maturity and resource implications of the respective projects. Possible arrangements discussed included the establishment of a WG with distinct workstreams, allowing the work to proceed according to their respective stages of development. The Chair noted that the delineation between the workstreams may require further refinement as the work progresses.

III. Technical Presentation by Milot Ahma, European Bank for Reconstruction and Development (EBRD)

7 Mr Milot Ahma, Principal Counsel at the EBRD, provided an overview of the EBRD's work supporting legal and regulatory reform in digital trade, including the implementation of the MLETR. He outlined legislative reform initiatives, capacity-building activities and pilot projects undertaken in several jurisdictions, including Morocco, Tunisia, Türkiye and Ukraine, aimed at facilitating the use of ETRs and the digitalisation of trade documentation.

8 Mr Ahma highlighted the practical significance of PIL issues for the cross-border use of ETRs. Uncertainty concerning jurisdiction, applicable law and connecting factors may affect the practical operation of ETR frameworks, particularly where jurisdictions have adopted different approaches to their legal recognition. He welcomed the EG's work towards greater legal certainty and interoperability in cross-border digital trade.

IV. Workstream 1: PIL issues relating to ETRs

A. General approach and methodology

9 The EG commenced its consideration of Secretariat Note ETR 4/2026, containing Draft One of possible provisions for a PIL framework relating to ETRs. The PB recalled that Draft One had been prepared on the basis of the discussions at the third meeting of the EG and the intersessional comments received from the members of the EG, with a view to providing a concrete basis for assessing the desirability and feasibility of possible future work.

10 The EG agreed that the proposed framework was intended to complement the MLETR by addressing PIL questions that the MLETR does not resolve. The EG discussed the importance of developing a framework capable of operating across jurisdictions with different approaches to ETRs, including those that have adopted the MLETR, those with other legislative frameworks for ETRs, and those that have not adopted specific ETR legislation. The Chair identified the PIL questions arising in these different circumstances as central to the practical utility of the proposed framework.

11 The EG reaffirmed the importance of ensuring that the transition from paper-based transferable documents and instruments to their electronic equivalents does not, in itself, produce different PIL outcomes. It was noted that the framework should seek to reduce legal uncertainty and facilitate cross-border use of ETRs, without introducing unnecessary distinctions between paper-based and electronic instruments or harmonising substantive law.

12 The EG discussed the relationship between the proposed framework and existing PIL rules, including the extent to which traditional connecting factors may remain applicable, require adaptation, or be unsuitable in an electronic environment. Some EG members raised questions on the scope of the proposed framework, its relationship with native digital assets, and the terminology used throughout Draft One. The PB recalled that the draft provisions were intended to facilitate the EG's assessment of future work and would remain subject to further examination and refinement. The EG noted the importance of identifying matters on which further technical and substantive work would be required. It was further noted that the form of any future instrument would need to take account of its intended objectives and mechanisms, including any provisions concerning international cooperation.

13 The Chair recalled that the mandate of the EG was to assess the desirability and feasibility of possible future work, rather than to resolve every substantive question arising from Draft One. He noted that the EG could provide useful guidance to CGAP by identifying the relevant issues with precision, recording areas of agreement and differing views, and indicating matters requiring further consideration and decision in a possible future Working Group. The Chair emphasised that the absence of agreement on individual provisions did not, in itself, detract from the progress achieved in assessing the desirability and feasibility of the proposed instrument.

14 The Chair suggested that the outstanding questions identified during the consideration of Draft One, including the different approaches proposed by experts, be consolidated and appended to the *Aide-mémoire*, organised by provision. This would provide a structured basis for further consideration of these matters and assist CGAP in assessing the scope and direction of possible future work, without prejudging their resolution by a possible Working Group.

15 A version of Draft One reflecting the discussions at the fourth meeting, with amendments shown in track changes, is appended to this *Aide-mémoire*. A clean version, designated as Draft Two, will be appended to the Final Report of the EG.

16 The EG agreed with the proposed approach to documenting the outcomes of its work for consideration by CGAP, comprising a concise Final Report addressing the desirability and feasibility of possible future work, accompanied, as appropriate, by a proposal for future work, an updated draft of possible provisions on ETRs, and a record of outstanding questions requiring further consideration. 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.

B. Draft One: Preamble

17 Some EG members raised the issue of the distinction drawn between jurisdictions treating ETRs as functional equivalents of paper-based documents or instruments and those treating them as digital assets in their own right. It was noted that national approaches may be more diverse, including jurisdictions with partial, sector-specific or hybrid regimes, as well as those without specific ETR legislation.

18 The EG discussed the terminology used in the Preamble, including the distinction between digitisation and digitalisation, and the importance of consistency with the MLETR. The EG agreed to use the term "digitalisation", with its intended meaning to be explained in accompanying materials. The EG further agreed to reinstate recital (c) of Preamble Option A of Draft Zero, referring to legal certainty, commercial predictability and legal interoperability.

