

Título	Grupo de Expertos sobre Monedas Digitales de Bancos Centrales: Informe
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Punto de la agenda	Por determinarse
Mandatos	CyD N.º 9 y 10 del CAGP de 2024
Objetivo	Presentar las actividades más recientes del Grupo de Expertos sobre Monedas Digitales de Bancos Centrales
Acción requerida	Decisión <input checked="" type="checkbox"/> Aprobación <input type="checkbox"/> Discusión <input type="checkbox"/> Acción/finalización <input type="checkbox"/> A título informativo <input type="checkbox"/>
Anexo	Anexo I: <i>Report of the kick-off meeting of the Experts' Group on Central Bank Digital Currencies</i> Anexo II: <i>List of Participants of the kick-off meeting</i> Anexo III: <i>Report of the first working meeting of the Experts' Group on Central Bank Digital Currencies</i> Anexo IV: <i>List of Participants of the first working meeting</i> Anexo V: <i>Report of the second working meeting of the Experts' Group on Central Bank Digital Currencies</i> Anexo VI: <i>List of Participants of the second working meeting</i>
Documentos relacionados	Doc. Prel. N.º 4 de enero de 2024 - Aspectos de derecho internacional privado de las monedas digitales de bancos centrales (CBDC)

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Grupo de Expertos sobre Monedas Digitales de Bancos Centrales: Informe

I. Introducción

- 1 En la reunión de 2024 del Consejo de Asuntos Generales y Política (CGAP), sobre la base del informe relativo al trabajo exploratorio de la Oficina Permanente (OP) sobre los aspectos de derecho internacional privado (DIPr) de las monedas digitales de los bancos centrales (CBDC por sus siglas en inglés)¹, se encomendó “la creación de un Grupo de Expertos para estudiar las cuestiones relativas al derecho aplicable y a la jurisdicción que plantean el uso y las transferencias transfronterizas de CBDC”.²
- 2 El Secretario General convocó al Grupo de Expertos sobre Monedas Digitales de Bancos Centrales (Grupo de Expertos sobre CBDC) a una reunión de lanzamiento en línea. Asimismo, informó a los Miembros de la HCCH de las reuniones de trabajo que se celebrarían posteriormente en la OP y en línea. Se solicitó a los Miembros que designaran a sus respectivos delegados para participar en el Grupo de Expertos.³ La OP también informó a los Miembros sobre su intención de invitar a representantes de una lista de organizaciones internacionales y no gubernamentales en calidad de observadores.⁴
- 3 En el presente Documento Preliminar (Doc. Prel.) se informa de la labor realizada por el Grupo de Expertos sobre CBDC en 2024.

II. Reuniones del Grupo de Expertos sobre CBDC

- 4 La reunión de lanzamiento se celebró en línea el 14 de mayo de 2024. Asistieron 42 participantes en representación de 33 Miembros de la HCCH, nueve Observadores, así como personal de la OP. Antes de la reunión, la OP distribuyó un proyecto de Documento de Delimitación con una lista de preguntas concebidas como punto de partida para el estudio de las cuestiones relativas al derecho aplicable y la competencia judicial que plantean el uso y las transferencias transfronterizas de CBDC. Este documento fue el principal tema de debate de dicha reunión. El Grupo de Expertos analizó los distintos tipos de CBDC, los marcos jurídicos vigentes y en ciernes, la taxonomía y las consideraciones relativas a leyes de policía y de orden público en materia de CBDC. También comenzó a examinar cuestiones relacionadas con los puntos de conexión, los intermediarios y terceros, la calificación jurídica de las CBDC, el reconocimiento o no reconocimiento de las CBDC como moneda de curso legal y su utilización como medio de pago. Sobre la base de los debates que tuvieron lugar durante esta reunión, se revisó el Documento de Delimitación y se lo volvió a distribuir como Documento de Delimitación v. 1.0 para ayudar a los miembros del Grupo de Expertos a prepararse para la primera reunión de trabajo. El Grupo de Expertos también solicitó a

¹ “Trabajo exploratorio: Aspectos de derecho internacional privado de las monedas digitales de bancos centrales (CBDC)”, Doc. Prel. N.º 4 de enero de 2024, disponible en el sitio web de la HCCH, www.hcch.net, en “Gobernanza” y luego “Consejo de Asuntos Generales y Política” y “Archivo (2000-2024)”.

² “Conclusiones y Decisiones del Consejo de Asuntos Generales y Política de la Conferencia (5 a 8 de marzo de 2024)”, CyD N.º 10, disponible en el sitio web de la HCCH, www.hcch.net (véase la ruta indicada en la nota 1).

³ Circular Específica N.º 23(24) de 12 de marzo de 2024, disponible en el Portal Seguro del sitio web de la HCCH, www.hcch.net, en “Gobernanza”.

⁴ *Ibid.* De conformidad con las Reglas II.B y II.J del Reglamento Interior de la HCCH, la OP informó a los Miembros sobre su intención de invitar, en calidad de observadores a la reunión, a las siguientes organizaciones internacionales y no gubernamentales: Academia Asiática de Derecho Internacional (AAIL); Asociación Americana de Derecho Internacional Privado (ASADIP); Asociación Internacional de Abogados (IBA); Banco de Pagos Internacionales (BPI); Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (CNUDMI); Consejo de Estabilidad Financiera (CEF); European Banking Federation (EBF); Fondo Monetario Internacional (FMI); Grupo del Banco Mundial; Instituto Africano de Derecho Internacional (AAIL); Instituto Europeo de Derecho (ELI); Instituto Internacional para la Unificación del Derecho Privado (UNIDROIT); International Swaps and Derivatives Association (ISDA); Organización para la Armonización del Derecho Mercantil en África (OHADA); e instituciones financieras internacionales regionales.

la OP que preparara varias Notas de la Secretaría para ayudar al Grupo de Expertos en su primera reunión de trabajo. El informe y la lista de participantes de la reunión de lanzamiento figuran en los anexos I y II, respectivamente.⁵

- 5 La primera reunión de trabajo del Grupo de Expertos sobre CBDC se celebró en la sede de la OP, con posibilidad de participación a distancia, del 24 al 26 de junio de 2024. Asistieron 30 participantes en representación de 13 Miembros de la HCCH y cinco Observadores, así como personal de la OP. Los participantes debatieron las cuestiones que figuran en el Documento de Delimitación v. 1.0, así como las Notas de la Secretaría preparadas por la OP. Continuaron con sus debates preliminares sobre las cuestiones que habían examinado en la reunión de lanzamiento y expusieron proyectos relevantes de sus respectivas jurisdicciones. Asimismo, hubo presentaciones sobre la taxonomía de CBDC del Banco de Pagos Internacionales (BPI), los planes para el euro digital y la iniciativa Drex de Brasil. En respuesta a la solicitud del Grupo de Expertos de que se le presentaran casos de uso concretos para delimitar los temas de debate, la OP aportó varios ejemplos formulados por otras instituciones para que el Grupo de Expertos los examinara. Entre estos ejemplos cabe citar el uso de CBDC mayoristas en los mercados financieros, casos de uso entre cadenas interoperables relacionados con las CBDC mayoristas y varios proyectos del BPI relativos al uso y a las transferencias transfronterizas de CBDC. El Grupo de Expertos decidió dividir su trabajo en dos partes: en primer lugar, examinar las cuestiones relativas al derecho aplicable y a la competencia judicial en relación con las CBDC mayoristas y, a continuación, examinar estas mismas cuestiones en relación con las CBDC minoristas. El Grupo de Expertos también le pidió a la OP que le presentara una lista no taxativa de los distintos actores que pueden intervenir en las operaciones con CBDC, en los casos en que los roles de estos actores pueden influir en la determinación del derecho aplicable a las CBDC mayoristas. Se invitó a los miembros del Grupo de Expertos a presentar respuestas por escrito al Documento de Delimitación, a estudiar otras cuestiones planteadas durante el debate y a presentar respuestas por escrito a las Notas de la Secretaría durante el período entre reuniones. El informe y la lista de participantes de la primera reunión de trabajo figuran en los anexos III y IV, respectivamente.
- 6 Durante el período entre reuniones, los miembros del Grupo de Expertos en representación de Estados Unidos de América (EE.UU.) presentaron un documento consolidado en respuesta al Documento de Delimitación v. 1.0. En dicho documento propusieron concentrar el examen del Grupo de Expertos en determinadas funciones básicas previsibles de las CBDC, a saber: la emisión, el reembolso, la transferencia, la titularidad y la constitución de garantías. Los miembros del Grupo de Expertos en representación de EE. UU. también propusieron priorizar el trabajo en relación con las CBDC mayoristas utilizadas exclusivamente con fines comerciales a través de una plataforma gestionada directa o indirectamente por un banco central. Asimismo, resumieron las cuestiones clave en materia de conflicto de leyes para consideración del Grupo de Expertos.
- 7 La segunda reunión de trabajo del Grupo de Expertos se celebró en línea del 12 al 14 de noviembre de 2024. Asistieron 25 participantes en representación de 10 Miembros de la HCCH, tres Observadores, así como personal de la OP. Según lo decidido en la primera reunión de trabajo, la segunda se centró íntegramente en cuestiones relativas al derecho aplicable y a la competencia judicial en torno a las CBDC mayoristas. Los miembros del Grupo de Expertos en representación de EE. UU. dieron una presentación sobre el documento que presentaron entre reuniones. El Grupo de Expertos siguió debatiendo el Documento de Delimitación v. 1.0, en particular las funciones de las CBDC mayoristas, los actores (p. ej.: intermediarios y terceros) que pueden participar en los sistemas de CBDC mayoristas y la relación entre las partes en dichos sistemas. El Grupo de Expertos analizó cuestiones en torno a una posible norma (supletoria) para la determinación del

⁵ Todos los documentos relativos al Grupo de Expertos sobre CBDC están disponibles en el Portal Seguro del sitio web de la HCCH, www.hcch.net, en “Grupos de Expertos y de Trabajo” luego “Grupo de Expertos sobre Monedas Digitales de Bancos Centrales”.

derecho aplicable a las CBDC mayoristas, así como casos de uso hipotéticos, consideraciones de orden público, reconocimiento de las CBDC mayoristas en jurisdicciones extranjeras y criterios de atribución de competencia. El Grupo de Expertos también consideró si la formulación de marcos ya existentes podría servir de modelo para que, llegado el momento, el Grupo de Expertos redacte disposiciones en materia de DIPr sobre las CBDC mayoristas, en particular definiciones y disposiciones de orden público y leyes de policía.

- 8 El 14 de noviembre, a continuación de la segunda reunión de trabajo, tuvo lugar una mesa redonda sobre aspectos técnicos. En este evento, cinco ponentes del ámbito académico y de organizaciones intergubernamentales con conocimientos y experiencia en relación con los aspectos de DIPr de las CBDC mayoristas presentaron sus ponencias y respondieron preguntas de los miembros del Grupo de Expertos. El informe de la segunda reunión de trabajo y de la mesa redonda sobre aspectos técnicos, así como la lista de participantes de la segunda reunión de trabajo figuran en los Anexos V y VI, respectivamente.

III. Recomendaciones del Grupo de Expertos

- 9 Sobre la base de los debates, el Grupo de Expertos recomienda que el CAGP apruebe la continuación de la labor del Grupo de Expertos, lo que incluiría la celebración de otras dos reuniones en 2025 (posiblemente en marzo y septiembre), así como trabajo en los períodos entre reuniones. Luego, el Grupo de Expertos presentaría un informe al CAGP en 2026.
- 10 El Grupo de Expertos recomienda además seguir adelante con la división del trabajo, para centrarse primero en las cuestiones relativas al derecho aplicable y a la competencia judicial en torno a las CBDC mayoristas, para luego pasar a examinar las CBDC minoristas. El Grupo de Expertos también decidió que en sus próximas reuniones se debata cuál podría ser el producto final que debe entregar.

IV. Propuesta para el CAGP

- 11 Sobre la base de lo anterior, la OP propone las siguientes Conclusiones y Decisiones para consideración del CAGP:
- El CAGP toma conocimiento de los informes del Grupo de Expertos sobre CBDC y le encomienda continuar su estudio de las cuestiones relativas al derecho aplicable y a la competencia judicial que plantean el uso y las transferencias transfronterizas de CBDC. El CAGP invita a la OP a convocar otras dos reuniones del Grupo de Expertos antes del CAGP de 2026: la primera en marzo de 2025 y la segunda en septiembre de 2025, con trabajo entre reuniones según sea necesario. Dichas reuniones deberían celebrarse preferentemente en persona, mientras que el trabajo entre reuniones, en línea.
 - El Grupo de Expertos presentará un informe al CAGP de 2026.

ANEXOS

Anexo I: Report of the kick-off meeting of the Experts' Group on Central Bank Digital Currencies

Report of the Kick-Off Meeting of the Experts' Group on Central Bank Digital Currencies (EG on CBDCs) of 14 May 2024

I. Introduction

- 1 On 14 May 2024, the kick-off meeting for the EG on CBDCs was held online from 10.30 a.m. to 4.30 p.m. (CEST). The meeting included 42 participants, representing 33 HCCH Members and nine Observers, as well as members of the Permanent Bureau (PB).
- 2 Prior to the meeting, on 3 May 2024, the PB circulated a draft Scope Paper setting out an initial list of possible questions that may serve as a broad starting point for the study of the applicable law and jurisdiction issues raised by the cross-border use and transfers of CBDCs.¹ The draft Scope Paper formed the primary subject of discussion at the kick-off meeting.
- 3 The meeting started with an introduction from the PB on the mandate of the EG, the working methods of the HCCH and the EG workplan. This was followed by a *tour de table* of the participants and a discussion of the draft Scope Paper. This report summarises the discussions concerning each *Issue* in the draft Scope Paper.
- 4 The Scope Paper (version 1.0), which incorporates the input from the discussion at the kick-off meeting and was made available in the Secure Portal of the HCCH website on 16 May 2024. The Scope Paper (version 1.0) will form the basis for the discussion at the first working meeting of the EG, which will be held from 24 to 28 June 2024.

II. Discussion of Questions in the Draft Scope Paper

Section I – Preliminary Considerations

Issue 1: Types of CBDCs

- 5 Participants indicated that all the questions listed under *Issue 1* were relevant for definitional purposes and suggested that the EG carefully consider the scope of the Project. According to the EG, among the issues that should be considered were the categorisation of CBDCs, as well as whether both wholesale and retail CBDCs should be included in the scope of work. Experts suggested that these questions should be considered with reference to real-world scenarios and examples. In order to facilitate the process of exploring the existing types and infrastructures of CBDCs in each jurisdiction, as well as how CBDCs are being used, the EG agreed that it would be helpful if experts could identify and submit for the EG's consideration related use cases and examples in the jurisdiction(s) they are familiar with to the PB ahead of the first working meeting.

Issue 2: Current and Nascent Practice

- 6 There were no requests for the floor in relation to this *Issue*.

¹ All documents pertaining to the EG on CBDCs are available on the Secure Portal of the HCCH website at www.hcch.net under "Working / Experts Groups" then "Experts' Group on Central Bank Digital Currencies".

