



# Enabling legal environment for paperless trade

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# What is paperless trade?

- Notion built around trade facilitation in customs operations through electronic single windows – a B2G transaction
- Goal to set up cross-border single windows – a G2G international transaction
- But international trade is a B2B transaction
- Broader e-governance context
- Need to enable paperless trade in all of these dimensions

# The intersection of law and technology

- Paperless trade often understood as a technological process
- Legal aspects are equally relevant to ensure enforcement of regulations and private agreements
- Contractual provisions may not suffice: statutory rules are necessary, co-regulation may be desirable
- Not enough attention to legal aspects

# Relevant factors that can influence paperless trade

- Technological: model chosen for paperless trade (e.g., single window architecture)
- Legal: regulatory elements vs. enabling elements
- Rigidity may be found in both: formalistic approach to transactions with public offices as well as among private individuals
- Examples: requirements for signature (case of attribution of a statement)
- Prevailing economic model and legal traditions need to be factored in

# General principles of electronic transactions law

- Principle of non-discrimination
- Principle of functional equivalence
- Principle of technological neutrality
- Designed for commercial transactions, now widely accepted
- They need to be extended to public sector, to substitute current prevailing sectorial approach

# E-contracting

- Generally successful
- Few adjustments due to technological requirements
- General contract law is not affected
- However, certain areas are still not touched (letters of credit, bills of lading) due to lack of industry trust or adequate legislation

## E-contracting (2)

- When dealing with public offices, further fine-tuning may be needed (e-procurement)
- The cross-border dimension needs further legislative work
- Consumer protection outside scope of paperless trade
- Liability (both civil and criminal) principles usually unchanged

# Authentication and security

Security is a leading concern for private and public authorities

Should not hinder the use of electronic communications

Can provide several services: origin, integrity, time-stamping

However, PKI has not yet delivered as expected

The loopholes lie outside the IT system: e.g., authentication

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