United Nations A/CN.9/1258

General Assembly

Distr.: General
17 December 2025

Original: English

United Nations Commission on International Trade Law
Fifty-ninth session

Exploratory work on secured transactions and digital platforms – Colloquium on "harmonizing law in the age of digital trade and finance" (New York, 10–13 February 2026)

Note by the Secretariat

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I. Introduction

1. At its fifty-eighth session (Vienna, 7–23 July 2025), the Commission requested the secretariat (i) to continue its exploratory work on secured transactions using new types of assets and (ii) to commence exploratory work on digital platforms and private law (A/80/17, paras. 22(d) and (e), 231 and 266). The Commission also agreed to hold colloquiums on these topics, utilizing the conference resources allocated to the forty-second and forty-third sessions of Working Group I (A/80/17, para. 347(c)).

2. This note outlines the background and objectives of exploratory work on these distinct yet related topics on the Commission's work programme (chapter II). It also provides an overview of the colloquium that is scheduled to take place at United Nations Headquarters in New York from 10 to 13 February 2026 to advance exploratory work on both topics (chapter III). The outcomes of the colloquium, as well as other exploratory work conducted by the secretariat, will be reported to the Commission at its fifty-ninth session, in 2026, for consideration and guidance on possible next steps.

II. Discussions at the Commission

A. Secured transactions using new types of assets and their treatment under the UNCITRAL Model Law on Secured Transactions

3. At its fifty-eighth session, in 2025, the Commission had before it a report on the colloquium on "navigating the new era of digital finance – UNCITRAL Model Law on Secured Transactions and the use of new types of assets for secured financing" (A/CN.9/1201), which was held at United Nations Headquarters in New York on 20 and 21 February 2025. The colloquium focused on a wide range of new types of assets, with a focus on digital assets, data, carbon credits, and negotiable instruments and documents in electronic form (with no paper-based equivalent).[1]

4. The Commission also had before it a note by the secretariat outlining several issues to be considered in relation to possible revisions of the UNCITRAL Model Law on Secured Transactions (MLST), namely, (i) the definition and characterization of new types of assets, (ii) the creation of security rights in such assets, (iii) means to achieve third-party effectiveness, (iv) priority among competing security rights, (v) rights and obligations of the parties and third-party obligors, (vi) enforcement and (vii) conflict-of-law rules (A/CN.9/1210, paras. 17–28).

5. While the view was expressed that the MLST already sufficiently addressed those issues, it was widely felt that the secretariat should be tasked with exploratory work to identify concrete gaps that required updates to the MLST or other texts on secured transactions prior to any work being undertaken by a working group. In support, it was said that such a stocktaking exercise could further assist States implementing secured transactions reforms on the basis of the MLST (A/80/17, para. 230).

6. After discussion, the Commission instructed the secretariat to continue to monitor developments in the area, in particular those of other international organizations, and as part of its preparatory work, to convene an expert group meeting or a colloquium involving representatives of relevant international organizations to define the scope and form of any future work and to report back to the Commission in 2026 (A/80/17, para. 231).

[1] Additional information available at https://uncitral.un.org/en/colloquiumsecuredtransactions2025.

7. Following the Commission session, the secretariat convened an expert group meeting on 28 November 2025 to further consider the issues identified so far.[2] The expert group meeting was held in conjunction with the 8th Conference on International Coordination of Secured Transactions Reform (Hong Kong SAR, China, 27–28 November 2025), which was co-hosted by the secretariat in its capacity as chair of the executive committee of the Joint Network for Coordinating and Supporting Secured Transactions Reforms.[3]

B. Digital platforms and private law

8. At the fifty-eighth session of the Commission, broad support was expressed for a proposal by the United Arab Emirates and Spain for possible future work on legal aspects of digital trade, with a special focus on digital platforms (A/CN.9/1227). After discussion, it was agreed that exploratory work should be conducted, with a focus on digital platforms and private law, including an assessment of the desirability and feasibility of developing a harmonized legal text, possibly in the form of a model law (A/80/17, paras. 262–266).