19 The EG noted the desirability of including information on the practical use and economic benefits of ETRs in the documentation accompanying any proposal for future work. Experts were invited to provide relevant data to the PB. The PB indicated that relevant publicly available information, including material from the Law Commission of England and Wales and the International Chamber of Commerce, could be included in the documentation supporting the EG's assessment of desirability and feasibility.

C. Draft One: Chapter I – Scope and Definitions

1. Draft Article 1 – Scope

20 Different views were expressed concerning the inclusion of proprietary and third-party effects. Some experts considered that these matters should be excluded from the scope of the framework, while others emphasised their relevance to the transfer and effectiveness of rights associated with ETRs. It was noted that the applicable law governing the underlying contractual relationship should be distinguished from the PIL questions concerning the transferable record or instrument.

21 The EG discussed the importance of avoiding separate PIL regimes for paper-based and electronic transferable documents and instruments, including the risk of encouraging changes of medium to obtain different legal outcomes. Drafting suggestions included aligning the terminology concerning the transfer of an ETR and the rights embodied in or evidenced by it with the terminology used elsewhere in Draft One.

22 Except for the deletion of sub-paragraph (e), the EG agreed to retain the list of matters in draft Article 1(1). It was understood that this deletion did not constitute a decision to exclude proprietary or third-party effects from possible future work. Sub-paragraphs (f) and (g) would remain in brackets for further consideration. The EG noted that related questions would arise in its subsequent consideration of draft Article 14.

23 The EG further considered the proposed provisions concerning internationality, the relationship with the MLETR and exclusions from scope. The EG agreed to retain the three alternative formulations concerning internationality and the bracketed provision relating to MLETR adoption for further consideration in possible future work. The reference to consumer protection law was also retained provisionally. The EG agreed to retain the provision clarifying that the proposed framework would not determine the applicable substantive law. A suggestion to include a reference to civil or commercial matters was referred to the PB for further consideration.

2. Draft Article 2 – Definitions

24 The EG considered the proposed definition of an ETR, including its relationship with the definition under the MLETR. Some experts expressed concern that the proposed formulation could extend to digital assets and instruments outside the intended scope of the framework, including certain digital payment instruments. It was suggested that the definition be more closely linked to transferable documents or instruments, while preserving sufficient flexibility to accommodate ETR systems that do not follow the MLETR approach.

25 Different views were expressed concerning whether the proposed framework should adopt a definition corresponding to that in the MLETR or a broader definition capable of accommodating different national approaches. The EG noted the importance of ensuring that the definitions support the objectives of the proposed PIL framework without introducing unintended substantive law requirements.

26 The EG also discussed the concept of "control", including the need for consistency in its use throughout Draft One. Questions were raised concerning the relationship between control and possession, the possibility of control being exercised by multiple persons, including through multi-signature arrangements, and the treatment of anonymous or pseudonymous persons. The EG also considered the relevance of the integrity of an electronic record and the approach adopted under the MLETR concerning reliable methods.

27 The EG noted that further consideration would be required concerning the definitions of control and person in control, including their application across the draft provisions. Additional drafting suggestions concerned the definitions of person and protocol and the terminology relating to electronic communications and data messages. The Chair noted that certain questions concerning control would involve policy choices requiring further consideration. The EG agreed that these

outstanding matters, including the different approaches and their implications, should be clearly identified in the documentation prepared for CGAP to inform the consideration of possible future work.

D. Draft One: Chapter II – General Provisions

3. Draft Articles 3 to 5

28 No objection was raised to the retention of draft Articles 3 to 5 as a basis for further work. In particular, support was expressed for the principle reflected in draft Article 3(2), concerning the relationship between PIL rules applicable to ETRs and those applicable to their paper-based equivalents.

29 The EG discussed the current formulation of draft Article 3(2) and its relationship with the exception in Article 5. Some EG members cautioned that the provisions, as drafted, could result in different PIL treatment of paper-based and electronic transferable documents and instruments. The Chair suggested that draft Article 3(2) could be reformulated to clarify that, in respect of matters not specific to ETRs, the PIL rules applicable to non-electronic transferable documents and instruments should continue to apply. The matter was retained by the EG for further consideration in possible future work.

4. Draft Article 6 – Overriding Mandatory Provisions

30 A question was raised concerning draft Article 6 (3) as to whether the concept of close connection should be defined or further clarified, including by reference to existing PIL instruments. The Chair recalled the approach reflected in the 2015 Principles on Choice of Law in International Commercial Contracts. The EG noted that this matter would require further consideration.

31 The EG further discussed whether paragraph 3 should be retained. It was noted that the provision was formulated in negative terms and did not require effect to be given to overriding mandatory provisions. Different views were expressed as to whether the matter should be addressed expressly in the proposed framework. The EG agreed to retain paragraph 3 in brackets for further consideration.

E. Draft One: Chapter II – Jurisdiction

32 The EG commenced its consideration of Chapter III on Jurisdiction. It recalled that the draft provisions sought to uphold party autonomy, ensure functional equivalence between ETRs and their paper-based counterparts, and preserve existing domestic jurisdictional rules. The EG discussed whether the proposed framework should establish autonomous jurisdictional rules or facilitate the application of existing jurisdictional regimes to ETRs.