Issue 3: Current and Nascent Legal Frameworks

- 7 Experts shared approaches taken in their respective jurisdictions in relation to national legislation related to CBDCs and suggested that the EG conduct a global survey to identify relevant national legislation. In relation to whether CBDCs were considered to fall within the concept of a “digital asset”, experts also noted that some jurisdictions have introduced different terms and definitions in their national legislations, such as “virtual asset” and “digital settlement asset”. Experts provided information on the divergent practice in relation to the exclusion or inclusion of CBDCs in the respective definitions. They also agreed that, in considering whether CBDCs were included in these definitions, the purpose and context of the specific legislation is relevant. For example, experts pointed out that CBDCs are specifically excluded from the definition of “virtual asset” in the context of legislation targeting Anti-Money Laundering (AML) or Counter-Terrorist Financing (CTF) in certain national legislations. The EG agreed that the relevant question under *Issue 3* should be rephrased in order to include the different approaches to the terms and definitions contained in legislation that could include CBDCs.
- 8 Experts also noted the importance of differentiating CBDCs from regulated stablecoins (for reasons including, for example, the potential recognition of CBDCs as legal tender, the need to draw a distinction between public and private money, and the way in which stablecoins maintain their value), and that their relevant regulatory regimes and legal frameworks should be differentiated to reflect their different features, origins and purposes.

Issue 4: Taxonomy

- 9 Experts agreed that there is a need to look at the taxonomy around CBDCs. As a starting point, experts suggested making reference to existing taxonomies, such as the taxonomy developed by the Bank for International Settlements (BIS), and then to identify any potential gaps for further work within the context of the determination of applicable law and jurisdiction.
- 10 One expert suggested that the EG consider excluding stablecoins from the scope of the taxonomic study, given the difference in the treatment of stablecoins from CBDCs in certain jurisdictions. The PB noted the possibility of including the study of stablecoins in the HCCH Digital Tokens Project,² and the need to ensure alignment between that Project and the work being undertaken by the EG on CBDCs.

Issue 5: Overriding Mandatory and Public Policy Considerations

- 11 Experts acknowledged that there are certain overriding mandatory rules and public policy considerations (including those relating to safety and soundness of financial institutions, forum shopping, regulatory arbitrage and contractual freedom) that will impact on questions about applicable law and jurisdiction. One expert also raised the differences between CBDCs and stablecoins in relation to the consideration of matters of public policy.
- 12 One expert discussed the importance of drawing a distinction between overriding mandatory rules and public policy considerations, as well as understanding how these would intertwine with the determination of jurisdiction and applicable law in cross-border transactions that involve CBDCs. The EG agreed that it would be helpful if experts could identify and submit related use cases and examples that could illustrate the relevant overriding mandatory rules and public policy considerations, including the necessary distinctions between them, that may arise in the context of CBDCs. The EG agreed that experts would submit related use cases and examples to the PB ahead of the first working meeting, for consideration during that meeting.

² For further information on the HCCH Digital Tokens Project, see the Secure Portal of the HCCH website at www.hcch.net under “Other HCCH meetings” then “Digital Tokens”.

- 13 In relation to the role and significance of residence, one expert noted that whether residence would be a relevant factor would be affected by the different architectures of CBDCs, and thus residence should be part of the preliminary considerations on taxonomy. Other experts also noted that the study of the role of residence is important for choice of law considerations and interoperability of CBDCs across borders, but that this should not be considered in the context of policy decisions about CBDCs, which would be outside the scope of the EG's mandate.

Section II – Connecting Factors

Issue 6: Connecting Factors

- 14 Experts underlined the importance of clarifying on which aspects of CBDCs the work of the EG should focus. Experts agreed that, instead of studying the CBDC itself (the existence of which could be seen as a claim against a sovereign State or central bank, and thus a public law matter), the EG should instead focus on how payment obligations are created by CBDCs (their use cases) in order to analyse the relevant private international law (PIL) issues that arise from them.
- 15 One expert suggested that a list of connecting factors would be helpful to determine the applicable law. The EG agreed that it would be helpful to collect a list of specific use cases of CBDCs with concrete / practical examples (for instance, the use of CBDCs for payment, transaction or collateral), so as to explore which connecting factors would be relevant in determining the applicable law with respect to each legal characterisation of CBDCs. The EG agreed that experts would submit practical examples to the PB ahead of the first working meeting, for consideration during that meeting.

Section III – Intermediaries and Third Parties

Issue 7: Intermediaries

- 16 An expert noted that it would be important for this *Issue* to capture situations where there is an international element but no cross-border handling of CBDCs by intermediaries (e.g., when CBDCs are issued by the Federal Reserve but held through an intermediary in the European Union). The EG agreed to include cross-border issuance and holding, in addition to handling, control and / or use of CBDCs, in its consideration of the determination of applicable law and jurisdiction.
- 17 Experts noted that the determination of the law applicable to intermediaries would depend on the architecture of CBDCs (i.e., whether end-users have a direct claim against central bank issuers) and what services the intermediaries provide. The EG agreed that it would be helpful if experts could identify and submit concrete use cases and examples in which intermediaries are involved and provide input as to what exactly the intermediaries do (e.g., providing an interface service, holding and transferring of CBDCs, etc.) ahead of the first working meeting, for consideration during that meeting.
- 18 Concerning choice of law and choice of court clauses in agreements with intermediaries, the EG agreed that it would be helpful if experts could identify and submit concrete use cases and examples of transactions involving CBDCs where parties have included valid choice of law or choice of court clauses in their agreements.
- 19 Experts also indicated that the determination of where CBDC-related disputes should be litigated may differ depending on the types of / issues in dispute. On this point, the EG also agreed that it would be helpful if experts could identify and submit concrete use cases and examples of possible CBDC-related disputes.
- 20 An expert pointed out that, in considering the involvement of intermediaries in the context of CBDCs, the EG should consider parallels or analogies that can be drawn from the HCCH 2006

Securities Convention,³ as well as whether CBDCs would differ from intermediated securities in the context of that Convention and, if so, the reasons for such differences.

Issue 8: Third Parties

- 21 An expert noted that the discussion on this *Issue* would to some extent overlap with considerations relating to both *Issue 10* (Proprietary Aspects) and *Issue 12* (Collateral), and that the EG might need to consider the boundaries between these three *Issues*, as the work of the EG moves forward.

Section IV – Nature (Characterisation) of CBDCs

Issue 9: Nature (Characterisation) of CBDCs

- 22 There were no requests for the floor in relation to this *Issue*.

Issue 10: Proprietary Aspects

- 23 Experts noted that the Commentary to the UNIDROIT Principles on Digital Assets and Private Law (UNIDROIT DAPL Principles) states that CBDCs may be included as “digital assets” and discussed Principle 5, which deals with the applicable law relating to proprietary aspects of a digital asset.
- 24 One expert raised the question of whether the distinction between “digital assets” as a general group and CBDCs as a specific subset thereof is only relevant for substantive law matters, or if such a distinction would also be relevant in the discussion of PIL issues. By raising specific examples of jurisdictions in which “digital assets” or “virtual assets” explicitly exclude CBDCs or digital representation of fiat currency, some experts noted that a contextual approach should be taken to decide whether CBDCs should be treated differently from other types of “digital assets”. Experts agreed that the nature and uses of CBDCs are relevant to the considerations of the proprietary aspects of CBDCs, and that *Issue 10* would help in shaping the analysis of the characterisation of CBDCs in *Issue 9*.

Issue 11: Contractual Aspects

- 25 Experts suggested narrowing the consideration of contractual aspects to the extent to which there are, or should be, limitations to party autonomy in relation to contractual aspects involving CBDCs. One expert highlighted the similarities of the question on party autonomy in the context of CBDCs and in the context of the HCCH 2015 *Principles on Choice of Law in International Commercial Contracts*, and suggested that the EG consider questions specific to the context of CBDCs.

Issue 12: Collateral

- 26 One expert commented that *Issue 12* is in substance a choice of law question because whether CBDCs can be used / treated as collateral would depend on the governing law. The expert also pointed out that any future analysis should be mindful of existing relevant instruments, for example, Articles 86 and 89 of the UNCITRAL Model Law on Secured Transactions, which might be relevant to this *Issue* even though CBDCs were not contemplated at the time of the creation of the Model Law.

Issue 13: Cross-border Restructuring and Insolvency Proceedings

- 27 One expert commented that *Issue 13* should not be overly restrictive to situations where the counterparty is in another jurisdiction. The expert referred to the example mentioned in *Issue 7*

³ The *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and 2006 Securities Convention.

where domestic disputes involving CBDCs can contain cross-border elements if the CBDCs are issued by foreign issuers.

- 28 Experts discussed whether the EG should consider if the differences between CBDCs and fiat currencies would warrant different treatments or lead to different implications on PIL rules from proprietary and contractual aspects, as well as issues relating to collateral and cross-border restructuring or insolvency. Experts highlighted the differences between CBDCs and fiat currencies, including the involvement of third parties (*i.e.*, central banks or intermediaries) for transfer of CBDCs, and the concepts of ownership and actual possession. It was agreed that, for *Issues 9 to 13* in Section IV, the EG should consider whether the characterisation of CBDCs and of fiat currency may differ and, if so, the extent to which this difference has implications for PIL rules.

Section V – CBDCs as Money and Legal Tender

Issue 14: Currency, Money and Legal Tender

- 29 One expert queried whether the questions under *Issue 14* were meant to take a more operational / factual perspective than a PIL analysis, since the *Issue* may be interpreted to be aimed at discussing the circumstances under which banking or financial regulatory law would supersede private law analysis of applicable law and / or jurisdiction regarding CBDCs. The PB clarified that *Issue 14* was concerned with examining whether there are any overriding mandatory banking law or financial regulations that the EG should consider and whether there are any PIL rules already in place in the banking and monetary system, and if so, if such frameworks would apply to CBDCs. It was decided that the questions under *Issue 14* would be redrafted for clarity.

Section VI – CBDCs as Means of Payment

Issue 15: Circulation and Transactions

- 30 Experts indicated that the draft questions relating to the use of CBDCs in cross-border payment systems are important for the work of the EG, as there are international elements and issues that arise in such contexts that are relevant to PIL.
- 31 Experts discussed how the architecture and technology used in payment platforms, including the involvement of third-party servers and the interoperability of decentralised digital platforms, might affect the analysis of the applicable law, particularly in finding the proper connecting factors. Experts noted the link between the considerations that would arise under *Issue 15* and those under *Issue 8 (Third Parties)*. The EG agreed that it would be helpful if experts could identify and submit concrete use cases and examples that can illustrate the characteristics of CBDCs (such as technology-related or algorithmic features) that distinguish them from fiat currency in the context of cross-border payment systems, and to further discuss them at the first working meeting.
- 32 One expert asked for a clarification on the meaning of the term “electronic payments platform” as used in *Issue 15*. The PB clarified that the term is to be interpreted broadly so as to include any non-physical payments platforms, and that it was not taken from any specific legislative definition or term of art. For clarity, the EG agreed that one of the questions to be asked under *Issue 15* should be how the determination of the law applicable to CBDCs payments would compare to, or differ from, the determination of the law applicable to other systems of payment.

Issue 16: Offline Payment Features

- 33 There were no requests for the floor in relation to this *Issue*.

Issue 17: Payment Validity

34 There were no requests for the floor in relation to this *Issue*.

Issue 18: Finality

35 Experts sought clarifications on the definition of the term “settlement medium” and asked whether the EG was to consider if the law applicable to platforms / systems would supersede other private law considerations in settlement finality. The PB clarified that *Issue 18* was intended to elicit discussion on whether payment by means of CBDCs was sufficient to discharge a payment obligation across platforms in the same way as fiat currency. Experts highlighted that whether payment obligations can be discharged would depend on how the CBDCs are set up in the specific jurisdiction.

36 Experts further noted that two questions should be considered under *Issue 18*: (i) where a CBDC is used as a payment across platforms, how that would affect the applicable law or jurisdiction; and (ii) how the applicable law or jurisdiction of the payment system would interact with the applicable law or jurisdiction of the CBDC transaction.

Issue 19: Credit Transfers

37 There were no requests for the floor in relation to this *Issue*.

III. Conclusion

38 The PB described the next steps in the workplan of the EG for 2024, including the iteration of the draft Scope Paper and its circulation ahead of the EG’s first working meeting that would take place from 24 to 28 June 2024, as well as the EG’s second working meeting that would take place from 11 to 15 November 2024. Both meetings will be held at the premises of the PB in The Hague, The Netherlands, with the possibility for remote participation.

39 No other issues were raised by the EG and the meeting was concluded.

Anexo II: List of Participants of the kick-off meeting

List of participants - HCCH Experts' Group on CBDCs (Central Bank Digital Currencies)

Kick-off meeting - 14 May 2024



Family name(s)	Name(s)	State or Organisation	Position
ALVES PINTO	Juliano	Brazil	Head of the Legal Cooperation Division at Brazil's MFA
BERTINI PASQUOT POLIDO	Fabício	Brazil	Associate Professor of Private International Law, Transnational and Comparative Legal Studies & New Technologies, University of Minas Gerais - UFMG
CASARA	Jorge Alexandre	Brazil	Assistant Director of Strategic Risk Supervision at Brazil's Exchange and Securities Commission (CVM)
LYON	Francisca	Chile	Senior Lawyer, Office of the Public Prosecutor, Central Bank of Chile
CAI	Mingyang	China	Legal and Compliance Division of Digital Currency Institute of the People's Bank of China
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SONG	Juhee	South Korea	Presiding Judge of Jeju District Court
LEE	Hwa-yon	South Korea	Judge of Suwon District Court (Seong Nam Branch Court)
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Anexo III: Report of the first working meeting of the Experts' Group on Central Bank Digital Currencies

Report of the First Working Meeting of the Experts' Group on Central Bank Digital Currencies of 24 to 26 June 2024

I. Introduction

- 1 Following the kick-off meeting on 14 May 2024, the Experts' Group on Central Bank Digital Currencies (EG on CBDCs) held its first working meeting from 24 to 26 June 2024. The first working meeting aimed to begin substantive consideration of the applicable law and jurisdiction issues raised by the cross-border use and transfers of CBDCs, in line with Conclusions & Decisions (C&D) Nos 9 and 10 adopted by the Council on General Affairs and Policy (CGAP) at its 2024 meeting (the Project). The meeting was held at the premises of the Permanent Bureau (PB) of the HCCH in The Hague, the Netherlands and via videoconference. Thirty delegates and other experts of the Group, nominated by 13 Members and five Observers, participated in the meeting.¹ Prior to the meeting, a Scope Paper and answers to the post-kick-off meeting survey were circulated by the PB to facilitate the discussions in the meeting.²
- 2 This Report summarises key points of the discussions that took place during the meeting, following the discussion questions provided in Sections I to VI of Scope Paper v. 1.³ This Report also summarises presentations made by some members of the EG during the meeting on:
 - a. the Bank for International Settlements (BIS) taxonomy of CBDCs;
 - b. the plans for the digital Euro; and
 - c. the Drex Initiative of Brazil.
- 3 Secretariat Notes prepared by the PB during the meeting at the request of the members of the EG, as well as further documents submitted by members of the EG during the meeting, were uploaded to the Secure Portal during and after the meeting. This documentation will be reviewed by members of the EG in preparation for further discussions at the second working meeting of the Project, scheduled to take place from 12 to 14 November 2024.

