



Legal issues relevant for paperless trade facilitation and electronic single window facilities

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Trade facilitation and paperless trade

- Trade facilitation aims at simplifying procedures and controls governing the movement of goods.
- Benefits include reducing direct and indirect transaction costs and increasing compliance with import/export laws and regulations.
- More cross-border trade → increased economic development.
- Better border control → increased security and additional revenues.

Paperless trade and electronic single windows

- ICT may provide great opportunities for trade facilitation.
- Private business exchange regularly electronic information across borders (B2B).
- Physically crossing borders requires passing border controls, i.e. the involvement of a public authority (typically, customs)
- Electronic single windows are increasingly used in customs operations (B2G) and sit at the core of paperless trade.
- The long term goal is to set up cross-border single windows (G2G).

Different aspects of paperless trade

- Paperless trade is often understood as a technological process.
- In reality, it is a policy decision that brings together law and technology.
- Legal provisions are necessary to ensure compliance with laws, regulations and contractual agreements:
 - laws and regulations are necessary;
 - contractual provisions and voluntary industry standards will complement laws and regulations.

Legal topics relevant for paperless trade

- UN/CEFACT Rec. 35 lists the legal topics relevant for paperless trade and electronic single windows;
- Legislation on the following topics is needed:
 - E-transactions and e-contracting;
 - Authentication / security (e-signatures);
 - Data protection and retention, including data archiving and sharing;
 - Cybercrime, digital forensics...
- Legislative needs are identified through an analysis of existing legislation (“checklist”);
- The checklist review should take into account laws and business practice and involve public authorities and private business.

Legal topics relevant for paperless trade

- In some, but not all fields, uniform standards exist. Their adoption greatly facilitates cross-border exchanges.
- UNCITRAL texts are the global standard for general electronic transaction law, electronic contracting and electronic signatures.
- Regional standards also exist (e.g., APEC Data Privacy Pathfinder and Cross Border Privacy Rules (CBPR), EU Directives and Regulations).
- For more detailed guidance, see UN NExT, Electronic Single Window Legal Issues: A Capacity-Building Guide.

E-transactions and e-contracting law

- Establishes general principles on the use of electronic communications, including electronic signatures
- A limited number of provisions are sufficient to accommodate the use of electronic means.
- General contract law is not amended.
- Needs to be first adopted at the national level.
- Those States that have adopted UNCITRAL model laws have a common legislative ground that facilitates mutual legal recognition.
- For higher certainty at the international level, countries need to adopt the United Nations Convention on the Use of Electronic Communications in International Contracts.

General principles of e-transaction law

1. Principle of non-discrimination
2. Principle of functional equivalence
3. Principle of technological neutrality
 - Designed for commercial transactions, now widely accepted
 - The principles were developed based on the needs of the private sector, but should be applied ideally also to the public sector in order to avoid the creation of a B2G gap.

Principle of non-discrimination

- A communication shall not be denied validity on the sole ground that it is in electronic form.
 - Once the use of electronic communications is accepted, their legal status cannot be denied because of their nature.
 - Easier to implement in the private sector than in the public sector.

Principle of functional equivalence

- Purposes and functions of paper-based requirements may be satisfied with electronic communications, provided certain criteria are met.
 - For instance, written form function is met if the electronic data message is accessible for future reference → this satisfies the same function as paper
 - In practice, every time a document has to be submitted in writing and signed, this can be done electronically if other conditions are met (e.g., authentication, archival, etc.)

Principle of technological neutrality

- Legislation shall not impose the use of or otherwise favour any technology (EDI, e-mail, Internet, instant messaging, fax, etc.)
 - This approach is open to future technologies;
 - Major issue: much support for PKI from public authorities due to its alleged higher security, but little interest in private sector because of costs;
 - But single window operators want better quality data from commercial documents;
 - Possible solution: the single window can use PKI, but information from private sector does not have to (i.e., B2G transactions are technology neutral);
 - Legal solution: legislation based on the “two tier” approach (at least to ease transition).

Building an enabling legal environment

- Enabling means removing barriers to electronic transactions in all directions (B2B, B2G and G2G)
- Adoption of modern legislation based on uniform laws greatly helps in expanding the use of electronic means nationally and internationally
- Uniform laws should apply also to the public sector to the maximum extent possible
- Over-regulation is to be avoided. In practice, this means:
 - Satisfying existing requirements through functional equivalence rules;
 - Not adding additional requirements.
- Transition to paperless environment allows to review existing practices and streamline laws.

Building an enabling legislative environment: concrete steps

- Take stock of existing legislation to identify gaps.
- E-transactions / e-contracting / e-signature is the area where the law is most settled thanks to UNCITRAL texts
- Russia has adopted the UN Convention on the Use of Electronic Communications on International Contracts.
- Russia has also changed its e-signature law to adopt the “two-tier” approach, which is technology neutral.
- Other States should follow that example if they wish to promote paperless trade with Russia.

Building an enabling legislative environment: concrete steps

- Other legal areas can be developed progressively, bearing in mind regulatory requirements.
- The cross-border single window facility is the most complex element in paperless trade.
- Its establishment requires decisions on
 - Structure;
 - Authority to share and store data...
- Some issues can be tackled separately at an earlier stage. Developing progressive familiarity is recommended.
- Security concerns shall not be exaggerated:
- Often, single windows are designed, developed and rolled out in interaction with advanced economic operators;
 - This approach makes sure that large users will actually buy in the paperless trade system.

Thank you for your attention!

For more information:

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