1. Draft Articles 7 to 8

33 The EG considered draft Articles 7 and 8 concerning choice of court agreements and jurisdiction in the absence of party agreement. 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. It was noted that introducing autonomous grounds of jurisdiction could raise difficulties in different legal systems, whereas reliance on existing jurisdictional rules would be consistent with the proposed framework's objective of facilitating functional equivalence. The possible implications of this approach for parallel proceedings were also noted.

34 The EG further discussed the treatment of exclusive and non-exclusive choice of court agreements, including the relationship with the 2005 Choice of Court Convention and the outcomes of the HCCH

Jurisdiction Project. The question of whether agreements designating the courts of non-Contracting States should be addressed was left for further consideration.

2. Draft Articles 9 to 10

35 The EG considered draft Article 9 concerning the functional interpretation of location-based grounds of jurisdiction. Support was expressed for functional equivalence as a guiding principle of the proposed framework, consistent with the approach of the MLETR. It was noted that this principle could facilitate the application of existing PIL rules to ETRs, including beyond jurisdiction, without creating a separate regime for electronic transferable documents and instruments. The Chair observed that the discussions had pointed towards adapting existing PIL principles and rules to ETRs, rather than establishing an entirely separate PIL regime for electronic transferable documents and instruments.

36 The EG discussed the references to possession and control in draft Article 9, and whether the provision should extend more broadly to concepts associated with paper-based transferable documents and instruments. The EG agreed with the Chair's suggestion 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 approach received support, without prejudging the formulation or placement of draft Article 9.

37 The EG considered draft Article 10 concerning the distinction between jurisdiction and applicable law. While recognising this as an established principle of PIL, views differed on whether an express provision was necessary or would provide useful clarification within the proposed framework.

F. Draft One: Chapter III – Choice of Law and Applicable Law

1. Draft Articles 12 to 13

38 The EG considered the two approaches reflected in draft Article 12: permitting the parties to choose the law of any State or applying the law governing the equivalent paper-based transferable document or instrument. The EG discussed the relationship between facilitating the cross-border use of ETRs through party autonomy and preserving the applicable-law rules governing their paper-based equivalents. Support was expressed for functional equivalence as a guiding principle for determining the law applicable to ETRs, including the approach reflected in draft Article 13, whereby the electronic form of a record should not extend the scope of party autonomy beyond that applicable to its paper-based equivalent. In concluding the discussion, the Chair noted that the EG had converged on the approach reflected in Option B as the preferable basis for further work.

39 The EG discussed the implementation of this principle, including whether party autonomy should be limited to that permitted for equivalent paper-based instruments and whether additional connecting factors may be required where existing rules cannot readily be applied to ETRs. Questions were also raised concerning the distinction between rights and obligations embodied in or evidenced by an ETR and those arising from the underlying transaction, and the effects of a choice of law on subsequent holders or transferees, including whether the choice should be contained in or readily ascertainable from the ETR. The EG noted the relationship between these questions and draft Articles 13 and 14.

40 The EG further considered whether draft Article 12 should permit the choice of non-State law, with reference to the 2015 HCCH Principles on Choice of Law in International Commercial Contracts. Differing approaches to this question were noted, and the matter was left for further consideration in possible future work.

2. Draft Article 14

41 The EG considered draft Article 14 concerning the law applicable to proprietary and third-party effects of ETRs, including the proposed combination of party autonomy and a default connecting factor based on the place of business or habitual residence of the person in control. The EG discussed whether this approach was consistent with functional equivalence and provided an appropriate basis for further work.

42 The EG agreed that future work should seek, so far as possible, to achieve outcomes equivalent to those applicable to corresponding paper-based transferable documents and instruments. Different views were expressed concerning the role of control, including whether it could serve as the electronic equivalent of possession or whether existing location-based connecting factors should be preserved or adapted. Questions were also raised concerning situations involving multiple persons exercising control.

43 Support was expressed for an approach that would preserve, as far as possible, the PIL treatment of corresponding paper-based instruments, with specific rules for ETRs introduced only where necessary to address their electronic characteristics. In particular, it was suggested that control could perform a function analogous to possession where relevant, without necessarily constituting an independent connecting factor determining the applicable law in all cases. It was emphasised that the proposed framework should avoid fragmentation and incentives to select paper or electronic form to obtain different PIL outcomes. The extent to which draft Article 14 should establish distinct connecting factors remained open.

44 The EG further discussed whether draft Article 14 should address proprietary interests in the ETR itself, the proprietary effects concerning rights or assets embodied in or evidenced by it, or both. The Chair highlighted the importance of distinguishing proprietary rights in an ETR from the proprietary effects of the ETR in respect of the rights or assets it embodies or evidences. Different views were expressed on the relevance and implications of this distinction, and no common position emerged concerning the scope of the provision.