9. Several points were highlighted during discussions at the Commission:

(a) The proposal draws connections with previous exploratory work carried out by the secretariat under a 2018 mandate from the Commission to explore legal issues related to the digital economy, which looked at digital platforms (referred to as "online platforms");

(b) Digital platforms have become a defining feature of the digital economy, serving not only as intermediaries but also as architects of online marketplaces governed by platform rules;

(c) While certain digital platforms are the subject of regulatory regimes in some jurisdictions, the operation of digital platforms fundamentally relies on contracts – between the platform operator and users, and among users themselves – and that the application of existing private law to these arrangements raises novel legal questions, including (i) the characterization of the platform–user contract, (ii) the allocation of rights and obligations (including due diligence duties), and (iii) the remedies available to enforce compliance with platform rules;

(d) Future work should be guided by the principles of transparency, equity and due diligence, and should aim at promoting greater openness and inclusivity in the digital economy, as well as greater system interoperability and integration in global supply chains;

(e) Future work should avoid regulatory issues such as data privacy and protection and consumer protection, as well as intellectual property and competition law.

10. The UNCITRAL secretariat has prepared a discussion paper to guide exploratory work, which is set out in the annex to this note. The paper builds on the discussions at the Commission and the discussions that took place at the UAE-UNCITRAL Global Summit on Digital Trade and Digital Platforms (Dubai, United Arab Emirates, 8–9 December 2025), which was co-organized with the Ministry of Economy and Tourism of the United Arab Emirates.

[2] Additional information available at https://aiifl-event.law.hku.hk/8th-conference-secured-transactions-reforms.

[3] Additional information available at https://uncitral.un.org/en/colloquiumsecuredtransactions2025.

III. Colloquium on “harmonizing law in the age of digital trade and finance – digital assets and platforms”

A. Concept

11. The colloquium brings together the two topics under a common theme of digital trade and finance. As has been recognized within the Commission and its working group, digital trade is characterized by new types of assets, new ways of trading and new ways of financing trade. These features of digital trade are often sustained by new digital ecosystems and share a dependence on data. They also present opportunities for deploying decentralized information systems as well as new techniques for the automated processing of data, including those associated with artificial intelligence.

12. Digital trade is reshaping the legal relationships that define international trade, yet legal frameworks have not kept pace with these developments or have responded in different ways. This matters because the resulting fragmented legal treatment may create uncertainty and hamper cross-border trade:

(a) For digital assets, uncertainty as to their legal nature and associated rights, including security rights, can limit their use as collateral, thus hindering access to credit and stymying innovation;

(b) For digital platforms, uncertainty as to the rights and obligations between platform operator and platform user can limit the rollout of platform services, thus hindering access to trading opportunities.

13. The colloquium aims to foster dialogue between a diverse range of experts and practitioners from governments, international and regional organizations, academia and the private sector. Organized over four days in two consecutive “streams”, the colloquium is designed to draw out concepts and issues that cut across both streams with a view to ensuring a coherent and holistic approach to possible future work by the Commission and to developing sustainable solutions that enable legal systems to adapt to fast-paced technological change, while enhancing legal certainty and facilitating the effective use of digital technologies in trade.

B. Stream 1 – Digital assets and secured financing (10–11 February 2026)

14. Stream 1 focuses on legal issues arising from the use of “digital assets” as collateral in secured transactions. The MLST provides a robust framework for using movable assets as collateral, but the application of its provisions to digital assets poses a number of questions, including whether such assets fall within the scope of application and their classification. The possible development of asset-specific provisions to address third-party effectiveness, priority and enforcement of security rights in digital assets, and the application of the conflict-of-law provisions are to be considered.

15. Among other things, this stream will focus on:

(a) Treatment and categorization of digital assets as collateral in secured transactions, including tokenized assets, electronic documents of title and electronic negotiable instruments;

(b) Practical approaches to achieving third-party effectiveness and priority of security rights in digital assets, including reliance on the notion of “control”;

(c) Enforcement of security rights in digital assets and related issues; and

(d) Cross-border challenges, including conflict-of-law rules for secured transactions involving digital assets.

C. Stream 2 – Digital platforms and private law (12–13 February 2026)

16. Guided by the discussion paper set out in the annex to this note, stream 2 focuses on the private law frameworks that govern the operation of digital platforms.

17. Among other things, this stream will focus on:

(a) Digital platforms in international trade, including the concept of "digital platform" and the types of digital platforms that are particularly significant for trade;

(b) Platform operators as a new actor in international trade, including the different roles that they play with regard to trading activities carried out on the platform, and the legal issues to which this gives rise;

(c) Contractual aspects of digital platforms;

(d) The role of private law in balancing the rights and obligations of platform operators and users, including intersections with regulatory regimes.