II. Discussion of Scope Paper

Preliminary Considerations

- 4 The EG discussed the need for a working definition of CBDCs for the purposes of their work. They agreed on adopting the BIS definition at the current stage, subject to future clarification that may be required: “a digital payment instrument, denominated in the national unit of account, that is a direct liability of the central bank”.⁴
- 5 The EG agreed that the work should focus only on CBDCs, which are direct claims against central banks. Consequently, it was agreed that, as stablecoins are issued by private entities, they should

¹ A list of participants can be found in Annex IV of the current document as well as on the Secure Portal of the HCCH website at www.hcch.net under “Working / Experts Groups” then “Experts' Group on Central Bank Digital Currencies”.

² Available on the Secure Portal of the HCCH website at www.hcch.net (see path indicated in note 1).

³ *Ibid.*

⁴ Glossary “Central bank digital currency (CBDC)” in “CBDCs: an opportunity for the monetary system”, BIS Annual Economic Report, available at <https://www.bis.org/publ/arpdf/ar2021e3.pdf>.

be studied separately under the HCCH's Digital Tokens Project.⁵ In addition, stablecoins have their own mechanisms to maintain value through pegs with other reference assets or algorithmic controls. This is not the case for CBDCs.

- 6 Some delegates and other experts agreed that it is important to differentiate between wholesale CBDCs (wCBDCs) and retail CBDCs (rCBDCs) because their respective differences would have implications for, among other matters, (i) the choice of law in consumer protection; (ii) concerns for regulatory schemes and sovereignty; (iii) intended uses; and (iv) financial inclusion. The EG agreed to bifurcate the work of the EG, and to focus on wCBDCs before examining rCBDCs, considering the relative complexity of rCBDCs and the potentially closer connections of wCBDCs with public policy or similar issues. Some delegates and other experts also indicated that the EG should focus on applicable law issues before considering jurisdictional matters.
- 7 Some delegates and other experts referred to surveys conducted by the BIS and the International Monetary Fund (IMF), which show the respective prevalence of account-based CBDCs and token-based CBDCs.⁶ The former (account-based) are typically used in wCBDCs except in the case of Brazil. Different policy aims also affect the forms of CBDCs to be adopted. Some delegates and other experts preferred to keep the discussion technologically neutral, noting that distributed ledger technology (DLT) is not the only technology in use in the implementation of CBDCs. These delegates and experts believed it is premature to exclude any forms of CBDCs from the Project.
- 8 Keeping the timeline and resources allocated to the EG in mind, some delegates and other experts agreed to use the BIS taxonomy as a starting point. They noted that the EG should refrain from creating new definitions unless the definitions in the BIS taxonomy were found to be insufficient or inapplicable to their work. Some delegates and other experts were referred to the glossary developed by the BIS in the report "CBDCs: an opportunity for the monetary system, BIS Annual Economic Report, June 2021".⁷ Some participants noted that the definition of "cross-border payments" provided by the BIS in that document is narrow,⁸ as it does not cover situations where two domestic parties transact with a foreign CBDC. The EG agreed that, if a cross-currency dimension is to be included in the scope of the Project, the functionality of currency conversion should also be considered. Some delegates and other experts also noted uncertainties about the meaning of "ultimate finality" in comparison to "settlement finality" in the BIS glossary.
- 9 The following terms were listed as terms that may benefit from definition in the context of the Project:
- a. CBDCs;
 - b. account-based and token-based, in addition to wholesale and retail;
 - c. intermediary;
 - d. transfers;
 - e. custody;
 - f. users;

⁵ For further information on the HCCH Digital Tokens Project, see the Secure Portal of the HCCH website at www.hcch.net under "Other HCCH meetings" then "Digital Tokens".

⁶ The BIS has noted that the terms "account-based" and "token-based" appeared in early discussions of CBDC systems, but that interpretation and usage of the terms may differ, depending on the context. "Central bank digital currencies: system design and interoperability", available at https://www.bis.org/publ/othp42_system_design.pdf.

⁷ *Supra* note 4.

⁸ *Ibid.* The definition of "cross-border and cross-currency payments" is as follows: "cross-border payments those where the payer and payee reside in different jurisdictions. Many, but not all, of these are also cross-currency payments – that is, payments where the payer and payee are respectively debited and credited in different currencies. Payments within monetary unions or payments in a common invoice currency may be cross-border but not cross-currency".

- g. deposits;
- h. holding as a store of value;
- i. use as payment; and
- j. platforms.

- 10 With respect to “platforms”, some delegates and other experts noted that the term does not have legal connotations and is primarily technical in nature. The EG’s attention was drawn to the fact that (i) “platform” is not used in any taxonomies of the BIS and (ii) the EU Market in Crypto-Assets Regulation (MiCA Regulation) adopts the term “operation of a trading platform for crypto-assets”.⁹ Some participants added that “platform” is a term used in the context of electronic payment. The EG agreed that the term “platform” could be used within the context of the Project as a common term to facilitate discussion until features that are specific to CBDCs are identified. Thereafter, the EG agreed that separate terms might be needed to refer to legal arrangements as opposed to the technical infrastructure of CBDCs.
- 11 Some delegates and other experts noted that, depending on the specific models of CBDCs and the structures of the relevant transactions, different parties might be involved and different functions of CBDCs might arise, each with potential impact on the determination of the applicable law. For example, matters between central banks and first-instance holders, compared to subsequent transfers, are likely to be subject to different governing laws (*i.e.*, the law of the jurisdiction of the central bank applies to the first instance party, while subsequent transfers could be governed by the law of other jurisdictions). Given the importance of analysing different actors on platforms related to wCBDCs, the EG requested that the PB conduct further research in order to provide the EG with a non-exclusive list of possible actors.
- 12 Some delegates and other experts described relevant projects in their own jurisdictions and by the BIS:
- a. The Bank of Mongolia has been investigating CBDCs with cross-border payment as one of the key considerations since 2022.
 - b. The Federal Reserve Bank of New York’s Innovation Centre participated in a project of regulated liability network (RLN)¹⁰ to study whether tokenised deposits can fit within the existing payment systems and payment laws, including Article 4A of Funds Transfer of the Uniform Commercial Code (UCC).¹¹ Under an RLN, central bank assets are framed as wCBDCs. Tokenised deposits are a new service category relying on new technology (*i.e.*, third-party ledgers). There is no change in the nature of deposit obligations.
 - c. In 2021, Chile announced a study to examine the possibility of issuing CBDCs. It is now at an early stage of the design and proof of concept. The focus of the study is on rCBDCs. It aims to deepen the influence of the central bank within the payment market, enhance the accessibility of payment services, and strengthen Chile’s payment system.
 - d. In India, a CBDC is a digital currency whereas rupee is fiat currency. Both are issued by the Reserve Bank of India.

⁹ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (MiCA Regulation), available at <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>. Art. 3(18) of the MiCA Regulation defines “operation of a trading platform for crypto-assets” as “the management of one or more multilateral systems, which bring together or facilitate the bringing together of multiple third-party purchasing and selling interests in crypto-assets, in the system and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for funds or by the exchange of crypto-assets for other crypto-assets”.

¹⁰ “Facilitating Wholesale Digital Asset Settlement”, available at <https://www.newyorkfed.org/aboutthefed/nyic/facilitating-wholesale-digital-asset-settlement>.

¹¹ See Uniform Commercial Code (2012), Art. 4A, available at <https://www.law.cornell.edu/ucc/4A>.

- e. Some delegates and other experts also indicated the potential relevance of Project Icebreaker by the BIS.
- 13 Some delegates and other experts agreed that it would be useful to analyse if existing laws will be applicable to CBDCs as well as to new elements introduced by CBDCs, such as fungibility between CBDCs and physical currencies and the satisfaction of payment obligations denominated in local currencies with foreign CBDCs (with elements of foreign exchange and regulatory law frameworks). The EG was referred to a parallel discussion that took place in the context of the Digital Tokens Project, where participants considered substantive and regulatory law frameworks with a potential impact on digital tokens. The EG agreed that while substantive law frameworks may be referred to for guidance, they are not private international law (PIL) frameworks, and the specific context and intent of any PIL provisions appearing in such substantive law instruments should be taken into consideration.
- 14 Some delegates and other experts also described national laws relating to CBDCs:
- a. United States of America (US): Money was redefined in Uniform Commercial Code (UCC) amendments to recognise digital currencies, potentially introducing the concept of CBDCs as money for the purposes of the UCC.¹² CBDCs, including foreign CBDCs, can discharge payment obligations. The UCC amendments have been adopted by some states in the US. However, according to case law, purchase of foreign currency is a sale rather than payment. The status of this body of case law remains unclear after the UCC amendments. Separately, Article 4A provides that the applicable law for transfer between sender and receiver is the law of the place of the beneficiary's bank unless parties agree otherwise.
 - b. Brazil: The concept of electronic currency was adopted in Law No. 12,865, of October 9, 2013.¹³
 - c. Mongolia: The Bank of Mongolia prepared a revision to the Law on the Central Bank of Mongolia in 2024.¹⁴ The proposed official unit of currency is to be made available in, *inter alia*, digital forms. It is intended that CBDCs should be subject to distinct regulations considering monetary policy impacts, financial stability and consumer protection.
- 15 A non-exclusive list of relevant instruments, their respective PIL provisions and other relevant project(s) of the HCCH were provided for discussion. The EG was invited to identify other relevant instruments to the PB. The list of relevant instruments discussed included:
- a. HCCH 2006 HCCH Securities Convention;¹⁵
 - b. 2015 HCCH *Principles on Choice of Law in International Commercial Contracts* (2015 Principles): the exclusion of consumer or employment contracts might be of particular relevance to wCBDCs;¹⁶
 - c. UNIDROIT Geneva Securities Convention;¹⁷

¹² See Uniform Commercial Code Amendments (2022), Arts 1 and 9, available at <https://www.uniformlaws.org/viewdocument/final-act-164?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments>.

¹³ Law No 12,865, of 9 October 2013, available at https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112865.htm.

¹⁴ Written responses to Scope Paper v. 1 by Mongolia.

¹⁵ The *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary*, available on the HCCH website at www.hcch.net under "Instruments" then "Conventions and other Instruments", and 2006 Securities Convention.

¹⁶ The *Principles on Choice of Law in International Commercial Contracts*, available on the HCCH website at www.hcch.net under "Instruments" then "Conventions and other Instruments", and "2015 Principles on Choice of Law in International Commercial Contracts". Art. 1 provides that the 2015 Principles do not apply to consumer or employment contracts.

¹⁷ UNIDROIT Convention on Substantive Rules for Intermediated Securities (2009), available at <https://www.unidroit.org/instruments/capital-markets/geneva-convention/>.

- d. UNCITRAL Model Law on Secured Transactions (MLST);¹⁸
 - e. UNIDROIT Principles on Digital Assets and Private Law (PDAPL);¹⁹
 - f. EU Financial Collateral Directive 2002/47/EC;²⁰
 - g. HCCH 1978 Convention on the Law Applicable to Agency;²¹
 - h. HCCH 2005 Choice of Court Convention;²²
 - i. HCCH 2019 Judgments Convention;²³
 - j. ongoing work on jurisdiction at the HCCH.²⁴
- 16 Some delegates and other experts were also concerned with application of mandatory rules and public policy of States other than the State of the issuing central bank. It was noted that Article 11 of the 2015 Principles would be relevant for the forum court to take foreign mandatory rules and public policy considerations into account. Some delegates and other experts raised the following public policy considerations that might be relevant to wCBDCs and / or rCBDCs:
- a. consumer protection;
 - b. party autonomy in light of the market power of central banks as a major party;
 - c. government sovereignty and *lex monetae*;
 - d. clarity and certainty of payment systems;
 - e. data protection and privacy;
 - f. cybersecurity;
 - g. anti-money laundering and countering the financing of terrorism;
 - h. economic sanctions;
 - i. arbitration;
 - j. financial stability and monetary policy, including the use of CBDCs to satisfy debt obligations, impacts on monetary policy transmission channels and dollarisation.
- 17 Access of CBDCs by non-residents: Experts discussed the relevance of “(habitual) residence” to this Project. From the applicable law perspective, experts expected that the absence of a choice of law would be rare. Experts noted that some other connecting factors, such as the location of the central bank, might be more relevant than the location of residence in any event.

¹⁸ UNCITRAL Model Law on Secured Transactions (2016), available at https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions#:~:text=The%20UNCITRAL%20Model%20Law%20on,intellectual%20property%20with%20few%20exceptions%2C.

¹⁹ UNIDROIT Principles on Digital Assets and Private Law (2023), available at <https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked.pdf>.

²⁰ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0047>.

²¹ The *Convention of 14 March 1978 on the Law Applicable to Agency*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and *Convention of 14 March 1978 on the Law Applicable to Agency*.

²² The *Convention of 30 June 2005 on Choice of Court Agreements*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and 2005 Choice of Court Convention.

²³ The *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and 2019 Judgments Convention.

²⁴ “Working Group on Jurisdiction: Report of 2024”, Prel. Doc. No 2 of February 2024, available on the HCCH website www.hcch.net under “Governance” then “Council on General Affairs and Policy”.

Connecting Factors

- 18 Experts recognised the need to ascertain the nature of the claims in question and to identify the relevant parties when discussing applicable law. Party autonomy should be recognised. Experts proposed that the applicability of connecting factors can be viewed from two dimensions. “Vertically”, it is necessary to examine the relationships of parties, such as the involvement of the issuer, individual holder, intermediary, and system operator. “Horizontally”, it is necessary to examine the relevant activities involving CBDCs that give rise to PIL questions.
- 19 Experts discussed and compiled a list of issues for the review and feedback ahead of the second working meeting of the EG. This list²⁵ includes the following CBDC functions and use cases:
- a. Claims against issuers;
 - b. Features of platform layers; obligations of platform operators;
 - c. Functions, activities, and duties of intermediaries in respect of holders and third parties from a PIL perspective;
 - d. Relationships between parties (including “static” and “dynamic” scenarios in the treatment of CBDCs with cross-border implications)²⁶
 - i. Insolvency of a CBDC holder who has moved across borders, and involvement of an insolvency administrator (taking into account the mandate of this EG and the ongoing work at UNCITRAL’s Working Group V: Insolvency Law);
 - ii. Law applicable in a restitution scenario;
 - e. Transfers and payment obligations: CBDCs in cross-border payments systems;
 - f. Use of CBDCs as collateral, including situations of CBDCs as original collateral or as proceeds of other collateral.
- 20 Experts noted that apart from the dynamic situations where CBDCs are transferred across jurisdictions, the Project should also examine different static situations where: (i) CBDCs are involved without actually crossing the border, but the parties present cross-border elements; and (ii) transfer or transactions not pursuant to consented agreement, such as taking security over CBDCs in insolvency cases, restitution for wrongful transfer of CBDCs across borders, and the holding of CBDCs by foreign holders.
- 21 In cases of insolvency, experts acknowledged that there might be more parties involved in the relationship such as liquidation administrators and insolvency practitioners. The experts’ attention was drawn to the work ongoing at UNCITRAL’s Working Group V regarding the applicable law in insolvency proceedings. Experts agreed that this Project should align with the work done by UNCITRAL, and that insolvency should be distinguished from the use of CBDCs as collateral (*i.e.* item 19f. in para. 19 above).
- 22 With respect to collateral, experts discussed the possible significance of the PDAPL, the UNIDROIT Geneva Securities Convention, and the EU Financial Collateral Directive. Experts found that the UNCITRAL MLST is particularly relevant to the creation, third party effectiveness, priority and enforcement of security interests in CBDCs. Moreover, experts pointed out that the UNCITRAL MLST is also relevant to security interest in CBDCs as proceeds of other collateral and fungibility among different CBDCs.