45 The EG considered the relationship between draft Article 14 and the UNIDROIT Principles on Digital Assets and Private Law (DAPL Principles). The representative of UNIDROIT highlighted the possibility that certain ETRs may also qualify as digital assets under the DAPL Principles, raising concerns about potentially divergent applicable-law rules and the risk of fragmentation. Other participants did not share that concern and referred in this connection to Commentary 3.7 of the DAPL Principles, which expressly recognises that, where the MLETR has been implemented, that law and the law governing the corresponding paper-based instrument would take precedence over the DAPL Principles in the event of conflict. The representative of the UNCITRAL Secretariat supported the relevance of this commentary to the discussion. Different views were expressed as to whether the approach reflected in draft Article 14 could result in inconsistency with the DAPL Principles and, if so, how that risk should be addressed. The matter was left for further consideration and identified as an issue to be brought to the attention of CGAP and a possible future Working Group.

46 Different views were expressed on whether proprietary and third-party effects should remain within the scope of the proposed framework and whether dedicated applicable-law rules were necessary. While some experts questioned their inclusion, others considered that addressing these matters could enhance legal certainty and facilitate the cross-border use of ETRs, including in jurisdictions that have not adopted the MLETR.

47 The EG noted that further consideration would be required concerning the scope, structure and operation of draft Article 14. In summarising the discussions, the Chair highlighted functional equivalence as a guiding principle, the need to identify appropriate connecting factors for ETRs, and the importance of maintaining coherence with existing international frameworks while avoiding fragmentation and arbitrage between paper-based and electronic transferable documents and instruments. The Chair noted that, notwithstanding these guiding considerations, differing views

remained concerning the role, scope and content of draft Article 14, which would require further consideration in possible future work.

3. Draft Article 15

48 The EG considered draft Article 15 concerning the application of functional equivalence where concepts developed for paper-based transferable documents and instruments cannot be directly applied to ETRs. Different views were expressed on whether control should perform a function analogous to possession or whether the relevant comparison should instead be with traditional location-based connecting factors. Questions were also raised concerning situations involving multiple persons exercising control. The EG noted that further consideration would be required concerning the relationship between possession and control, including whether a more uniform understanding of control would be desirable for the purposes of the proposed framework. It was further noted that the application of functional equivalence would need to take account of the different legal functions performed by the various categories of transferable documents and instruments.

49 The EG did not discuss further Draft One and moved to the recommendations for future work.

G. Recommendations for Future Work

50 The Chair noted that the provisions of Draft One not examined in detail remained open for further consideration and should be brought to the attention of a possible future Working Group, should CGAP decide to establish one. It was further noted that the functions of Chapters IV and V, and their relationship with the applicable-law provisions, would require careful examination in any future work.

51 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 the consideration of Draft One had provided a concrete basis for advancing the work and identifying substantive questions requiring further examination.

52 The EG identified several guiding considerations for future work, including functional equivalence between paper-based and electronic transferable documents and instruments, the identification of appropriate electronic equivalents for existing connecting factors, and the distinction between rights in an ETR and rights embodied in or evidenced by it. The EG further emphasised the importance of avoiding fragmentation and divergent PIL outcomes based solely on the medium used, ensuring the applicability of the framework across MLETR and non-MLETR jurisdictions, and maintaining coherence with relevant international instruments and initiatives. The Chair noted, to the agreement of the EG, that these considerations provided a direction for possible future work, while recognising that their translation into specific PIL rules, including the treatment of matters on which differing views remained, would require further technical and policy consideration by a possible Working Group.

53 On the fourth day, the EG reviewed the consolidated list of issues identified for further consideration under the ETR Workstream, prepared by the PB on the basis of the discussions across its meetings. The EG recalled that the list was intended to record outstanding questions and differing approaches for consideration in possible future work, without prejudging their resolution or implying agreement on any particular solution. The list would accompany the proposed programme of future work and assist a possible future Working Group in identifying the matters requiring further technical and policy consideration.

H. Recommendations to CGAP

54 The EG reaffirmed its consensus that the development of a PIL instrument on ETRs is desirable and feasible and that work towards a binding instrument is the most desirable outcome. It accordingly

recommended that CGAP establish a Working Group to develop a PIL instrument concerning ETRs, building on the work undertaken by the EG.

55 In support of this recommendation, the EG agreed that its Final Report concerning the ETR workstream would be submitted to CGAP, accompanied by Draft Two of the proposed ETR provisions and the list of issues identified for further consideration. These materials would provide the basis for the proposed Working Group's work, without prejudging the resolution of outstanding substantive questions or the final form and content of the instrument.

56 The EG examined the draft Final Report concerning the ETR workstream paragraph by paragraph and adopted it by consensus, subject to the editorial revisions agreed during the meeting.

V. Workstream 2: PIL issues arising from (Non-Payment) Transactions and Relationships in Digitally Mediated Environments

A. Delineating Future Work: Scope, Desirability and Feasibility

57 The EG considered the scope, desirability and feasibility of possible future work concerning transactions and relationships in digitally mediated environments. Several EG members noted the increasing use of digital technologies in commercial and financial transactions and the corresponding need to address PIL uncertainties arising in cross-border situations.