Annex

Discussion paper on digital platforms and private law

[*See paras. 10 and 16 of the note*]

A. About this paper

1. Digital platforms are a key driver of the digital economy.[4] Increasingly, they support trade-related activities along the entire supply chain, including trade in goods and services and dealings in trade documents. They are also used to establish commercial relations and to resolve commercial disputes. At the same time, digital platforms represent new ways of trading, which are challenging traditional legal concepts and prompting different – and at times divergent – legislative responses. Given their global reach, digital platforms have become a subject matter of international trade law and a focus for calls for harmonization efforts.

2. This paper has been prepared by the UNCITRAL secretariat to guide exploratory work, including consultations with experts, on the topic of digital platforms and private law, as mandated by the Commission at its fifty-eighth session (A/80/17, paras. 262–266) based on a joint proposal of the United Arab Emirates and Spain (A/CN.9/1227; hereinafter "proposal"). It focuses on the following areas:

(a) Digital platforms in international trade;

(b) Platform operators as a new actor in international trade; and

(c) Contractual aspects of digital platforms.

3. Before turning to these areas, the paper seeks to position digital platforms within UNCITRAL's existing work.

B. UNCITRAL's work on digital platforms

4. While digital platforms have been a focus of attention in recent work at UNCITRAL on electronic commerce, it is fair to say that all areas of international trade law covered by UNCITRAL texts, including the international sale of goods, commercial dispute resolution, cross-border insolvency, secured transactions, international transportation and trade finance, have been affected – if not transformed – by digital platforms.

5. At one level, the UNCITRAL Model Law on Electronic Commerce is of fundamental importance to digital platforms as it gives legal recognition to transactions that are carried out on digital platforms. At another level, more recent UNCITRAL electronic texts have been developed specifically to accommodate the activities of platform operators as third-party service providers, including by way of:

(a) Systems – for electronic trade documents[5], automated contracting,[6] and online dispute resolution;[7]

(b) Services – cloud computing services,[8] identity management services, and trust services.[9]

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[4] UNCTAD, *Digital Economy Report 2019: Value Creation and Capture – Implications for Developing Countries* (Geneva, 2019), p. xv.
[5] UNCITRAL Model Law on Electronic Transferable Records.
[6] UNCITRAL Model Law on Automated Contracting.
[7] Technical Notes on Online Dispute Resolution.
[8] Notes on the Main Issues of Cloud Computing Contracts.
[9] UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services.

6. The UNCITRAL secretariat has also taken a closer look at digital platforms as part of earlier exploratory work on legal issues related to the digital economy. The outcome of that work is presented in the "online platforms" chapter of the *Taxonomy of legal issues related to the digital economy* (hereinafter "Taxonomy"), which was published in 2023.[10]

7. More recently, the UNCITRAL secretariat has been exploring platform-based dispute resolution as part of its project on dispute resolution in the digital economy (DRDE). Besides the development of standards specific to that context, exploratory work has highlighted the need to clarify the contractual relationship between the provider of platform services and the users of those services (A/80/17, para. 235), an issue at the centre of the present project on digital platforms and private law.

C. Digital platforms and international trade

8. Based on the definition used by the Organisation for Economic Co-operation and Development (OECD),[11] the Taxonomy puts forward a "working definition" for digital platforms in the following terms:

> "a service that (i) is provided via the Internet or some other communications network by electronic means (i.e. an online service) and (ii) facilitates interactions between persons who interact using the service".[12]

9. A similar concept of digital platform is reflected in the work of United Nations Conference on Trade and Development (UNCTAD), the World Bank and the International Telecommunications Union.[13]

10. According to the working definition, a digital platform is not dependent on a particular technology, business model, trade-related activity or sector, but on the provision of an electronic environment in which third parties can interact. Digital platforms create online spaces – or "digital ecosystems" – where platform users can connect, collaborate and transact. A simple website or online hosting service (including cloud computing) would thus fall outside this definition, as would networked environments without an additional software interface to facilitate user interaction (e.g. the "infrastructure layer" of a distributed ledger system without the "application layer"), notwithstanding that they may be referred to colloquially as "platforms".