²⁵ See “Lists of CBDC functions and use cases”, Secretariat Note 3/2024, available on the Secure Portal of the HCCH website (see path indicated in note 1).

²⁶ The terminology of “static” and “dynamic” is explained in para. 19.

CBDCs as Means of Payment

- 23 Experts observed that transfer, holding and the collateralisation of CBDCs may implicate a wider consideration of the functions and use cases of CBDCs in the context of cross-border payments systems. Experts raised questions on the nature of payment and issues linked to the payment structure such as settlement finality. Seeing the need to study payment functions of CBDCs, experts believed platforms where CBDCs are found should also be analysed, noting that CBDCs cannot be considered in isolation, as evidenced by the various ongoing projects showing linkages of CBDC platforms to other functions and services. Experts moreover noted that PIL questions relating to CBDCs may be resolved by solutions applicable to other forms of electronic payments. Experts were referred to the exploratory phase of the Project on the PIL aspects of CBDCs and the issues described in relation to digital cross-border payments systems, noting that the mandate was narrowed for this EG to focus on the study of applicable law and jurisdictional issues raised by the cross-border use and transfers of CBDCs.
- 24 Some experts were concerned about the increased scope of the Project if the mandate were to include global payments systems. In reply, other experts explained that the issues presented by CBDCs may differ from those presented by digital currencies; as such the Project should look at wider issues than the mere issuance of CBDCs – without needing to solve payment systems issues across the board. Experts agreed that the multi-layered and cross-border nature of platforms may involve third parties situated in different jurisdictions. Moreover, some experts noted that additional PIL issues may arise when platforms involving the private sector interact with central banks; it was agreed by the EG that these PIL questions should also be covered by the Project.

Intermediaries and Third Parties

- 25 “Intermediaries” is a term common to many jurisdictions. The EG discussed the fact that intermediaries may play a wide range of roles depending on the structure of CBDCs and the operations in question, such as maintaining CBDC accounts, transfer and disposition, custodian services, execution of transactions, and perfection. Experts agreed that the specific functions played by intermediaries would affect the choice of law by parties. Experts also noted the possibility of the involvement of intermediaries in less common roles, for example, in the provision of a digital wallet or merely enabling access to a service (*i.e.*, without the provision of infrastructure or tools such as a digital wallet). Experts commented that a “wallet provider” is a relatively neutral term compared to “intermediary” or “custodian”, as the latter two terms have connotations of offering services additional to mere intermediation. Some experts noted that, in certain jurisdictions, the role of issuers of CBDCs might need to be considered, as this role may be related to that of registrars and transfer agents (which may be intermediaries). Experts also discussed whether central banks take on functions that are normally handled by traditional intermediaries in a direct holding system and, if so, what PIL questions may arise in those situations.
- 26 Some delegates and other experts recommended that this Project continue to use “intermediary” as an umbrella term but that consideration be given to whether different types of intermediaries may need to be defined, depending on their specific functions. It was also noted that not all intermediaries undertake all of these different functions. The EG agreed that the scope of examination should be kept broad and flexible as the roles of intermediaries in relation to CBDCs are still evolving. As such, the EG agreed that this Project should first analyse whether existing instruments may apply to different types of intermediaries. The HCCH 2006 Securities Convention was specifically identified for this purpose. The EG also discussed the PDAPL, since the PDAPL could be relevant to custodian functions that may be performed by intermediaries, keeping in mind that any definitions developed in the framework of this Project should align with definitions in existing legal instruments.

- 27 Experts discussed the following issues in relation to third parties:
- a. priority;
 - b. negotiable instruments and the take-free rule;
 - c. privity of contract;
 - d. tort-related claims, e.g. failure to pay third parties despite instructions of the initiator of payment;
 - e. disposition;
 - f. finality; and
 - g. collateral.

28 Experts deliberated whether agents of intermediaries, and agents of end users of CBDCs providing authentication services, should also be included in the scope of the Project. However, they concluded that the law of agency dealing with principals could sufficiently apply in such situations, assuming that such agents act with unvitiated authority. Experts noted that questions relating to agency did not appear to be contingent on the specific nature of CBDCs.

Nature (Characterisation) of CBDCs

29 In relation to the nature (characterisation) of CBDCs, experts discussed some of the technical aspects of CBDCs, such as the use of a ledger and tokenisation of CBDCs. Experts noted that the CBDC could be categorised as either a digital form of fiat currency or a new type of financial instrument. Different classifications affect the applicability of different legal regimes (namely monetary laws and securities laws) and regulations. Experts reiterated the importance of a functional approach to focus on different activities related to CBDCs as identified above, instead of categorising issues by legal fields.

CBDCs as Money and Legal Tender

30 It was noted that, during the exploratory phase preceding this Project in 2023, the need to examine the differences between money and legal tender was identified. Experts noted that in jurisdictions such as Chile, and Hong Kong Special Administrative Region, China, statutory changes would be needed to declare CBDCs as legal tender. Questions as to the status of CBDCs in relation to whether they are legal tender include whether they could be transferred as satisfaction of payment obligations and, in that case, the meaning of “transfer”. Experts noted that the legal understanding of concepts such as “currency”, “money” and “legal tender” differed by jurisdiction, as the understanding of these concepts is influenced by *lex monetae*. Experts therefore agreed on the need for a functional approach in examining the relevant PIL issues.

31 Experts discussed what applicable law issues would arise when the jurisdiction of a recipient of CBDCs in discharge of a payment does not recognise the CBDC as legal tender, agreeing on a list of “key functions of CBDCs” that would be reviewed in intersessional work and discussed at the second working meeting. This list is in Secretariat Note 3/2024.²⁷ The list includes:

- a. the requirement to accept CBDCs;
- b. if CBDCs are accepted, whether doing so discharges payment obligations;
- c. mandatory acceptance rules;
- d. transfers;

²⁷ *Supra* note 25.

- e. holding; and
- f. use as collateral.

Presentations by Experts with Question and Answer Sessions

32 The meeting included presentations on recent developments in CBDCs by three members of the EG in the following areas:

- a. BIS Taxonomy of CBDCs;
- b. the plans for the digital Euro; and
- c. Brazil's Drex Initiative.

1. BIS Taxonomy of CBDCs

33 The presentation of the BIS taxonomy of CBDCs noted that taxonomies depend on policy and design choices of CBDCs. These policy and design choices affect the legal framework for the issuance and use of CBDCs, including in the context of cross-border payment. It was noted that the BIS taxonomy appears to focus on payment and transfer functions.

34 CBDCs can be viewed from various perspectives: that of its issuers, its forms, its accessibility and the technology on which it is based.²⁸ CBDCs are not traditional reserve or settlement accounts; instead, they can widen access to central bank money and tap on new functionalities enabled by tokenisation, such as composability and programmability.

35 The architecture of CBDCs is divided into direct and indirect holding systems. A direct holding system is a direct claim against central banks. Intermediaries might be involved to handle or execute retail payments. Depending on the role of intermediaries, central banks would either keep a copy of all retail holdings or only wholesale holdings. In an indirect holding system (also known as synthetic CBDCs), CBDCs are a claim against intermediaries. Such claims are fully backed by holdings of CBDCs at central banks. For the BIS, CBDCs only refer to direct holding systems as synthetic CBDCs lack the neutrality and liquidity of central bank money. Issuances denominated in foreign currency are also excluded from the scope of CBDCs according to the BIS taxonomy.

36 Experts enquired about the nature of claims of end users in situations of insolvency of intermediaries. For two-tier structures in a direct holding system, claims of end users are segregated from claims of intermediaries. Central banks retain the ability to move holdings of end users from insolvent intermediaries to solvent ones.

37 The presentation discussed wCBDCs, rCBDCs, and their respective arrangements. For rCBDCs, participants include central bank operators, payment service providers (PSPs), banks, data service providers, etc. Multi-CBDC arrangements (mCBDC) were also discussed. There are currently three models that would enable mCBDC: (i) enhanced technical and regulatory compatibility among CBDCs; (ii) interlinking CBDC systems through shared technical interface to allow user-to-user currency transaction without intermediaries; or (iii) integration into a single system jointly held, holding multiple CBDCs. Some experts were of the opinion that only model (iii) allows truly cross-border holdings as the first two models involve foreign exchange or keeping ledgers of the other CBDCs involved.

38 The presentation also discussed the BIS Project Agora. Project Agora focuses on a direct holding model based on a two-tier structure, and examines how tokenisation of wCBDCs and commercial

²⁸ According to the presentation, balances in reserve accounts and most forms of commercial money are account-based whereas cash and digital currencies are token-based. While the former technology is about the ability to verify identities of account holders, the latter technology is about verification of the payment object.

bank deposits on programmable platforms can improve monetary systems. The presentation moreover introduced the concept of a unified ledger for the use of CBDCs on a single platform for cross-border payments.

2. The Plans for the Digital Euro

- 39 The EG on CBDCs also heard a presentation on the different phases and features of the digital Euro proposed under the Proposal for a Regulation of the European Parliament and of the Council on the establishment of the digital Euro (Draft Proposal).²⁹ The digital Euro is a direct claim against the European Central Bank (ECB) and is recognised as an equivalent to the physical Euro, as it is fungible with Euro banknotes and coins at par.³⁰ The digital Euro has the status of legal tender,³¹ and is not programmable money. The ECB has no plans to set limitations on where, when or to whom people can pay with a digital Euro. Moreover, the value of the digital Euro would not fluctuate due to factors extrinsic to the currency itself. It is intended to be compatible with programmable payments. Conditional payments at the level of intermediaries are possible to enable automatic payments so long as pre-defined conditions are met.
- 40 To maintain financial stability, there were initial proposals to limit the amount of digital Euro that users can individually hold. The digital Euro is not intended to be used for a store of value,³² and does not bear interest.³³ In response to questions from the experts, the presentation referred to the digital Euro glossary³⁴ for the mechanism by which holdings are limited – a “waterfall” (transformation of payments received on the digital Euro accounts into private money) and “reverse waterfall” (refunds made from digital Euro accounts funded from private money). Subject to more concrete proposals for the development of the digital Euro, the mechanism was described as follows: credit institutions and PSPs have prior agreements to fund and defund accounts in digital Euro. PSPs instruct for and on behalf of clients to effect changes in value holdings on the Eurosystem ledger. Commercial banks will place the amount as instructed by clients in reserves at the disposal of the Eurosystem. The Eurosystem would then burn the reserves, issue the equivalent amount in digital Euro and transfer it to the holdings of the PSPs of clients.
- 41 The design of the digital Euro allows both online and offline use. The online and offline variants of digital Euro are convertible into one another.³⁵ One of the key differences between them is that online use involves third-party validators. In response to questions by the experts as to the roles and characteristics of third-party validators, the presentation included an overview of the Draft Proposal which makes reference to PSPs³⁶ (defined in Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (Payment Services Directive II)).³⁷ It was noted that PSPs are credit and payment institutions. For online transactions, PSPs are to match and alert parties about the completion of transactions. Other roles of PSPs include distribution, funding and defunding.³⁸ The presentation drew the

²⁹ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0369>.

³⁰ *Ibid.*, Art. 12(1).

³¹ *Ibid.*, Art. 8(2).

³² *Ibid.*, Art. 16.

³³ *Ibid.*

³⁴ “Digital euro glossary”, available at https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.dedocs220420.en.pdf.

³⁵ Art. 23(2) of the Draft Proposal.

³⁶ *Ibid.*, Arts 2(7) and 13.

³⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>.

³⁸ Art. 13 of the Draft Proposal.

attention of the experts to the digital Euro scheme rulebook,³⁹ which will provide a description of all relevant actors.

42 Potential use cases of the digital Euro include person-to-person payments, consumer-to-business payments, business-initiated payments, payments to governments and by governments, and possibly machine-initiated payments without user interaction.

43 Experts were interested in knowing how the Draft Proposal would ensure legal certainty for other aspects of the digital Euro. It was noted that the Draft Proposal addresses final settlement⁴⁰ but not collateral. Since PSPs are not a party to the direct liability held by digital Euro users towards the ECB and the national central banks of the Member States of the Eurozone, and are acting on behalf of digital Euro users, the insolvency of PSPs would not affect digital Euro users.⁴¹

44 The presentation noted that the Draft Proposal does not deal with PIL issues directly, and it does not contain choice-of-law provisions. However, the following provisions might have cross-border, and so PIL, implications:

- a. territorial scope of legal tender status: for online transactions, payments of a monetary debt denominated in Euros to a payee residing or established in the Euro area (by any payer) shall have legal tender status;⁴²
- b. distribution of the digital Euro to natural and legal persons residing or established in third countries and in third countries or territories under a monetary agreement with the EU;⁴³ and
- c. cross-currency payments.⁴⁴

45 The presentation also noted that prior agreement with the EU and consultation with the Eurosystem are necessary for the use of the digital Euro in third countries. Compliance with rules issued by the ECB is necessary. In certain cases, national central banks of third states might have access to settlement platforms and infrastructure of the digital Euro.

3. Brazil's Drex Initiative

46 A presentation on Brazil's Drex initiative described it as an ongoing pilot project in a sandbox environment. Drex is a digital representation of the Brazilian currency, hence, a direct claim against the central bank. Drex is defined in the presentation as an electronic currency issued by the Central Bank of Brazil as an extension of physical currency with distributions to the public intermediated by custodians of the national financial system and the Brazilian payment system.

47 The Drex Platform itself is a "DLT ecosystem" for access to various financial services. Banks must maintain a wallet on the Drex Hyperledger in order to participate in the Drex Platform. There are multiple layers on the Drex Platform, and PIL issues can arise when any of the layers have a cross-border element. For example, with reference to the diagram provided during the presentation,⁴⁵ aggregators make suggestions of business opportunities by using algorithms. Some experts were of the opinion that the aggregators act as service providers that provide ancillary services to transactions. Ancillary service providers are not tied to CBDCs *per se*. Experts discussed whether ancillary service providers include third-party validators, and whether ancillary service providers should be included in the Project. Experts noted that it is unclear if these validators are agents of

³⁹ "Digital euro scheme rulebook", available at https://www.ecb.europa.eu/euro/digital_euro/timeline/rulebook/html/index.en.html.

⁴⁰ Art. 30 of the Draft Proposal.

⁴¹ *Ibid.*, Recital 9.

⁴² *Ibid.*, Art. 8(2).

⁴³ *Ibid.*, Arts 19 and 20.

⁴⁴ *Ibid.*, Art. 21.

⁴⁵ Page 4 of the PowerPoint slides provided by the delegate from Brazil, available on the Secure Portal of the HCCH website at www.hcch.net (see path indicated in note 1).

central banks, intermediaries or end users. In the case that these validators are indeed agents, some experts were of the opinion that the *HCCH Convention of 14 March 1978 on the Law Applicable to Agency* provided a sufficient framework within which to deal with the relevant PIL issues.