58 The EG discussed the relationship between the proposed work on transactions and relationships in digitally mediated environments and the possible future work on digital payments. It was noted that the same digital assets, tokens, platforms, wallets and intermediaries may perform multiple functions and that a single transaction may give rise to both payment and non-payment questions. Support was expressed for distinguishing the respective workstreams by reference to the legal issue concerned, rather than the technology, asset or platform involved. It was further noted that questions concerning the discharge of monetary obligations fall within the digital payments workstream, while other legal questions, including custody, insolvency, transfers, creditor claims and governance arrangements, may remain relevant to the present project. The importance of coordination between the respective workstreams was emphasised.

59 The Chair noted that, while the desirability of further work appeared to attract broad support, the EG also needed to assess its feasibility, including whether sufficiently identifiable PIL questions could be addressed in a manner that would enhance legal certainty and predictability. The Chair emphasised the importance of identifying the questions to be addressed and the prospect of reaching workable solutions.

60 The EG discussed whether developments in digital transactions and tokenised environments raise PIL questions that merit further consideration. Several EG members noted that existing legal frameworks do not always accommodate features associated with digital transactions, including issues relating to custody, control, location and the interaction between tokens and underlying rights. Some members emphasised that the value of future work lay not only in proposing solutions but also in identifying and articulating PIL gaps and areas of legal uncertainty.

61 Several EG members stressed the importance of considering digital transactions within their wider technological and commercial environment. It was observed that the relationship between a token and the underlying entitlement may vary considerably across use cases and that understanding these relationships is necessary in order to identify relevant PIL issues. It was emphasised that examining an arrangement holistically for analytical purposes did not necessarily imply that every aspect of that arrangement should fall within the scope of future normative work.

62 A number of EG members observed that the concept of digitally mediated environments remained broad and that greater clarity regarding the scope of future work would be beneficial. Questions were raised as to whether the focus should be on digital tokens, digitally mediated environments

more generally, or a more precisely defined category of digital transactions and relationships. Several members noted that a clearer articulation of the issues to be addressed would assist in assessing feasibility and explaining the objectives of future work. The possible designation of the workstream as "digital transactions" was also discussed, without a decision being reached on its terminology.

63 The EG further considered the designation of Workstream 2 in light of the evolution of its analytical approach from digital tokens as objects towards the PIL questions arising from transactions and legal relationships within digitally mediated environments. The EG considered that the designation "Transactions and Relationships in Digitally Mediated Environments" would more accurately reflect the scope and orientation of the continuing workstream, without prejudging the precise scope of any eventual normative deliverable. The revised designation would be used in the documentation submitted to CGAP and in the continuation of the EG's work.

64 A representative of UNIDROIT, participating as an Observer, expressed the view that Workstream 2 was not yet sufficiently developed to proceed to a Working Group. Referring to the discussions and the current formulation of Draft Zero, the representative questioned whether the issues and objectives of the proposed work had been defined with sufficient precision, and cautioned that transmitting an insufficiently defined project to a Working Group could jeopardise its prospects of success.

65 Following this intervention, EG members expressed differing assessments of the implications of the work's present stage of development. Several members emphasised that identifiable PIL uncertainties already arise in practice and that targeted future work could provide useful guidance, including in jurisdictions without comprehensive legislation governing digital transactions. Reference was also made to the difficulties encountered in developing common PIL approaches to intangible assets and the third-party effects of assignments, while noting that new technological arrangements might provide opportunities to examine alternative connecting factors. The discussion distinguished the feasibility of addressing a defined set of PIL questions from that of addressing all issues arising in digitally mediated environments.

66 Several EG members emphasised that approaches to digital assets, digital tokens and related technologies differ significantly across jurisdictions. Reference was made to the absence of regulatory frameworks in some jurisdictions and to differing national assessments of the risks and benefits associated with digital assets. Other members observed that the absence of harmonised regulatory frameworks should not prevent consideration of PIL questions where cross-border transactions and disputes were already occurring in practice.

67 The Chair emphasised the distinction between identifying PIL gaps and determining which of those gaps could usefully and feasibly be addressed through future work. The EG discussed the importance of identifying a manageable set of questions, including those relating to jurisdiction, applicable law, proprietary and third-party effects, and cross-border remedies. It was noted that identifying an unresolved PIL question did not, in itself, establish that it should be included in any future instrument.

68 Several EG members highlighted the importance of proceeding in a timely manner, noting the rapid pace of technological and market developments. At the same time, other members cautioned that work should proceed on the basis of a sufficiently clear understanding of the issues to be addressed. It was suggested that further work should remain responsive to evolving practices while retaining a sufficiently focused mandate.