11. Recent work by the OECD and UNCTAD on trade-related aspects of digital platforms has expanded the concept to capture digital services that do not necessarily facilitate interactions between users but have a disruptive impact on the sectors in which they operate. While these developments may warrant a revisit of the working definition, it would seem that facilitating interactions between third parties remains key to the legal significance of digital platforms.

12. Three types of digital platforms may be identified with particular significance for trade:

(a) *e-commerce platforms* – digital platforms which facilitate transactions involving the supply of goods and services. This type of digital platform includes "online marketplaces" for buying and selling goods, "online trading platforms" for trading financial instruments, and online platforms for the provision of financial

[10] United Nations publication, Sales No. E.12.V.11.

[11] OECD, *An Introduction to Online Platforms and Their Role in the Digital Transformation* (Paris, 2019), p. 21.

[12] Taxonomy, para. 119.

[13] Ibid. In its Digital Economy Report 2019, UNCTAD refers to digital platforms providing "the mechanisms for bringing together a set of parties to interact online", while its Digital Economy Report 2024 refers to digital platforms "acting as intermediaries and infrastructure of the digital economy": *Digital Economy Report 2024: Shaping an Environmentally Sustainable and Inclusive Digital Future* (United Nations publication, 2024), p. 5.

services, such as crowdfunding and trade finance, and transactions in data products (including digital assets);

(b) *supply-chain platforms* – digital platforms which facilitate interactions between supply chain participants, including dealings in trade-related documents and data;

(c) *dispute resolution platforms* – digital platforms which facilitate the resolution of commercial disputes by providing a system for the exchange of electronic records and communications between parties (including case management and remote hearings).

13. The proposal recognizes that there is no uniform terminology or typology of digital platforms in trade. It adds that a "global concept of platform is not yet defined" and identifies this as an issue for further exploration. It does not put forward a definition but observes that digital platforms "embrace a wide variety of business models". During the discussions at the Commission, it was acknowledged that the concept of "digital platform" was broad.

14. On a related topic, it is worth recalling that suggestions were already put forward at the Commission to confine the scope of work. Specifically, it was suggested to focus on online marketplaces, which are commonly discussed in legal scholarship and the subject of law reform initiatives. It was also emphasized that regulatory issues, such as competition and consumer protection, as well as intellectual property and data privacy and protection, should be avoided. Online marketplaces commonly engage concerns about competition and consumer protection in the digital economy, and there is a risk that confining work to online marketplaces might focus attention on those issues. Moreover, it seems that at least some of the private law issues raised by online marketplaces are raised by other types of digital platforms, notably supply chain platforms, which are also commonly associated with business-to-business ("B2B") transactions. Discounting supply chain platforms could risk overlooking significant B2B activity in the platform economy, noting that, according to UNCTAD, B2B transactions are dominating global e-commerce in terms of value.[14] For these reasons, it might be preferable not to confine work at the exploratory stage to any particular type of platform.

15. At the same time, it makes sense to consider whether particular types of digital platforms should be included or excluded from scope as work on the topic advances. For instance, drawing from the experience in developing the United Nations Convention on the Use of Electronic Communications in International Contracts, future work might exclude digital platforms constituting a "regulated exchange" or some form of financial service market on the basis that transactions between users on those platforms are "governed by well-defined regulatory and contractual rules that already address issues relating to electronic commerce in a manner that allows for their effective worldwide functioning".[15]

Q1. Does the working definition provide a good starting point for exploring the topic? Should it be expanded to capture digital services that do not necessarily facilitate interactions between users?

Q2. What digital platforms are relevant to cross-border trade, particularly B2B transactions?

Q3. Are there particular types of digital platforms that should be included or excluded from the scope of future work?

[14] UNCTAD, Digital Economy Report 2024, p. 143.

[15] *United Nations Convention on the Use of Electronic Communications in International Contracts* (United Nations publication, Sales No. E.07.V.2), para. 78.

D. Platform operators as a new actor in international trade

16. A digital platform itself is not a legal entity capable of being subject to rights and obligations. The legal aspects of digital platforms are thus explored from the perspective of the actors involved in their operation and the legal relationships that are thereby engaged.