Use cases

48 In response to the experts' request for the provision of concrete use cases to identify issues for discussion, the PB provided several examples developed by other institutions for the experts' consideration. Each use case or pilot project was presented with reference to documentation of the organisation responsible for the project. The experts' input on what PIL issues would arise in each of the use cases, including and apart from situations of transfers and payments, was sought. This section provides a summary of the use cases discussed at the first working meeting.

1. The World Economic Forum (WEF) - Use of wCBDCs in Financial Markets⁴⁶

49 An overview of the industry challenges facing financial markets identified by the WEF was provided, including the WEF's suggestions on areas for modernisation. The WEF has identified two wCBDCs use case areas as potential opportunities to modernise financial markets:

- a. Interbank payments: domestic payments, cross-border payments via nostro accounts, and cross-border payments via central bank accounts.
- b. Securities transactions: delivery versus payment (DvP) for securities settlement, collateral and liquidity management, and post-trade operations.

2. Crosschain Interoperable Use Cases related to wCBDCs⁴⁷

(a) Interbank Settlements / DvP (Capital Markets)

50 Financial institutions can settle interbank transfers using wCBDCs in real-time gross settlement systems to reduce settlement time and counterparty risks as payment and delivery of securities are finalised. An example was given where banks use wCBDCs for a sale and purchase of shares between their clients, where the shares and payments are exchanged simultaneously.

51 Experts were of the opinion that the example lacked crucial details regarding its implementation. They agreed to keep this example as a use case for study, noting that further reflection is needed to examine the different PIL considerations for DvP on the same technical platform in a single process compared to interoperable platforms. An integrated DvP on a single platform would be a multi-asset platform. Some experts noted that DvP on interlinked systems had complex setups that would complicate considerations of PIL. Experts also observed that the focus on digitised transfers of payments, the interlinkage between CBDC arrangements and intermediaries and the interlinkage between CBDC and non-CBDC arrangements are not CBDC-specific but about general payment systems. However, experts agreed that the EG should study interoperable platforms and general payment systems where they involve CBDCs-specific aspects.

52 Building on this use case, experts engaged in a discussion of payments effected through smart or automated contracts. They noted that CBDCs introduce the possibility of programmability and conditional payment. In comparison, payments effected through intermediaries are often made with instructions that are non-conditional. This would raise considerations for the law applicable to setting conditions or instructions of payments effected through intermediaries. Experts further

⁴⁶ "Modernizing Financial Markets with Wholesale Central Bank Digital Currency", available at https://www3.weforum.org/docs/WEF_Modernizing_Financial_Markets_with_Wholesale_Central_Bank_Digital_Currency_2024.pdf.

⁴⁷ "Wholesale CBDC (wCBDC)", available at <https://qualitax.gitbook.io/interop/use-cases/wholesale-cbdc-wcbdc>.

discussed whether there would be issues relating to the question of jurisdiction arising, for instance, in relation to the effect of conditional payment on the choice of forum by parties.

(b) Cross-border Transactions (Capital Markets)

- 53 Cross-border interbank transactions can be simplified and expedited with wCBDCs by reducing the need for intermediaries. The associated costs and delays are also reduced. Two case scenarios were discussed: (i) where banks adopt wCBDC systems with an agreement for interbank cross-border transactions; and (ii) where banks use local wCBDC systems for transfer and foreign exchange while the subject of the transaction is delivered simultaneously through transfer and foreign exchange (forex).
- 54 Experts agreed that each of these scenarios might have PIL implications. Some experts were of the opinion that these scenarios could take place in a truly disintermediated, interoperable platform, whereas other experts were of the opinion that these scenarios could not take place without the involvement of intermediaries. Some experts noted that existing legal frameworks do not provide guidance when two or more systems are involved.
- 55 Experts noted that the scenarios did not specify whether the designated currencies are CBDCs or physical currencies, highlighting that there are different considerations if the linkage is between a CBDC system and a non-CBDC system, as opposed to the situation of a linkage between two CBDC systems. If there are two interlinked CBDC structures, the mechanisms of interlinkage can either be via third parties such as a forex provider or pre-agreed arrangement between the two structures without the involvement of third parties. Regarding CBDCs transfers, experts agreed that it is worthwhile to examine when the rights and obligations of initiators of the transfers (senders) end, when the CBDC goes into the sphere of the receiver, and which jurisdiction determines the transfer.
- 56 Experts agreed that the connection between a CBDC system and a non-CBDC system is a good use case to study as it tests the boundaries of whether CBDCs are money or not.

(c) Interbank Payments (Outside Capital Markets)

- 57 This scenario concerns direct transfer of funds between banks for transactions that are not related to securities. The experts discussed a scenario of repayment of interbank lending using wCBDCs in which the transfer of funds and the discharge of the loan obligation happen simultaneously. Some experts questioned whether loan obligations are different from other obligations to pay. It was noted that loan obligations are usually subject to the specific arrangement between parties. Experts agreed to keep this use case for further consideration.

(d) Forex Transactions to Facilitate Cross-border Payments (Outside Capital Markets)

- 58 Commercial banks, on behalf of corporations or end-users, make cross-border payments using wCBDCs to facilitate forex transactions and payment to a recipient bank in another country. The experts discussed a process with four steps: (i) issuance of wCBDCs by a commercial bank to use in the transfer; (ii) execution of a forex transaction; (iii) payment in foreign wCBDCs on an international network; and (iv) redemption by a foreign commercial bank.
- 59 The interlinkage between two CBDCs, the step of foreign exchange, and interface of the two commercial banks involved did not appear to add features that had not been addressed in previous use case. Experts agreed to set aside this use case.

(e) Liquidity Provision by Commercial Banks to Facilitate Forex Transactions (Outside Capital Markets)

- 60 Experts discussed a use case in which banks deposit wCBDCs to provide liquidity for forex transactions for other participants, for example, where a domestic commercial bank issues

domestic wCBDC and transfers it to an automated market maker (AMM) on an international network using a bridge to provide liquidity.

- 61 Despite not having specific comments on this use case, experts suggested that it would be helpful to find use cases covering intermediaries with a limited role, as well as third parties. Experts agreed to consider this specific use case and to submit relevant scenarios for the EG to consider at its second working meeting.

3. South Africa - Project Khokha⁴⁸

- 62 The experts discussed South Africa's Project Khokha, which focuses on the wholesale settlement of tokenised assets for DvP. The Project centres around central banks operating wCBDCs that are used by specific groups of entities on a private permissioned DLT called the "wCBDC Zone". On the wCBDC ledger, central banks hold wCBDCs in escrow and mint tokens (Khokha tokens) on a ledger called the "Khokha Hub". wCBDC is allocated to recipients of Khokha tokens. Following the reconciliation of the two ledgers, the Khokha tokens are then burned (destroyed).

- 63 Experts suggested that this process would raise questions about what the Khokha tokens represent – whether these tokens are only an object to facilitate the transaction, a record of ownership of wCBDCs, or a synthetic CBDC serving functions similar to collateral. In addition to examining the nature of Khokha tokens, some experts suggested that the EG study the escrow arrangement.

4. BIS – Project Jura⁴⁹

- 64 Experts next discussed the BIS Project Jura, which focuses on cross-border settlement. Experts discussed issues in the framework of Project Jura, such as transaction flow, experimental architecture, wCBDC issuance, DvP exchange between different wCBDCs and payment versus payment (PvP) exchange between different wCBDCs. The experts agreed that the PB would contact the BIS for more information on Project Jura, possibly by way of a presentation at the second working meeting of the EG.

5. BIS – Project Mariana⁵⁰

- 65 Experts also discussed the BIS' Project Mariana, which focuses on foreign exchange financial markets. Project Mariana is a proof of concept for a global interbank market for spot FX featuring both an AMM and wCBDCs. Potential benefits of AMMs include supporting simple and automated execution of FX transactions, providing options to broaden the range of currencies, eliminating settlement risk and enabling transparency. The use of AMMs is premised on the pre-funding of liquidity. With respect to wCBDCs in Project Mariana, these circulate on domestic platforms and bridges allow them to be moved on to a transnational network that hosts the AMM. Bridges may serve as a mechanism to enable broader interoperability. The bridge design features controls and safeguards.

- 66 Experts discussed different functions of the parties involved. It was observed that liquidity providers in the scenario envisaged by Project Mariana are lending to an AMM, hence, taking up a liquidity function in addition to the execution of foreign exchange. The experts agreed that the PB would contact the BIS for more information on Project Mariana, possibly by way of a presentation at the second working meeting of the EG.

⁴⁸ "Project Khokha 2", available at <https://www.resbank.co.za/content/dam/sarb/publications/media-releases/2022/project-khokha-2/Project%20Khokha%202%20Full%20Report%206%20April%202022.pdf>.

⁴⁹ "Project Jura – Cross-border settlement using wholesale CBDC", available at <https://www.bis.org/publ/othp44.pdf>.

⁵⁰ "Project Mariana – Cross-border exchange of wholesale CBDCs using automated market-makers", available at <https://www.banque-france.fr/system/files/2023-09/20230928%20Mariana%20final%20report.pdf>.

6. China Central Depository & Clearing (CCDC) – CNY-denominated Bonds as Collateral for Global Repurchase Transactions⁵¹

67 The experts discussed two use cases by the CCDC of issuing overseas bonds secured by domestic bonds. Experts were not of the opinion that these use cases brought additional elements for consideration, noting that the repurchase function described is similar to conditional payment, as discussed previously.

Intersessional Work

68 Further to the questions in Scope Paper v. 1, experts agreed to provide feedback or answers to the following list of matters raised during the first working meeting:

- a. as discussed in paragraphs 6 and 23 above, given that the mandate of the Project includes consideration of questions of jurisdiction, issues of jurisdiction would be a topic of discussion at the second working meeting; in this context experts would provide examples of use cases in which issues of jurisdiction across borders would arise in the context of CBDCs;⁵²
- b. experts agreed to continue consideration of the lists of CBDC functions and use cases identified in Secretariat Note 3/2024 and referred to in paragraphs 19 and 31 above;
- c. experts agreed to identify instruments relevant to the legal frameworks of CBDCs, including those with specific PIL provisions, in addition to those identified in paragraph 15 above;
- d. considering paragraphs 19 and 23 above, experts agreed to consider the relevance of studying the issues of applicable law and jurisdiction arising in cross-border payments systems and how such work should be taken into account under the future mandates of the Project;
- e. mindful of the decision to start with a broad definition of “intermediary”, experts agreed to further consider specific functions and types of intermediaries and whether existing instruments apply to these intermediaries (as discussed in paras 25 and 26, above);
- f. in light of paragraph 48 above, experts agreed to continue the study of use cases discussed in the first working meeting. Experts also agreed to identify to the PB specific projects that they wish to discuss in the second working meeting and to amend the Scope Paper to identify these projects if necessary;
- g. experts agreed to study applicable law and jurisdiction questions around CBDCs that have an impact on third parties (with reference to issues noted in para. 27 above).

Conclusion

69 The PB provided a summary of the action items to take forward from this first working meeting including intersessional work on the points raised during the meeting. Participants agreed to provide written responses to the questions in Scope Paper v. 1 and to provide feedback on the questions or requests for information that were newly raised during the first working meeting.

70 The EG agreed:

- a. the work of the EG is to be bifurcated to consider applicable law and jurisdiction issues relating to wCBDCs first, and thereafter to move to the consideration of applicable law and jurisdiction issues relating to rCBDCs;

⁵¹ “Use of RMB-denominated Bonds as Collateral for Global Repo Transactions”, available at <https://www.icmagroup.org/assets/CCDC-English-repo-report.pdf>.

⁵² Conclusion and Decision (C&D) No 10 of CGAP 2024. “Conclusions & Decisions”, available on the HCCH website www.hcch.net under “Governance” then “Council on General Affairs and Policy” and “Archive (2000-2024)”.

- b. the PB is requested to provide a non-exclusive list of different actors that may be involved in CBDC transactions, where these roles have a potential impact on the applicable law relating to wCBDCs;
- c. the link to the survey for submission of case studies corresponding to questions in Scope Paper v. 1, which can be accessed through the Secure Portal, should remain active for further submissions by the experts until the second working meeting.

71 Participants agreed that the second working meeting of the EG would take place from 12 to 14 November 2024, in person at the premises of the PB in The Hague, with the possibility for remote participation. The second working meeting will include on its agenda a discussion of issues relating to jurisdiction arising from CBDCs, the applicable law issues arising in concrete use cases and functions of wCBDCs, the relevance of studying applicable law and jurisdiction issues arising in cross-border payments systems, the functions and types of intermediaries, as well as applicable law and jurisdiction questions around CBDCs that have an impact on third parties.

Anexo IV: List of Participants of the first working meeting

List of participants - HCCH Experts' Group on Central Bank Digital Currencies (CBDCs)



First meeting - 24-28 June 2024

Family name(s)	Name(s)	State or Organisation	Position	Status of attendance (online/on site)
DOSANI	Muhammad	Australia	Assistant Director, Digital Asset and Crypto Unit, Treasury	Online
CHEYTANOVA	Dessi	BIS	Deputy General Counsel	Online
ALVES PINTO	Juliano	Brazil	Head of the Legal Cooperation Division, Ministry of Foreign Affairs	In person
LYON	Francisca	Chile	Senior Lawyer, Legal Department of the Central Bank of Chile	In person
CAI	Mingyang	China	Legal and Compliance Division of Digital Currency Institute of the People's Bank of China	Online
CHUNG	Tim	China	Chief Counsel (Advisory), Office of the General Counsel, Hong Kong SAR Monetary Authority	Online
LIANG	Wenwen	China	Assistant Professor, Wuhan University	Online
DIMITRIJEVIC	Marko	ELI	ELI member	Online
VONDRACEK	Ondrej	European Commission	Legislative Officer	Online
PAPAPASCHALIS	Panagiotis	European Commission	Principal Legal Council	Online

LOEBER	Klaus	IBA	Member of the IBA Banking & Financial Law Committee Advisory Board	In person
DUMITRESCU PASECINIC	Adrian Dorel	International Monetary Fund		Online
SINAI LIVYATAN	Michal	Israel	Assistant Legal Counsel, Legal Department, Bank of Israel	Online
DE FRANCESCHI	Alberto	Italy	Full Professor of Private Law, Digital Law and Environmental Sustainability at the University of Ferrara	Online
BUSE	Dina	Latvia	Deputy Director of the Credit Institution and Payment Services Policy Division of Financial Market Policy Department	Online
PODNIEKIS	Indulis	Latvia	Senior Expert of Credit Institution and Payment Services Policy Division of Financial Market Policy Department	Online
LACERDA	Pedro	Portugal		Online
LEE	Hwayon	Republic of Korea	Judge of Suwon District Court (Seong Nam Branch Court)	Online
SONG	Juhee	Republic of Korea	Presiding Judge of Jeju District Court	Online
MOLDOVAN	Cristina	Romania	Expert from the Romanian National Bank	Online
BEAVES	Antony	UK	Senior Legal Counsel, Bank of England	Online
VINCENT	Keith	UK	Senior Lawyer, HM Treasury	Online
HAENTJENS	Matthias	UNIDROIT	Chair of Private Law University of Leiden	In person
CASTELLANO	Giuliano	UNIDROIT	University of Hong Kong	Online
ODINET	Christopher	USA	Professor of Law at the University of Iowa College of Law	In person