69 The PB clarified that the EG's task was to assess the desirability and feasibility of possible future work, rather than to resolve all substantive questions or establish the feasibility of a particular instrument. It recalled that HCCH Experts' Groups may recommend the establishment of Working Groups without having prepared draft provisions. The PB further noted that Workstream 1 on ETRs had reached an unusually advanced stage, whereas the progress achieved under Workstream 2,

including the identification of potential PIL gaps through hypotheticals and the preparation of Draft Zero, was consistent with the stage ordinarily reached in an Experts' Group. The PB further recalled that CGAP was aware of the different levels of maturity of the two workstreams and would determine the appropriate arrangements for future work, taking account of available resources.

70 A representative of UNIDROIT, participating as an Observer, asked to what extent the recommendations and outcome of the EG's work would be consistent with the UNIDROIT Principles on Digital Assets and Private Law (DAPL Principles). The representative recalled that the project had initially been envisaged as building upon the DAPL Principles but had subsequently evolved in a different direction. Referring to the proposed gap-filling approach, she sought clarification as to how the proposed future work would remain consistent with the DAPL Principles and avoid fragmentation. She also recalled that Commentary 3.7 of the DAPL Principles encourages States to avoid inconsistency between the DAPL Principles and specific legal frameworks governing ETRs.

71 At the invitation of the Chair, the Deputy Secretary General responded expressly on behalf of the HCCH. She recalled that, in mandating the exploratory study that subsequently led to the establishment of the EG, CGAP had expressly recognised, in C&D No 12 of 2024, the importance of avoiding fragmentation among legal instruments developed by different intergovernmental organisations, specifically referring to the DAPL Principles. She emphasised that ensuring coherence with existing international instruments and initiatives had therefore formed an integral part of the project's mandate from the outset. The Deputy Secretary General further recalled that the division of the project into two workstreams reflected the importance attached to coherence with both UNCITRAL's MLETR and the work of UNIDROIT. She underscored that the HCCH, mandated with the progressive unification of PIL, had a responsibility to address relevant PIL questions within its mandate, including questions of jurisdiction, recognition and enforcement, and international cooperation, which were not exhausted by Principle 5 of the DAPL Principles concerning the law applicable to proprietary aspects of digital assets. She reaffirmed the HCCH's commitment to avoiding duplication and fragmentation while addressing outstanding PIL questions within its mandate. The representative of UNIDROIT thanked the Deputy Secretary General for the clarification and acknowledged the importance of recalling the CGAP mandate.

72 Several EG members expressed support for progressing Workstream 2 to a possible Working Group, notwithstanding its less advanced stage of development compared with Workstream 1. They noted that the identification of PIL gaps, relevant hypotheticals and possible approaches provided a basis for continued work, even though the substantive provisions remained preliminary. It was emphasised that the further identification and refinement of questions, as well as the development of possible solutions, could appropriately form part of the work entrusted to a Working Group.

73 The EG discussed the degree of further refinement required before proceeding to the next stage. While several members supported progression to a Working Group, others emphasised the importance of defining a sufficiently focused scope and identifying the PIL questions to be addressed. The Chair noted the importance of accurately reflecting the progress achieved and the outstanding questions, taking account of the different levels of maturity of the two workstreams. The appropriate institutional arrangements remained for further consideration.

B. Recommendations for future work

a. Guidance concerning scope and list of PIL issues identified by the EG

74 The EG commented on the list of PIL issues identified in Secretariat Note No 9, paragraph 86. Support was expressed for using the list as a starting point for identifying PIL questions that could usefully be examined in future work. Particular reference was made to issues relating to functional equivalence, the law applicable to links between tokens and underlying assets or rights, arrangements operating without a central operator, and the legal effects of designations made at

the level of a digital environment. The Chair recalled that inclusion in the list did not imply that every identified gap should necessarily be addressed in a future instrument.

75 An EG member suggested including PIL issues arising in proceedings against persons unknown, particularly in cases involving misappropriation or hacking, noting the potential difficulties concerning jurisdiction and access to remedies across different legal traditions.

76 Some EG members emphasised the distinction between identifying PIL gaps and determining which gaps might appropriately be addressed through future HCCH work. It was observed that the existence of an unresolved issue does not necessarily imply that it is suitable for normative work. The EG discussed the need to assess the importance of each issue and whether workable approaches could be developed within the HCCH's PIL mandate.

77 The EG discussed the relationship between the PIL gaps identified in Secretariat Note No 9 and the DAPL Principles. An EG member suggested that, insofar as Principle 5 addressed the law applicable to proprietary aspects of digital assets, this should be taken into account when identifying gaps for possible future HCCH work. Another member cautioned against treating the DAPL Principles as occupying the entire field of proprietary rights relating to digital assets, noting that their application was limited to matters actually addressed and that different transactional structures, including emerging models, could raise additional questions.

78 Views were expressed concerning the implications of Principle 5 for future HCCH work. While an EG member emphasised the importance of avoiding approaches inconsistent with the DAPL Principles, other members cautioned against treating the solutions reflected in a non-binding instrument as predetermined rules for future HCCH normative work. It was noted that the relationship between the respective instruments would require consideration by reference to the particular PIL questions concerned, their respective scope and the need to avoid fragmentation.