17. For present purposes, two main actors may be distinguished: (i) the "platform operator", who provides the platform service (i.e. the service constituting the digital platform); and (ii) the "platform user", who uses the platform to interact with other platform users, including to offer, supply or acquire goods or services through the platform. In this configuration, legal scholarship has identified at least three roles that the platform operator may play, which are echoed in the proposal:

(a) *Service provider* – in addition to the platform service itself, platform operators may provide additional services, which users may be required or incentivized to use. In the case of e-commerce platforms, these additional services can include advertising services, ranking and reputation systems, payment services, identity management and trust services, and logistics services;

(b) *Regulator* – platform operators establish and maintain the terms of use of the platform (i.e. the platform rules or "rulebook"), which prescribe how platform users interact with the platform and with other users;

(c) *Enforcer* – platform operators monitor compliance of platform users with the platform rules and impose sanctions for non-compliance, such as restricting interactions with other platform users or suspending or terminating the platform service. This role relies heavily on automated systems, including the deployment of "smart contracts" to apply sanctions.

18. By combining these different roles, the platform operator serves as more than just a mere intermediary in the interactions that it facilitates. In addition, the platform operator itself may use the platform to transact with users. For instance, it may supply goods or services in competition with other users or act as a "market maker".

19. In some respects, the combination of roles is not unique to the digital economy or unknown to the law. Analogies may be drawn with private marketplaces, such as exchanges and central securities depositories, where operators play a similar role of "regulator" and "enforcer" beyond creating the online space to trade. Some historical analogy has also been drawn in scholarship with merchant guilds.

20. Nevertheless, the combination of roles takes on greater significance in the digital economy given (i) the breadth and geographic reach of trade-related activities that digital platforms support, (ii) the relative ease with which the platform service can be integrated with other services, (iii) the ability to use the technical design of the platform to shape user interactions (e.g. the software interface controlling how information is presented and how transactions are initiated and carried out), and (iv) the "digital intelligence" derived from data generated and processed by the platform operator regarding user interactions with the platform and with other users. This has led to the observation, echoed at the Commission, that platform operators represent a new type of actor in trade.

21. As a new type of actor in trade, platform operators pose a challenge to established legal typologies and a potential to disbalance established commercial relationships. The proposal highlights that, depending on the business model of the digital platform, a platform operator may serve as a "simple digital intermediary" in transactions between platform users or as a "direct provider of services" to users, with different legal consequences flowing in each case. For its part, the Taxonomy observes that the combination of roles that the platform operator plays leads to it exerting greater influence over the interactions between users, which in turn can affect how its relationship with users is characterized under existing law, including tort law, competition law, and employment law (among others).

22. Concerns about the growing influence of platform operators on trading activities on the digital platform, together with concerns about the growing reliance on digital platforms for trade, have prompted calls for legislative intervention to rebalance or recalibrate the relationship between platform operator and platform user. This call has been echoed at the Commission. The Taxonomy surveys regulatory regimes enacted in several jurisdictions, namely, China, the European Union, Japan and the Russian Federation, with respect to e-commerce platforms. Regulatory regimes have since been enacted in other jurisdictions, including Cabo Verde, Kazakhstan, the Philippines, Thailand and the United Arab Emirates. In addition, non-governmental initiatives have produced "soft law" instruments to guide legislative intervention, including the Model Rules on Online Platforms developed by the European Law Institute and the "Hangzhou Initiative".

23. While these initiatives differ in content and scope, they broadly pursue common policy objectives of greater transparency and fairness and, in many cases, envisage more active involvement of platform operators in monitoring trading activities on the platform. In broad terms, these objectives are typically implemented through information disclosure requirements regarding the operation of the platform, including the platform rules, procedural requirements for modifying and enforcing those rules, and due diligence and fairness requirements in managing the relationship with platform users.

Q4. How should platform operators be characterized for the purposes of international trade law? Is it possible to characterize platform operators for particular types of digital platforms?

Q5. What features of a digital platform may lead to characterizing the platform operator as something more than a mere service provider?

Q6. How do regulatory regimes affect the role of the platform operator vis-à-vis the trading activities carried out on the platform?

E. Contractual aspects of digital platforms

24. The proposal notes that digital platforms are "contract-based models". Similarly, it was observed at the Commission that "the operation of digital platforms fundamentally relies on contracts".

25. At the core of a digital platform lies the contract between the platform operator and each platform user under which the platform operator provides the platform service to the user and thus by which that user gains access to the digital platform (the "platform-user contract"). This access control has led to digital platforms being described as a "closed" environments.