TORREGROSSA	Joseph	USA	Associate General Counsel at the Federal Reserve Bank of New York	In person
RUBEN	Andrew	USA	Senior Attorney at the Board of Governors of the Federal Reserve System	Online
SMITH	Edwin	USA	Partner at Morgan, Lewis & Bockius LLP	Online
COHEN	Neil	USA	Professor of Law at Brooklyn Law School	Online
KHAWAM	Joseph	USA	Attorney-Adviser at the Department of State's Office of the Legal Adviser	Online
BERNASCONI	Christophe	HCCH	Secretary General of the HCCH	In person
WONG	Connie	HCCH	Intern	In person
WAN	Diana	HCCH	Secondee (Hong Kong SAR)	In person
GOH ESCOLAR	Gérardine	HCCH	Deputy Secretary General of the HCCH	In person
CHENG	Harry	HCCH	Legal Officer	In person
SALINAS PEIXOTO	Raquel	HCCH	Legal Officer	In person
HAPP	Veronika	HCCH	Meeting Aide	In person

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Regional Office for Asia and the Pacific (ROAP) - Bureau régional pour l'Asie et le Pacifique (BRAP)
Regional Office for Latin America and Caribbean (ROLAC) - Bureau régional pour l'Amérique Latine et les Caraïbes (BRALC)

Anexo V: Report of the second working meeting of the Experts' Group on Central Bank Digital Currencies

Report of the Second Working Meeting of the Experts' Group on Central Bank Digital Currencies of 12 to 14 November 2024

I. Introduction

- 1 From 12 to 14 November 2024, the Experts' Group on Central Bank Digital Currencies (EG on CBDCs) held its second working meeting via videoconference. Twenty-five delegates and other experts nominated by 10 Members and three Observers participated in the meeting.¹ In addition, five speakers from academia and from intergovernmental organisations presented at the technical roundtable, which was organised adjacent to the meeting on 14 November.
- 2 Prior to the meeting, Secretariat Notes prepared by the Permanent Bureau (PB) of the HCCH at the request of the members of the EG, as well as documents submitted by members of the EG, were uploaded to the Secure Portal to facilitate discussions. As part of intersessional work between the first and second working meetings, EG members were invited to submit written responses to the questions in Scope Paper v.1 and to provide feedback on the questions or requests for information that were raised during the first working meeting. EG members had decided at the end of the first working meeting that the EG was to focus its discussions at the second working meeting on wholesale CBDCs (wCBDCs).
- 3 This Report summarises key points of the discussions that took place during the meeting, including: (a) applicable law issues arising from concrete use cases and functions of wCBDCs; (b) the relevant wCBDC actors; (c) the functions and activities of intermediaries; (d) the relationship between the relevant parties; (e) public policy and overriding mandatory rules; and (f) issues relating to jurisdiction. A summary of the technical roundtable is provided at the end of this Report.

II. Intersessional submissions

- 4 The EG decided in the first working meeting to provide written comments during the intersessional work period in response to Scope Paper v. 1 and the list of matters set out in paragraph 68 of the report of the first working meeting. Only one intersessional submission was received, which comprised a consolidated submission from the delegates of the United States of America (USA).² The delegates from the USA provided an overview of their submission at the beginning of the second working meeting.

Intersessional Submission from the Experts Designated by the USA

- 5 The delegates of the USA noted that there are a number of different models of CBDCs being proposed, though there are fewer examples of operational systems. They proposed that the examination of the EG could be focused on “certain predictable core functions of a CBDC”, namely, **issuance, redemption, transfer, holding, and collateralisation**. The delegates of the USA also proposed that work be prioritised on a “wholesale CBDC used exclusively for commercial purposes

¹ A list of participants can be found in Annex VI of the current document as well as on the Secure Portal of the HCCH website at www.hcch.net under “Working / Experts Groups” then “Experts' Group on Central Bank Digital Currencies”.

² Prior to the first working meeting, responses to the Scope Paper v. 1 were received from the experts of Brazil and Mongolia. As these submissions were discussed at appropriate times during the first working meeting, they are not documented as submissions of the intersessional period and are not addressed again in this Report.

through a platform operated directly or indirectly by a central bank”.³ This reflected the decision made at the first working meeting to bifurcate the EG’s examination into phases for, first, wCBDCs and, then, retail CBDCs (rCBDCs).

- 6 Out of the core functions of a wCBDC cited above, the delegates of the USA suggested that issuance and redemption are closely tied to core central bank functions, such that the choice of law by the central bank would likely be valid and may be better addressed in public law. EG members then discussed the core functions identified by the USA submission, noting the likelihood of issuance and redemption being considered public law issues, and discussed whether these matters are, therefore, set aside from the work of the EG. The delegates of the USA explained that there was value in identifying and setting a default rule, as further complexities may arise when more than one economy is represented by a central bank or more than one issuer is active in a system.
- 7 The delegates of the USA summarised the key conflict of laws questions that merit consideration by the EG: To determine the law applicable
- a. With respect to transfers of CBDCs, whether and when the transfer of a CBDC discharges an obligation between a sender and a recipient outside the CBDC’s home jurisdiction; and whether a recipient of a CBDC takes it free of adverse claims.
 - b. With respect to financial institutions and other intermediaries, what kind of duties an intermediary owes to the person for whom it is holding a CBDC; what kind of duties are owed by an intermediary to third parties, if any; and what effect the transfers of CBDCs initiated by the intermediary have.
 - c. With respect to collateral, how to obtain a security interest and related priority in a CBDC, as well as which transactions may be characterised as those creating a security interest.
- 8 The delegates of the USA observed the following:
- a. based on information already collected, it should be presumed that there are and will be differences across the jurisdictions on the treatment of CBDCs, including with respect to rights and system design;
 - b. the central bank choice on their platforms should be recognised as the primary factor to determine the applicable law, while also recognising public policy exceptions; and
 - c. it should be recognised that parties, whether intermediaries or transacting counterparties, engaged in certain core CBDC functions (*i.e.*, transfers, holding, and collateralisation) should retain autonomy to choose the law governing certain bilateral rights and obligations by agreement, even if the central bank has established a governing law.
- 9 Against the background of the presentation from the delegates of the USA, EG members asked for further explanation for the reason of the focus on a platform (item b, para. 8 above). The delegates of the USA explained that the focus on the “platform” may simplify the private international law (PIL) analysis because it would set the bounds for which operations will fall under the choice of law made by the central bank. The central bank will issue wCBDCs to the platform, and the platform would have functionalities as a payment system.
- 10 EG members also asked for clarification of the meaning of “interlinking systems” used in the USA submission. The delegates of the USA explained that it referred to transfers across different central bank operating systems, where the transfer begins in one currency on one central bank platform and ends in a different currency on a different central bank platform. In this situation, the central bank selects the choice of law governing its own platform, but the end-to-end transfer will present

³ Consolidated Submission from the Experts designated by the USA, circulated among the members of the EG prior to the second working meeting, on file with the PB.

two choices. From a USA law standpoint, the rule for a payment system would default to the choice of the receiving side. Therefore, the delegates of the USA suggested that a similar default rule for interlinking systems of wCBDCs may need to be considered.

- 11 It was noted that certain projects from the Bank of International Settlements (BIS) have implemented CBDC transfers through the creation of a token and the use of a bridge to reach the receiving jurisdiction, where the token is extinguished and re-created on the other side of the bridge. The delegates of the USA noted that the end-to-end cross-border movement of the wCBDC would nonetheless give rise to questions of applicable law.
- 12 Finally, EG members discussed potential challenges with respect to the choice of law made by the central bank. The delegates of the USA suggested that the central bank likely makes a choice of law, but there may be situations where the bank does not have a rule concerning an unanticipated issue. Another gap may exist when a wCBDC circulates widely and is transacted on a platform different than the original one where it was issued. In such cases, the wCBDC would leave the purview of the issuing central bank and its choice of law.

III. Characteristics of CBDCs (Secretariat Note 3.1/2024: Lists of CBDC functions and use cases; Scope Paper, Issues 1 and 9)

- 13 The EG was referred to the two items identified as areas of study with respect to characteristics of wCBDCs: fungibility with non-digital currencies and whether centralisation / decentralisation makes a difference in the jurisdiction and applicable law of wCBDCs. EG members were asked whether they would propose any other characteristics for consideration. An expert noted that the question of fungibility should be revisited during the discussion on legal tender because the matter of fungibility will be clearer when considering who is obliged to accept the wCBDC and who is not.

IV. Functions of CBDCs (Secretariat Note 3.1/2024: Lists of CBDC functions and use cases)

- 14 The list of functions of CBDCs developed in the first working meeting was considered by the EG:
- a. means of payment (see Report of the first working meeting of the EG)
 - i. requirement to accept as payment (mandatory acceptance rules);
 - ii. discharge / satisfaction of payment obligations;
 - iii. transfers;
 - iv. holding;
 - v. use as collateral;
 - vi. settlement / ultimate finality;
 - b. holding as a store of value;
 - c. purchases of foreign currency;
 - d. legal tender (Scope Paper, Issue 14);
- 15 An EG member noted that these issues could eventually be combined into three or four different categories, although all issues are important and require study. The EG member suggested that the categories could be, for example, sovereign issues under the purview of the issuing central bank (such as issues (a)(i) and (c) above); transactional issues (implicating the law of obligations); and law governing proprietary issues (such as collateral and perfection). An expert noted the close linkage between transfers and payments and suggested that transfer may be a broader activity

since it is possible to make transfers, for example between two wallets held by the same entity, without effecting payment.

- 16 Another expert noted that the central bank or authority that issues the wCBDC would be the primary actor to consider. In certain other instances, however, such as the use of wCBDCs as collateral, the primary relationship would be between the two parties to the transaction. Different policy considerations could emerge, whether the matter is about the issuance or nature of a wCBDC, as compared to transactional issues involving a wCBDC.

V. Actors (Secretariat Note 4/2024: List of wCBDCs actors)

- 17 The EG was referred to the list of actors developed for the second working meeting, by request of the EG members, contained in Secretariat Note 4/2024. The list of actors was assembled to assist the EG in their discussions as to the types of intermediaries that may participate in wCBDC systems. The list includes:

- a. central banks;
- b. commercial banks / private sector banks;
- c. technology / platform providers, among which,
 - i. DLT providers
 - ii. bridges
 - iii. smart contract providers
 - iv. automated market makers (AMM)
 - v. liquidity saving mechanisms (LSM)
 - vi. other technical services (e.g., data protection and encryption solutions providers);
- d. payment service providers (PSPs);
- e. non-bank financial institutions;
- f. international financial institutions;
- g. domestic regulatory authorities;
- h. and others.

- 18 To the list above, experts suggested the inclusion of real-time gross settlement platforms, foreign States that participate in the cross-border payment systems, financial market infrastructures, non-bank and non-PSP institutions, and international or multilateral regulatory authorities. One expert noted that regulatory authorities would better be described as “supervisory” rather than “domestic”. The experts also agreed to include ancillary service providers which act as agents. One expert mentioned the relevance of agents in this discussion, given that they might be the primary interface between the ultimate economic parties of interest and the system, and this might also be relevant when considering the use of wCBDCs as collateral. Therefore, it would be helpful to note the agents and how they interact with the system to analyse what is unique and what is not unique about agency issues with respect to wCBDCs.

VI. Role of issuers

- 19 In relation to the role of issuers, two actors were listed for discussion, stemming from the discussion at the first working meeting: (a) registrars; and (b) transfer agents. One expert noted that these two terms are not routinely used in the case of central banks. Another expert noted that these two terms

are used in the context of securities law and that in the context of wCBDCs, it was a question of how to record or evidence the underlying debt obligation or promise of a central bank. Therefore, although, to some extent, there would be some similarities in relation to the role of intermediaries in the context of securities, it would be challenging to use these two terms in the context of wCBDCs.

VII. Functions, activities and duties of intermediaries (Scope Paper, Issues 7-8)

20 The EG discussed certain duties and obligations in relation to platform operators, as well as to wallet providers and other enablers of access to service, in respect of holders and in respect of third parties:

- a. duties of platform operators;
 - i. maintaining accounts;
 - ii. transfer and disposition of CBDCs;
 - iii. custodian services;
 - iv. execution of transactions;
 - v. perfection;
- b. duties of wallet providers;
- c. duties of enablers of access to service;
- d. duties in respect of holders;
- e. duties in respect of third parties;
- f. agents of intermediaries.

21 The EG agreed that it would be important to consider the party to whom the duties enumerated in points (a) to (e) of paragraph 20 above is owed. The EG agreed that it would be helpful to have a matrix showing the obligors and obligees of the various duties owed where intermediaries are involved.

VIII. Relationship between parties

22 The EG discussed the distinction between static and dynamic scenarios involving wCBDCs.⁴ Static scenarios are characterised by wCBDCs that remain within a single jurisdiction but involve parties with cross-border elements, such as foreign holders or collateralisation in insolvency cases. Dynamic scenarios refer to the movement of wCBDCs across borders, either physically or digitally, which introduces additional PIL considerations. One expert noted that the choice of law by a central bank – implemented through its platform – could potentially simplify the legal questions arising in both scenarios.

23 Some EG members highlighted, however, that insolvency proceedings present unique challenges, as they combine private and public law elements. It was suggested that existing instruments, such as the HCCH 2006 Securities Convention,⁵ and ongoing work, such as the work of UNCITRAL Working Group V on insolvency, could offer some guidance, although adjustments to the reasoning used in these instruments and scope of the EG's work might be necessary to accommodate the sovereign nature of wCBDCs.

⁴ See terminology “static” and “dynamic” in the Report of the first working meeting, para. 20.

⁵ The *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and 2006 Securities Convention.

- 24 One EG member noted that wCBDCs, as sovereign-backed digital currencies, differ from privately issued digital assets. Some delegates and other experts emphasised the need to analyse the multi-layered nature of platforms hosting wCBDCs, particularly where private sector systems interact with central bank frameworks, as these interactions may give rise to additional PIL questions.
- 25 The EG agreed on the structure of future work on this item and emphasised the need to examine specific categories, including (1) insolvency, (2) restitution, (3) transfers, (4) payment obligations, and (5) collateral. It was agreed that static and dynamic scenarios should be explored through use cases, focusing on whether wCBDCs physically cross borders or present cross-border elements via the parties involved.

IX. Issues in relation to third parties (Scope Paper, Issues 7-8)

- 26 Experts discussed the list of seven issues in relation to third parties from the Scope Paper:⁶
- a. priority;
 - b. negotiable instruments and the take-free rule;
 - c. privity of contract;
 - d. tort-related claims, e.g., failure to pay third parties despite instructions of the initiator of payment;
 - e. disposition;
 - f. finality; and
 - g. collateral.
- 27 Some experts suggested collapsing these issues into fewer categories (relating to contract, tort, property, etc). It was agreed that grouping related issues, such as priority and take-free rules (which are closely related) under one heading, or grouping all issues that deal with proprietary rights under one heading, would improve the clarity and accuracy of the analysis.
- 28 Experts also discussed the treatment of consumers as third parties. Experts highlighted that consumer issues are often excluded from substantive law and PIL instruments due to varying public policy considerations across jurisdictions. Some experts suggested excluding consumer-related matters from the analysis of contractual issues but retaining these matters in proprietary contexts to ensure clarity in ownership and claims ranking for wCBDCs. It was also proposed that consumer considerations be postponed to later phases of the project when rCBDCs are addressed.
- 29 The EG requested that the PB refine the categorisation of issues in relation to third parties into broader groups while preserving detailed sub-categories.