79 An EG member observed that, while the DAPL Principles constituted a valuable source of guidance and relevant solutions, their non-binding character should be preserved. The member cautioned that treating those solutions as binding constraints on future HCCH normative work would effectively confer binding force, in the relationship between international organisations, upon an instrument adopted as soft law. The member emphasised that the DAPL Principles should inform, but not preclude, the independent examination of PIL questions within the HCCH's mandate.

80 A participant noted his understanding that CGAP had already discussed at length how the EG's work should take account of existing instruments. In his view, CGAP was the principal forum for considering that question. He observed that the development of uniform commercial law provided ample material for examining when and why fragmentation had occurred, and recalled instances in which fragmentation had been expressly mandated as a matter of policy.

81 The Chair noted that the discussion had revealed substantial common ground concerning the importance of taking account of the DAPL Principles and avoiding fragmentation, while differences remained regarding the implications of Principle 5 for possible future HCCH work. He distinguished the legal status of the DAPL Principles from the question of how their solutions should be considered in developing a dedicated PIL framework under CGAP's mandate. The Chair suggested that further work could proceed while the relationship between any future HCCH instrument and the DAPL Principles remained open for consideration.

82 The Deputy Secretary General recalled the EG's earlier discussions concerning Principle 5 of the DAPL Principles and reiterated that its scope did not exhaust the PIL matters falling within the HCCH's mandate. The Chair acknowledged the broader scope of the HCCH's mandate and observed that the differences concerning the relationship between the respective workstreams and instruments appeared more limited than initially suggested.

83 An EG member emphasised that, as indicated in the Secretariat Note in which it was presented, Draft Zero should not be understood as reflecting agreement on any particular provision,

connecting factor, scope or form of instrument. It was recalled that Draft Zero had been prepared at the request of the EG as a means of testing the issues and possible approaches identified in Secretariat Note No 9, rather than as a proposed negotiated text. Its provisions remained open for consideration.

84 The Chair noted that the two workstreams had reached different stages of development. While the ETR workstream had progressed to the consideration of specific draft provisions, Workstream 2 remained focused on identifying and refining the PIL questions that could usefully be addressed in future work. The Chair emphasised the importance of presenting CGAP with a sufficiently clear account of the progress achieved, the outstanding questions and the work that could appropriately be undertaken at the next stage.

85 The EG reviewed the consolidated list of issues identified for further consideration under Workstream 2, prepared by the PB on the basis of the EG's earlier meetings and the discussions at its fourth meeting. The Chair recalled that the list was intended to identify questions for further examination rather than prescribe solutions. Inclusion of an issue did not imply that existing PIL rules were inadequate, that new rules were necessarily required, or that every question would need to be addressed in future work.

86 In reviewing the list, the EG agreed to clarify that future work should focus on PIL questions arising specifically from the use of digitally mediated environments. It also refined the questions concerning the relationship between tokens, the environments in which they are recorded, and external or linked rights, assets and entitlements. The EG noted the importance of distinguishing these relationships and avoiding terminology that presupposes that the external asset or entitlement necessarily determines the legal significance of the token.

87 The EG considered further refinements concerning the prioritisation of PIL questions, jurisdiction, applicable law and international cooperation. These included the risk of divergent national solutions; the limits of party autonomy, including overriding mandatory provisions, public policy and rules protecting consumers and other weaker parties; and the possible added value of international cooperation in commercial and financial matters. The EG also noted the importance of coordination with existing HCCH instruments and initiatives, without extending the scope of Workstream 2 to matters governed by separate HCCH projects.

88 The EG further discussed coherence with existing international frameworks, including the DAPL Principles. Following exchanges concerning the implications of the term "coherence", the EG accepted language reflecting this objective without prejudging the substantive approaches that might be developed in future work. The EG also considered whether future work might develop additional PIL solutions where necessary, alongside confirmation or clarification of existing rules where relevant. No decision was reached concerning the form or content of any eventual instrument. The Chair recalled that Draft Zero remained an exploratory working document prepared by the PB and did not reflect agreement on specific provisions or connecting factors.

89 One EG member emphasised the importance of proceeding with due care in the development of any future instrument, noting that the substantive questions identified by the EG required further examination before particular normative solutions could be determined. The EG member highlighted, in particular, the significance of PIL questions concerning proprietary rights in digital tokens and the need to address these coherently in future work, while avoiding premature conclusions that could compromise the quality and authority of any eventual instrument.

b. Modalities for future work

90 EG members discussed the implications of the different levels of maturity of the two workstreams for the organisation of possible future work. The EG considered whether future work should proceed through a single Working Group encompassing both workstreams or through differentiated arrangements reflecting their respective stages of development. Some members supported a

structure that would recognise the less mature stage of Workstream 2 while allowing the development of more concrete outputs under Workstream 1. Other members considered that maintaining both streams within a single process would best preserve coherence, avoid fragmentation and facilitate consideration of issues arising across both workstreams.