26. Separately, one or more contracts may be concluded between platform users in the course of their interactions on the platform (the "user-user contract"). As noted in the Taxonomy, depending on the business model of the digital platform, these contracts may include contracts for the sale of goods, contracts for the supply of services, or cooperation agreements. They may also include financial contracts and contracts for the provision of data.

27. Digital platforms are commonly depicted as a "triangulation" of contracts with the platform operator at the apex. They have also been described as a network of contracts with the platform operator at the centre. It has also been pointed out that, just as the working definition of "digital platform" accommodates platforms that integrate distributed ledger systems to support the delivery of the platform service, the same contractual structure applies to DLT-based platforms (in other words, the "decentralized" nature of recording data does not deny the central role of the platform operator).

28. Platform–user contracts tend to be contracts of adhesion; standard form contracts whose terms are established by the platform operator and not negotiated with the platform user. There may be different terms for defined categories of users (e.g. suppliers and end users of goods and services). The contract typically incorporates the platform rules and reserves the right of the platform operator to unilaterally modify those rules from time to time and to impose sanctions for non-compliance. The platform-user contract thus establishes the different roles of the platform operator as described in the previous section.

29. User–user contracts depend on the underlying transaction. In some cases, the platform rules may impose standard terms on user-user contracts, including the use of particular payment services or dispute resolution mechanisms, and allow little or no room for users to depart from those terms. The platform may also control how the contracts are formed.

30. The contractual structure of digital platforms raises several private law questions. As indicated in the proposal, the platform-user contract may fall between or beyond established types of contracts under existing law, which may differ from one jurisdiction to another. The characterization of the contract – which is linked to the characterization of the relationship between the platform operator and the user – may have implications for the rights and obligations of both parties, including limits on party autonomy.

31. In that regard, commentators in both common law and civil law systems have drawn analogies between platform-user contracts and membership agreements or relational contracts to argue in favour of a rights and obligations regime that injects greater fairness in how users interact with and on digital platforms. A similar process is contemplated by the proposal, which notes that "contract-related issues" arising from the characterization of the platform-user relationship "could benefit from attention from UNCITRAL to enable fairness in digital trade in a global platform economy, provide legal certainty and predictability, and remove possible obstacles to trade". For particular categories of users, commentators have also drawn analogies with other types of contracts, such as agency contracts or "mandate contracts", to capture the expectations and responsibilities that may arise in practice.

32. Commentators have also pointed to contract law principles to justify due diligence obligations for platform operators with respect to trading activities on the platform. This again is contemplated by the proposal, which suggests that a growing dependence on digital platforms in trade warrants exploring "whether certain due diligence duties of platform operators could be deemed common and apply uniformly to all platforms to enable digital trade in the global economy". Preliminary enquiries suggest that, besides identifying common duties, work could usefully identify common circumstances in which those duties would apply, including by reference to the type of trading activity carried out on the platform and the control that the platform operator exercises over key elements of relevant transactions, taking into account access to the platform, information flows, and the enforcement of platform rules.

33. Other legal issues have been identified for possible future exploration. For instance, the proposal suggests a "common approach to liability or, at least, to selected liability cases" with a view to reducing uncertainties, allocating incentives and enhancing competition in global markets. For its part, the Taxonomy identifies two other issues, namely, (i) the extent to which the platform operator can modify the platform rules unilaterally and (ii) the extent to which the platform operator can impose penalties or other sanctions against users for non-compliance with the platform rules. In that regard, it draws a connection with rules on unfair contract terms, the doctrine of unconscionability and public policy considerations, which in turn evoke principles of fairness and proportionality. Another more precursory issue is to how the platform rules can be incorporated into the platform-user contract, which is also linked to transparency and fairness.

Q7. To what extent can contract law principles (including incorporation of platform rules, unilateral modification, good faith/fair dealing and proportionality of sanctions) be applied to pursue the policy objectives reflected in existing initiatives (e.g. transparency, fairness and due diligence), including in B2B settings and for platforms facilitating cross-border trade in services? Where contract law is insufficient, can these objectives be achieved by adapting other areas of private law (e.g. extracontractual/tort liability), and if so, in which types of scenarios?

Q8. What contract law issues warrant priority attention?

Q9. To what extent should the platform operator be responsible for legal consequences beyond failing to perform its obligations?