X. Applicable law (Scope Paper, Issue 6)

A. Discussion of cases in the intersessional submissions from the USA

- 30 The EG engaged in a detailed discussion of the five hypothetical examples provided in the Intersessional Submission from the Experts Designated by the USA concerning the transfer of CBDCs. The five examples illustrate diverse scenarios involving the cross-border use and transfer of CBDCs, highlighting the roles of intermediaries and central banks:

⁶ See Report of the first EG meeting, para. 27; Scope Paper, Issues 7-8.

Example 1: A Country A entity (Entity A) holds Country B CBDC through a Country B intermediary (Intermediary B). Entity A seeks to exchange the Country B CBDC for bank deposit money denominated in Country B currency, with the exchange facilitated by Intermediary B.

Example 2: A Country A entity (Entity A) holds Country B CBDC through a Country A intermediary (Intermediary A). Entity A seeks to exchange the Country B CBDC for bank deposit money denominated in Country B currency, with the exchange facilitated by Intermediary A.

Example 3: A Country A entity (Entity A) holds Country B CBDC through a Country A intermediary (Intermediary A). Entity A seeks to exchange the Country B CBDC for bank deposit money denominated in Country A currency, with the exchange facilitated by Intermediary A.

Example 4: A Country A intermediary (Intermediary A) seeks to transfer Country A CBDC to a Country B intermediary (Intermediary B).

Example 5: A Country A entity (Entity A) seeks to transfer Country A CBDC to a Country B entity (Entity B), with the transfer facilitated by intermediaries in both jurisdictions (Intermediary A in Country A and Intermediary B in Country B).

31 The experts designated by the USA noted that each example could follow the proposition that the law chosen by the central bank to govern the platform would likely apply to all participants of the platform. In response to these examples, experts discussed various points for clarification and potential further study:

- a. What are the ways in which legal disputes could arise in these examples, and would the governing law adequately address the matter?
- b. Can parties to a transaction, including any intermediaries involved, make arrangements between themselves as to the governing law? To what extent could parties deviate from the platform's governing law?
- c. What PIL challenges may arise when a participating intermediary is located off the main platform or "off-chain"?
- d. What unanticipated intermediary functions may exist, and would such functions introduce considerations that may lead to a different applicable law rule?
- e. What law applies at or across the bridge to a different platform, or to the wrapping of a currency to send it through a bridge?
- f. What similarities and differences exist if the parties were transacting in physical currency rather than digital currency?
- g. What is the law applicable to an agency relationship?

32 Experts discussed the transaction process where a holder transfers wCBDCs to an intermediary, which then converts the wCBDCs into local bank deposit money. This sequence underscored the cross-border nature of such transactions, particularly the intermediary's custodial role and the central bank's authority in setting governing rules for the wCBDCs system. The platform hosting the wCBDC was recognised as a critical factor in determining the applicable law, which may create a cascading effect such that standard rules at the user level are established at the platform level. Nonetheless, experts acknowledged that bilateral agreements between the intermediary and the holder might govern specific aspects of the transaction.

33 Questions arose about the extent to which the intermediary's legal jurisdiction should influence the choice of law, particularly given the intermediary's significant role in the transaction. Some experts questioned whether the law of the intermediary's location should govern the relationship or whether the central bank's platform rules should take precedence. Others suggested that a clear distinction

must be drawn between regulatory and proprietary issues, where uniformity is critical, as opposed to contractual issues, where parties may be allowed greater autonomy in determining the governing law.

34 Experts discussed the hypothesis that the central bank's platform rules could serve as the default choice of law, while allowing for exceptions in cases involving bilateral agreements between the holder and intermediary. The EG agreed to consider varying intermediary roles and the potential for divergence in applicable laws based on the specific dynamics of the transaction.

35 Some experts also discussed whether the nature of the wCBDC itself, as a payment system or as a form of money, would materially affect the choice of law framework. The consensus was that, at least in these examples, such distinctions did not require separate legal treatment, but further exploration of different scenarios might be necessary.

B. Party autonomy

36 Experts emphasised the importance of party autonomy in determining applicable law, borrowing from established Conventions and instruments for language in drafting potential provisions. In cases where party autonomy is absent or invalid, experts discussed the need for default rules and the identification of objective connecting factors.

C. Connecting factors

37 The experts addressed the list of connecting factors discussed during the first working meeting including the location of platform layers, the issuing bank, the holder, and the intermediary. One expert emphasised that the importance and weight of these connecting factors might vary depending on the category of legal issues being considered. For example, contractual disputes might prioritise the parties' location and the laws governing their agreements, while proprietary issues might place more emphasis on the location of the asset. One expert highlighted the necessity of creating a structured methodology to address the interplay between the various possible connecting factors while ensuring consistency and legal certainty in cross-border wCBDC operations.

D. Nature of claims in question

38 Experts agreed on the importance of streamlining the categories of claims to enhance clarity and consistency in the analysis done by the EG. They agreed that restitution should be retained as a separate category on the list due to the different interpretations given to "restitution" across common law and civil law jurisdictions. For instance, in some jurisdictions, restitution is viewed primarily as a remedy tied to equitable relief, while in others, it pertains to property claims and the right to recover assets. Experts noted that this variation highlighted the necessity of developing a shared lexicon for the EG (and potentially the audience of any future instrument) to ensure a common understanding among experts from diverse legal traditions and avoid potential misinterpretations.

39 Experts explored the question of whether it might be necessary to classify the nature of claims. One expert indicated that such classifications might significantly influence the determination of connecting factors. The EG agreed to revisit the topic in subsequent discussions.

E. Aspects of the claims in question (Scope Paper, Issues 10-12)

40 The EG returned to the implications of distinguishing between proprietary and contractual issues. The EG agreed that proprietary issues, such as ownership and competing claims, may require a single law to avoid systemic incoherence. However, contractual matters may permit greater party

autonomy. For example, contracts between participants could be subject to mutually agreed laws, provided such flexibility does not undermine broader systemic objectives.

- 41 Experts proposed clarifying the terminology used to describe the infrastructure supporting the wCBDCs, the terms “platform”, “system” and “infrastructure”. It was proposed that the term “platform” should primarily refer to the technological framework that enables the core functionalities of wCBDCs, including their issuance by the central bank, their transfer between participants, and their eventual redemption. The term “system” was described as encompassing a broader conceptual framework that integrates not only the platform but also the participants, such as central banks, intermediaries, and end users. It also includes the associated operational rules, legal agreements, and governance structures that collectively enable the functioning of the wCBDCs ecosystem. Meanwhile, the term “infrastructure” was suggested to denote an even more expansive construct, combining the regulatory, institutional, and technical frameworks that underpin the wCBDCs system. The term “infrastructure” would include the overarching legal and policy frameworks set by central banks and other regulators, as well as the integration of technological and operational systems into broader financial markets and payment networks.

XI. Taxonomy (Secretariat Note 1.1/2024: Provisions of instruments discussed at the first working meeting; Scope Paper, Issues 2-4)

- 42 Keeping in mind the specific purposes of each instrument, the EG considered language in the texts of provisions that may be helpful for wCBDCs, including provisions and definitions from the HCCH 2006 Securities Convention, HCCH 2015 Principles,⁷ HCCH 1978 Agency Convention,⁸ HCCH 2005 Choice of Court Convention,⁹ UNIDROIT Principles on Digital Assets and Private Law (PDAPL), UNCITRAL Model Law on Secured Transactions (MLST), Model Law on Electronic Transferable Records, and the UNCITRAL Taxonomy of legal issues related to the digital economy. The PB cautioned that the definitions cited were used for the specific purposes of each instrument.
- 43 **“Digital Assets” and “Electronic Records”:** An expert noted that the notion of “digital assets” in the PDAPL is broader than that of “electronic records” in UNCITRAL instruments because unlike the former, the latter does not necessarily cover those assets that do not have a paper equivalent. The expert also noted that many central banks decided to exclude CBDCs from the broad definition of digital assets for regulatory reasons. In this regard, the key question would be whether such carve-outs have material implications or whether this type of carve-out would not be necessary from a PIL perspective. The expert thus noted that it would be helpful to proceed, as had been agreed on in the first meeting, with the study of use cases before committing to any definitions.
- 44 **“Possession”:** One expert noted that the term “possession”, as used in both the HCCH 2006 Securities Convention and the UNCITRAL MLST, could be included for consideration. This would be particularly relevant where wCBDCs are used as collateral, and could help to avoid confusion, given that the Model Law defines possession as “actual possession of a tangible asset” instead of constructive or fictive possession. The expert further noted that some jurisdictions reserve the term “possession” for actual possession of physical objects while other jurisdictions also use the term with respect to intangible assets. Therefore, it would be necessary to consider the definition of the term “possession” or perhaps avoid using it if it is limited to tangible assets. The EG requested that

⁷ The *Principles on Choice of Law in International Commercial Contracts*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and “2015 Principles on Choice of Law in International Commercial Contracts”.

⁸ The *Convention of 14 March 1978 on the Law Applicable to Agency*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and *Convention of 14 March 1978 on the Law Applicable to Agency*.

⁹ The *Convention of 30 June 2005 on Choice of Court Agreements*, available on the HCCH website at www.hcch.net under “Instruments” then “Conventions and other Instruments”, and 2005 Choice of Court Convention.

the PB compile a table with terms which may, in different contexts and instruments, carry different definitions, so as to aid the EG in its comparison of these terms.

- 45 **“System” and “Account”:** One expert raised a question about the definition of “systems” in the UNIDROIT PDAPL. The experts were pointed to paragraph 5.6 of the commentary of the PDAPL, which suggested that the word “system” is used in a broad sense and would include protocols, platforms, applications, transfer arrangements and networks. The expert designated by UNIDROIT confirmed the adoption of a broad definition of the term “system” in the PDAPL, the intent of which was to cover anything that can be shared in a fully decentralised way. Another expert remarked that it was important to avoid narrowly defining terms at this stage, and suggested that once the EG had come to agreement on which terms would fall within its work, it could be more deliberate about how each term is being used. For example, if the EG focuses on a certain type of “system”, then it would be necessary to elaborate further on this point.
- 46 Another expert agreed that the definition of a “system” should be broad enough to cover different systems implemented by different countries and that it was important that the wCBDC could be recorded and transacted on those systems. The expert indicated that the digital Euro is envisaged to be intermediated by payment institutions and banks where the individual users would have accounts with these intermediaries. However, the actual holding of the CBDC would not be in the account itself but would instead be recorded in the Digital Euro Settlement Infrastructure, which is with the European Central Bank. The expert also pointed out that in the European Union (EU), the payments legislation only refers to accounts instead of wallets, but that the term in the EU context is broad enough to encompass crypto assets in the wallets. Therefore, the expert suggested that the definition of “account”, similar to “system”, should be broad enough to encompass all the different tokenised asset types.
- 47 An expert noted that, given the EU example, even if an intermediary holds the account, the asset and the transactions would be recorded in the central bank system. The expert noted this was the reason why, in the intersessional submission from the experts designated by the USA, it was important to distinguish between the roles of intermediaries, as some of them actually give access to an account rather than to traditional account holding activities.
- 48 **Using language from earlier defined terms:** An expert noted the complexity of using definitions from other documents or other texts as examples in the context of wCBDCs. In particular, the expert noted that the UNIDROIT DAPL Principle 5 text mentions “the law expressly specified in the asset”, or failing that, “the law of the system”, or failing that, “the law of the issuer seat”. The central bank might not specify the law applicable to a wCBDC, meaning that in the case of the UNIDROIT PDAPL, it would fall back to the law of the system. Given the discussion on the definition of a “system”, the definition of a “system” could be considered functionally in that it is disseminated throughout the financial structure and that might as well not contain a law expressly identified. The expert noted that the applicable law would probably be that of the issuer’s seat, which would be assumed to be the central bank. In turn, if the HCCH 2006 Securities Convention were to be considered, it would depend on whether there is an intermediary as defined in Article 1, which says that registrars and transfer agents are not intermediaries. In contrast, central securities depositories are considered intermediaries in that instrument unless otherwise decided by the Contracting Parties. The expert therefore suggested that for CBDCs, there is a need to define terms *de novo* because CBDCs have thus far not yet been structured.

XII. Public policy considerations / Mandatory rules (Scope Paper, Issue 5)

- 49 The EG considered relevant articles of the HCCH 2006 Securities Convention (Art. 11), the HCCH 2015 Principles (Art. 11), and the UNCITRAL MLST (Art. 93). One expert highlighted the different ways in which the public policy considerations were organised in these instruments, in particular

given the differences between the HCCH 2006 Securities Convention and the other two instruments, which were drafted relatively close to each other in time. The expert added that the latter two instruments focus on the stage at which the public policy considerations can be made and whether reference can only be made to policies of the forum State or if they could also be made to policies of the State that would govern in the absence of a choice of law clause. Looking at this kind of model would be particularly useful for the work of the EG in ultimately drafting any provisions on public policy and overriding mandatory rules.

- 50 Other experts emphasised the fact that these provisions are drafted in the context of the purpose of the respective instruments and that, while they provide useful language, any text used for the work of this EG should aim at the objectives that the EG itself is working towards.
- 51 The EG requested that the PB prepare a Secretariat Note with a compilation of the background of the provisions on public policy and overriding mandatory rules that are found in HCCH instruments.
- 52 The PB moved on to discuss the list of the following items concerning public policy and mandatory overriding considerations contained in paragraphs 16 and 29 of the report of the first working meeting:
- a. consumer protection;
 - b. party autonomy;
 - c. government sovereignty / *lex monetae*;
 - d. clarity and certainty of payment systems;
 - e. data protection and privacy;
 - f. cybersecurity;
 - g. anti-money laundering and countering the financing of terrorism;
 - h. economic sanctions;
 - i. arbitration;
 - j. financial stability and monetary policy;
 - k. classification as fiat currency of a new type of financial instrument (for reasons of applicability of domestic regulatory regimes).
- 53 One expert suggested that this list be categorised into fewer items. They suggested that, for example, “government sovereignty / *lex monetae*” (item (c)) and “classification as fiat currency or a new type of financial instrument” (item k) concern similar considerations, and that some sovereignty issues have already been carved out regarding issuance and redemption.
- 54 Another expert suggested that public policy considerations may differ depending on the characterisation at hand, for example, as property, contracts, torts or restitution. It was therefore suggested that this list serves, first, as a checklist of issues to be cognisant of, and second, to the extent that these public policy considerations need to be addressed, the lists would act as a reminder for situations in which it is inappropriate to override domestic rules.
- 55 The EG agreed that the list should be kept in mind, noting that some of the considerations would need to take place after the exercise of characterisation has been completed. The EG requested that the PB reorganise the list to categorise the items in it. Experts also suggested adding financial inclusion and sustainability to the list of public policy considerations.