91 The PB recalled the distinction between Experts' Groups and Working Groups and noted that any recommendation concerning future work would ultimately be subject to consideration by CGAP. It explained that, from a resource perspective, a single Working Group with differentiated workstreams could be accommodated more readily than the establishment of two separate groups, while recognising that the appropriate arrangements would ultimately be determined by CGAP. The EG discussed the importance of presenting the progress and outstanding questions under each workstream accurately in any recommendation concerning future work.

92 The EG discussed possible arrangements for continuing the two workstreams, including a single Working Group with differentiated workstreams, the continuation of expert-level work alongside a Working Group, and arrangements allowing Workstream 2 to undergo further scoping before progressing to the negotiation of substantive provisions.

93 On the fourth day, the EG resumed its consideration of the modalities for future work. Several EG members expressed support for recommending the establishment of a single Working Group with two differentiated workstreams. They considered that, notwithstanding the different stages of development of the workstreams, the substantive progress achieved under Workstream 2 provided a sufficient basis for proceeding to a Working Group, within which further refinement of its scope, priorities and possible solutions could be undertaken.

94 One EG member reiterated that he was not able to join consensus concerning the progression of Workstream 2 to a Working Group at the present stage. While supporting the continuation of the substantive work, this EG member considered that further refinement of its scope and priorities was necessary, and that the appropriate institutional modality could be left for CGAP to determine.

95 In response to the reservations expressed by the member, another EG member requested that it be reflected in the meeting record that the same degree of caution should be applied consistently across the issues under consideration. The member observed that, if certain matters were considered not yet sufficiently mature to support recommendations concerning future work, a similarly cautious approach should be adopted in relation to PIL issues concerning proprietary rights in digital tokens.

96 At the Chair's invitation, the PB recalled that the EG's task was to assess the desirability and feasibility of future work, and recalled the consensus concerning the progression of the ETR workstream and the agreement on the desirability of continuing Workstream 2. To reconcile the different positions expressed and facilitate the continued progression of both workstreams, it was proposed that the EG consider recommending the establishment of a Working Group on ETRs while continuing the work of the existing Experts' Group on transactions and relationships in digitally mediated environments.

97 Following further discussion, EG members who had supported progressing both workstreams to a Working Group indicated their willingness to accept the proposed differentiated arrangement in the interest of reaching consensus. The Chair noted that consensus had emerged on recommending the establishment of a Working Group on ETRs and the continuation of the existing Experts' Group for Workstream 2. The EG emphasised the importance of maintaining coherence and coordination between the two programmes as their work progressed.

C. Recommendations to CGAP

98 The EG agreed on the desirability of continuing work concerning transactions and relationships in digitally mediated environments. Recognising that further refinement of the scope, priorities and

possible approaches would be beneficial before considering progression to the Working Group stage, the EG **recommended that CGAP authorise the continuation of the existing Experts' Group, under the revised designation of "Transactions and Relationships in Digitally Mediated Environments"**, to undertake further examination of the PIL questions identified, assess the applicability and adequacy of existing frameworks, and develop and evaluate possible solutions where appropriate, subject to available resources.

99 The EG agreed that the consolidated list of issues identified for further consideration under Workstream 2 would accompany this recommendation to CGAP and provide a basis for its continued work. The list would serve as an initial programme for further examination and prioritisation, without implying that all questions require normative solutions or prejudging the form or content of any eventual deliverable. The EG further emphasised the importance of coordination with the proposed Working Group on ETRs and with relevant existing and ongoing international initiatives.

VI. Conclusions and Recommendations to CGAP

100 Following its deliberations, the EG reached consensus on the desirability and feasibility of proceeding to a Working Group on the PIL aspects of electronic transferable records (ETRs), and on the desirability of continuing its work concerning transactions and relationships in digitally mediated environments. Recognising the different stages of development of the two workstreams, and following discussions concerning the appropriate institutional arrangements, the EG agreed on the following recommendations to CGAP.

101 The EG recommends that CGAP:

a. **Electronic Transferable Records (Workstream 1)**

i. **Take note of the Final Report** of the EG concerning ETRs, accompanied by Draft Two of the proposed ETR text and the list of issues identified for further consideration; and

ii. **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 text and the list of issues identified for further consideration could be used as the basis for the Working Group's future work, without prejudging the resolution of outstanding substantive questions.

b. **Transactions and Relationships in Digitally Mediated Environments (Workstream 2)**

i. **Approve the continuation of the existing Experts' Group**, renamed the Experts' Group on Transactions and Relationships in Digitally Mediated Environments, to further refine its scope and priorities, examine the relevant PIL questions, and develop and assess possible approaches and solutions;

ii. **Invite the PB to convene two further Experts' Group meetings,** as well as intersessional work, in 2027 prior to CGAP 2028; and

iii. **Take note of the list of issues identified for further consideration**, as a basis for the continuing work of the Experts' Group, without prejudging the form of any eventual outcome of its work.

Annexes

A. Draft Convention on Private International Law Aspects of Electronic Transferable Records (ETRs): Draft One provisions with changes after the fourth meeting tracked

B. Issues Identified for Further Consideration in Possible Future Work on the (Non-Payment) Transactions and Relationships in Digitally Mediated Environments