XIII. Recognition of CBDCs in foreign jurisdictions / CBDCs as legal tender

- 56 The EG turned to consider the matter of the (non-)recognition of wCBDCs in foreign jurisdictions and whether the work of the EG should include consideration of the legal tender status or otherwise of wCBDCs. One expert suggested that non-recognition of a CBDC in a foreign jurisdiction should be considered a public policy issue. The expert suggested that the EG's focus should be on what the parties to a transaction have the autonomy to agree to, which is whether they can discharge obligations. Referring to the digital Euro, another expert noted that it could be under certain conditions distributed in countries outside the Eurozone, but that there would be no requirement that it is recognised as legal tender in these countries.
- 57 One expert noted that in some jurisdictions the concept of legal tender might be less important because parties are free to transact and discharge obligations in ways other than payment with legal tender. The expert suggested that the question would be more properly focused on whether the local jurisdiction is permissive or prohibitive of CBDCs, which in the latter case would be a public policy consideration. Another expert added, by giving the example of stablecoins, that what is relevant is whether the transaction with and the ownership of the wCBDC are recognised, regardless of the legal tender status or otherwise of the wCBDC.

XIV. Grounds for jurisdiction

- 58 On whether jurisdictional issues could arise due to a prospective foreign judgment being incapable of enforcement in a jurisdiction that does not recognise the CBDC in question as legal tender, one expert indicated that in their jurisdiction, the issue of non-recognition and enforcement of a subsequent judgment has typically been taken into account in the *forum non conveniens* analysis. To the extent that there was concern that a case might not find a forum if a court refuses to take jurisdiction or considers that it is not competent to hear the case, the expert proposed that the EG should consider whether existing rules of jurisdiction can already address these circumstances.
- 59 The EG also discussed general issues concerning jurisdiction, which fall into three levels. The first concerns the role of party autonomy and the selection of the forum by the central bank or the contractual agreement between parties. The second concerns possible default grounds for jurisdiction in the absence or invalidity of the selection of a forum. The third relates to considerations arising from matters requiring specialised jurisdiction, for example, in the case of torts.
- 60 The experts indicated that the issue of systems and platforms and, ultimately, the wCBDC design, were relevant to this discussion as these issues would impact on the location of the accounts and any intermediaries involved. One expert noted that, typically, the account is held with the intermediary, but there could be a situation in which the account is held in crypto form on a self-hosted wallet. However, the experts added that it was unlikely that a CBDC would be issued in this way. Another expert expressed reservations about the use of the term "location" in the context of the work of the EG, given the complexities of decentralised ledger systems and, more generally, the use of it in the context of digital assets.

XV. EG recommendations

- 61 In light of the discussions, the EG recommends that the Council on General Affairs and Policy (CGAP) approve the continuation of the EG's work, including two further meetings in 2025 (potentially in March and September), as well as intersessional work.
- 62 The EG also recommends the continued bifurcation of its work to focus first on wCBDCs before moving on to consider rCBDCs. The EG also agreed to include for discussion in its next meetings the potential deliverable(s) of the EG.

Report of the Technical Roundtable Adjacent to the Second Working Meeting of the EG on CBDCs, 14 November 2024

- 1 On 14 November 2024, the Permanent Bureau (PB) organised a technical roundtable adjacent to the second working meeting of the EG on CBDCs, consisting of a series of presentations on CBDCs aspects that are relevant for private international law (PIL) considerations. This report summarises the key points of the presentations and discussions that took place during the technical roundtable.

- I. wCBDCs and the Global Financial Network: Some Private International Law Considerations, by Heng Wang, Professor of Law, Singapore Management University**

- 2 The presenter outlined the shift that the global financial system is witnessing, from a centralised framework to a more decentralised model characterised by regional clusters of States developing CBDCs. This evolving structure raises concerns about fragmentation and competition. The relationship in a cross-border CBDC or wholesale CBDC (wCBDC) ecosystem contains multiple interconnected actors, including central banks, intermediaries, technology providers, platform administrators, and end-users. Each of these entities plays a distinct role in the operation and governance of the ecosystem, shaping how CBDCs are issued, transferred, and redeemed across borders. Issues such as interoperability, jurisdiction, data sovereignty, and the application of regulatory standards are magnified when transactions span multiple jurisdictions.

- 3 The presenter explained that CBDCs-related disputes may arise among States, public-private entities, or private parties. State-to-State disputes may involve governance, regulatory divergence, or access to shared infrastructure. Public-private conflicts may centre on liability for defective CBDCs, data handling, or regulatory compliance, while private-party disputes might focus on payer-payee relationships, intermediary obligations, or service failures. These issues are compounded by technological vulnerabilities, inconsistent regulations, and interoperability challenges. The presenter highlighted the need for a multi-faceted approach to dispute resolution in light of the following challenges: private contracts provide a foundation but face enforcement challenges; inter-State agreements enable collaboration but lack uniformity; and multilateral mechanisms, such as HCCH instruments, offer consistency and legitimacy but demand significant coordination and trust.

- 4 The unique nature of CBDCs presents complex PIL challenges, including the characterisation of digital transactions, determination of applicable law, and issues of jurisdiction. For example, determining the place of performance in digital transactions involving multiple jurisdictions or resolving conflicts between platform rules and private agreements can be particularly challenging. Additionally, disparities in national regulatory standards may exacerbate legal uncertainties. These challenges emphasised the need for clear legal frameworks to address the cross-border nature of CBDCs use.

- II. The Legal Certainty of Payments in the Era of Central Bank Digital Money, by Rosa Giovanna Barresi, Adjunct Professor, University of Florence, and Filippo Zatti, Associate Professor, University of Florence**

- 5 The presenters highlighted that CBDCs constitute a public monetary instrument with unique attributes, including risk-free value, monetary anchoring, liquidity assurance, and settlement finality. These features distinguish CBDCs from private digital currencies, reinforcing their role as a secure and centralised alternative for digital transactions.

- 6 The presenters opined that wCBDCs will have a critical role in cross-border payment infrastructures, particularly in resolving issues inherent to traditional systems, such as reliance on correspondent banking networks and fragmented regulations. By leveraging distributed ledger technology (DLT), wCBDCs could be identified as capable of offering deterministic settlement finality, improving operational efficiency, and reducing costs. However, according to the presenters, achieving interoperability across jurisdictions and aligning legal frameworks remains a significant challenge.
- 7 The presenters contrasted the deterministic settlement finality offered by CBDCs with the probabilistic nature of stablecoins, and suggested that settlement finality should be presented as a cornerstone of CBDC design. Legal frameworks like the EU Settlement Finality Directive (SFD) were referenced by the presenters as benchmarks. The presenters noted the need for clear rules defining the point at which transactions become irrevocable, especially in multi-jurisdictional contexts.
- 8 Finally, the presenters highlighted issues such as jurisdictional inconsistencies, data confidentiality, and the harmonisation of settlement standards. They also discussed the Financial Action Task Force's (FATF) evolving recommendations on payment transparency, focusing on resolving jurisdictional ambiguities in cross-border payment and funding chains. Against this background, the presenters emphasised the importance of robust governance frameworks, harmonised legal systems, and trust-building mechanisms to support the widespread adoption of CBDCs. Addressing these challenges, the presenters argued, would be essential for CBDCs to realise their potential in revolutionising cross-border payments, enhancing financial stability while maintaining monetary sovereignty.

III. Legal Work of the International Monetary Fund (IMF) on CBDCs, by Adrian Dumitrescu Pasecinic, Senior Counsel, IMF

- 9 The work of the IMF on CBDCs focuses on providing technical assistance to central banks in their discussions concerning the development of CBDC models. The presenter emphasised that the core functions of central banks, including the issuance of CBDCs, must be grounded in the principle of attributed powers to ensure legal certainty and institutional trust.
- 10 The presenter explained the critical importance of ensuring a firm legal basis for CBDC issuance within the mandate of central banks. According to the presenter, this legal basis is essential for establishing trust, legal certainty, and financial stability. To achieve this, many jurisdictions are reforming their central bank laws to explicitly authorise the issuance of CBDCs. For example, Jamaica and the Bahamas have amended their laws to include CBDCs alongside physical banknotes and coins, while other countries, such as Nigeria, interpret existing legal provisions as sufficient to support digital currency issuance.
- 11 The presenter indicated that a key distinction in CBDC design lies in whether the currency is account-based or token-based, as this has significant legal implications. Account-based CBDCs are akin to existing central bank book money, with well-established legal frameworks governing their issuance and use. In contrast, token-based CBDCs represent a novel form of money that necessitates new legal considerations, as they do not involve the direct contractual relationships characteristic of account-based systems.
- 12 Finally, the presenter addressed the legal tender status of CBDCs with examples illustrating how legislative reform can grant CBDCs the same legal status as traditional currency. For example, in Jamaica, CBDCs are explicitly designated as legal tender, and the European Union's proposed digital Euro regulation includes detailed provisions for legal tender status, including exceptions to mandatory acceptance. These exceptions aim to balance practical concerns such as digital

infrastructure limitations and small business capabilities with the broader objective of promoting the use of CBDCs.

IV. Bank for International Settlements (BIS): Project Agorá, by Marino Vollenweider, Counsel, BIS

- 13 The presenter provided an overview of Project Agorá by the BIS,¹⁰ a global initiative aimed at enhancing cross-border payments through a unified ledger. This project, involving seven central banks and over 40 regulated financial institutions, seeks to improve the traditional correspondent banking model. It explores the use of tokenised central bank and commercial bank money to enable more efficient, transparent, and cost-effective payment solutions while addressing regulatory and operational challenges.
- 14 Key aspects of Project Agorá include the exploration of payment versus payment settlement models, which aim to synchronise payments in different currencies, minimising risks and delays in cross-border transactions. The project leverages smart contracts to enable “atomic” settlement, ensuring that transactions are either fully completed or entirely voided. Compliance with “Know Your Customer” (KYC), Anti-Money Laundering (AML), and sanctions frameworks would be built into the platform through privacy-preserving tools and integrated compliance checks, conducted collectively upfront within the payment chain. Project Agorá uses the concept of a unified ledger that serves as a single venue for recording ownership, governing transactions through programmable rules, and executing operations via a smart contract layer.
- 15 The presenter discussed a list of PIL aspects of Project Agorá, with focus on issues such as settlement finality, applicable law, and jurisdiction in the context of tokenised central bank money. For example, PIL questions arise concerning:
- a. Claims: Where is the contractually specified place for performance on a unified ledger?
 - b. Concerning the perspective of property law, where the law normally applicable would be directed by the principle *lex rei sitae*, where would the location be in the case of tokenised central bank money? Would the Place of the Relevant Intermediary Approach (PRIMA) rule be relevant?
 - c. If payment institutions among themselves are subject to the law and court of one jurisdiction but the relationships with their customers is subject to the law and courts of another jurisdiction, would gaps arise that will need solutions rooted in PIL?
- 16 The presenter also raised questions concerning the challenges of providing for legal consistency across several jurisdictions. Finally, the presenter delved into questions concerning the legal status of smart contracts and challenges concerning traditional connecting factors. The use of smart contracts would raise questions about their legal enforceability, and their potential to resolve disputes.

¹⁰ Information about Project Agorá is available at the following link:
<https://www.bis.org/about/bisih/topics/fmis/agora.htm>.

Anexo VI: List of Participants of the second working meeting

List of participants - HCCH Experts' Group on Central Bank Digital Currencies (CBDCs)
Second meeting - 12-14 November 2024



Family name(s)	Name(s)	State or Organisation	Position	Status of attendance (online/on site)
DOSANI	Muhammad	Australia	Assistant Director, Digital Asset and Crypto Unit, Treasury	Online
LYON	Francisca	Chile	Senior Lawyer, Legal Department of the Central Bank of Chile	Online
CAI	Mingyang	China	Legal and Compliance Division of Digital Currency Institute of the People's Bank of China	Online
CHUNG	Tim	China	Chief Counsel (Advisory), Office of the General Counsel, Hong Kong SAR Monetary Authority	Online
CUI	Hongyu	China	First Secretary, Department of Treaty and Law of the Ministry of Foreign Affairs	Online
LI	Jingyang	China	Judge, The Second Civil Division of the Supreme People's Court	Online
LIANG	Wenwen	China	Associate Professor, Wuhan University	Online
LYU	Yuan	China	Innovation Division of Digital Currency Institute of the People's Bank of China	Online
ROSALES	Fátima Raquel	El Salvador	General Attorney's Office	Online
VONDRACEK	Ondrej	European Commission	Legislative Officer	Online
PAPAPASCHALIS	Panagiotis	European Commission	Principal Legal Council	Online
ŽVELC	Rok	European Commission	Legislative Officer [DG FISMA]	Online
McARDLE	Bríon	Ireland	Administrative Officer Banking Division - Department of Finance	Online

NI RUAIRC	Sarah	Ireland	Assistant Principal Officer Banking Division - Department of Finance	Online
SINAI LIVYATAN	Michal	Israel	Assistant Legal Counsel, Legal Department, Bank of Israel	Online
DE FRANCESCHI	Alberto	Italy	Full Professor of Private Law, Digital Law and Environmental Sustainability at the University of Ferrara	Online
ÁLVAREZ-RENDON	Martha Angélica	Mexico	Director of International Law II, Ministry of Foreign Affairs	Online
CAMP MEJAN CARRER	Luis Manuel	Mexico	External Adviser of Ministry of Foreign Affairs on Private International Law	Online
YUEN	Paul	Singapore	General Counsel, Monetary Authority of Singapore	Online
LIM	Delphia	Singapore	Director (International Legal Division), Ministry of Law	Online
QUEK	Zhao Feng	Singapore	Senior Legal Counsel, Monetary Authority of Singapore	Online
BEAVES	Antony	UK	Senior Legal Counsel, Bank of England	Online
RISNESS	John	UK	Legal Counsel - Bank of England	Online
VINCENT	Keith	UK	Senior Lawyer, HM Treasury	Online
COHEN	Neil	USA	Professor of Law at Brooklyn Law School	Online
KHAWAM	Joseph	USA	Attorney-Adviser at the Department of State's Office of the Legal Adviser	Online
ODINET	Christopher	USA	Professor of Law at the University of Iowa College of Law	Online
RUBEN	Andrew	USA	Senior Attorney at the Board of Governors of the Federal Reserve System	Online
SMITH	Edwin	USA	Partner at Morgan, Lewis & Bockius LLP	Online
TORREGROSSA	Joseph	USA	Associate General Counsel at the Federal Reserve Bank of New York	Online
CHEYTANOVA	Dessi	BIS	Deputy General Counsel	Online

DIMITRIJEVIC	Marko	ELI	ELI member	Online
LOEBER	Klaus	IBA	Member of the IBA Banking & Financial Law Committee Advisory Board	Online
BECHARA	Marianne	International Monetary Fund		Online
DUMITRESCU PASECINIC	Adrian Dorel	International Monetary Fund		Online
CASTELLANO	Giuliano	UNIDROIT	University of Hong Kong	Online
GOH ESCOLAR	Gérardine	HCCH	Deputy Secretary General of the HCCH	In person
CHENG	Harry	HCCH	Legal Officer	In person
SALINAS PEIXOTO	Raquel	HCCH	Legal Officer	In person
DO	Minho	HCCH	Secondee (Korea)	In person
WAN	Diana	HCCH	Secondee (Hong Kong SAR)	In person
WANG	Jianfa	HCCH	Intern	In person