Review the draft document on the technologically neutral mutual recognition mechanism.

Agenda item 2(i)

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Definition: What is Mutual Recognition?



Lessons from existing cross-border mutual recognition approaches



Literature review and harmonization of attributes



Conclusion

Definition:

What is Mutual recognition

Definitions

- **Mutual recognition** is “reciprocal recognition of the validity of trade-related data and documents in electronic form exchanged across borders between two or more countries.”(FA article 3)
- The primary need of mutual recognition is the creation of the opportunity to exchange trade-related data and documents in electronic form across borders between different countries with different technological approaches and under different jurisdictions.
- Mutual recognition based on common principles will provide a smooth, transparent and reliable environment for trade-related data and documents in electronic form exchanged across borders.

Definitions

- **Mutual Recognition Mechanism**
  - To achieve mutual recognition, a mechanism to ensure a substantial level of integrity, non-repudiation, authentication, confidentiality and legal validity of electronic trade-related data and documents from other countries should be designed and implemented.
  - This mechanism may consist of

    a governance including institutional arrangement and role and responsibility of stakeholders,

    a methodology for securing trust, including assessment and technical and legal framework for interoperability

    and **legal validity**.

Lessons from existing cross-border mutual recognition approaches

WCO AEO MRA	APEC MRA	ILAC MRA	EU eIDAS	PAA PKI MRA	Key attributes
WCO	APEC	ILAC	EU	PAA Steering Committee	Mutual recognition scheme governing body
Customs of MRA partner countries	Designating Authority or Accreditation Body	ILAC Arrangement Council	Cooperation Network and Supervisory body of Member States	PAA CPA	Implementation body
Customs of MRA partner countries	Regulatory Authority is responsible for telecommunications requirements	Technical and standards requirements are from the international standard body	EU Commission	PAA Steering Committee	Owner of recognition requirements
SAFE framework of standards	APEC Mutual Recognition Arrangement	ILAC Mutual Recognition Arrangement	eIDAS Regulation	PAA Club Agreement	Major legal instruments or governance rules set by the governing body
AEO programme	Conformity Assessment Bodies	Accreditation Bodies	Electronic Identification scheme	Certification Authorities	Target object being recognized
Standards compatibility mechanism	Designation or Accreditation	Accreditation	Peer review for eID scheme and Ex-ante supervision for QTSP	Accreditation	Actualization methods for recognition
Information exchange	Confidence building measures	Periodical peer-review	Notification of eID scheme changes, and ex-post supervision for QTSP	Periodical assessment	Trust mechanism
Public service area	Public service and private service areas	Private service area	Mostly in the public service area	Mostly for private transactions and limited acceptance of electronic transactions by public institutions	Application coverage of recognition
N/A	N/A	N/A	European Union Interoperability Framework	ebXML and proprietary PAA technical standards	Interoperability guidelines

9 attributes identified

(1) Mutual Recognition scheme governing body: an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme,

(4) Implementation body: mutual or multilateral implementation bodies implementing such scheme or guideline,

(3) Mutual Recognition requirements owner: a legitimate entity that has the authority to set the recognition requirements,

(2) Legal instrument or governing rule: a legal instrument or guidelines set or agreed upon by participants,

(5) Target object: the object of recognition,

(6) Actualization method for recognition: an execution method for recognition,

(7) Trust mechanism: a mechanism to maintain trust among participants,

(8) Application coverage of recognition: Official control purpose or private transactions

(9) Interoperability guidelines: whether the scheme is neutral to technology or adopts specific technical standards or guidelines.

9 attributes identified

(1) A governing body: an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme, (who leads the direction)

In most multilateral recognition scheme, there is a governing body which is responsible for the development of and maintaining recognition scheme. However, their role and responsibility are case sensitive. Some bodies control the details of recognition implementation including execution method and trust mechanism while some bodies merely provide only guidelines or principles for participating members.

9 attributes identified

(2) An implementation body: mutual or multilateral implementation bodies implementing such scheme or guideline,

- The stakeholders which implement mutual recognition process and system by the agreement or guidelines.
- Implementation body could be the owner of recognition requirements

9 attributes identified

(3) Mutual recognition requirements owner: an ownership of recognition requirements, (who set the rule?)

A stakeholder(s) which has a right to set the mutual recognition criteria and requirements (such as the specific competencies or conformity to security or quality requirements). The owner does not have to be a stakeholder governing cross-border recognition scheme.

9 attributes identified

(4) legal instrument or governing rule: a legal instrument or a guideline set or agreed upon by participants,

Most mutual recognition scheme has either an international, regional or bilateral agreement or a guideline set or agreed upon by governing body(ies)

9 attributes identified

(5) A target object: an object of recognition, (what to recognize?)

A mutual recognition can be achieved through direct or indirect recognition method.

For example, notarization is one method of direct recognition on a document. In case of APEC TEL MRA, it is a testing laboratory and certification body not the test result report nor a Certificate. By recognizing the issuing body, the documents issued by the certified bodies are being indirectly recognized in the MRA country(ies).

9 attributes identified

(6) Actualization method for recognition: an execution method for recognition, (how to conduct)

The recognition can be made by different methods. Designation and accreditation are the common execution methods

(7) A trust mechanism: a mechanism to maintain trust among participants (how to maintain)

Operating and maintaining trust is more important than the initial implementation of mutual recognition. A mechanism to maintain trust among participants is highly dependent on a legal instrument that the mutual recognition is based on.

9 attributes identified

(8) Coverage of recognition: Official regulatory control purpose or private transactions

Whether the main purpose is for official regulatory control or for private business transactions

(9) Technical guidelines: whether the scheme is neutral to technology or adopts specific technical standards or guidelines.

In some case of mutual recognition scheme provides technical standards and guidelines

Key stakeholder group	Legal group	Operational group
❶ International or regional body that governs the rule or provides principles for cross-border mutual recognition scheme.	❹ Legal instrument or governance rules set by the governing body or agreed upon by participants.	❺ Target object being recognised.
❷ Implementation bodies implementing such a scheme or guideline.		❻ Actualization method for recognition.
❸ Owner of recognition requirements.		❼ Trust mechanism.
		❽ Application coverage of recognition.
		❾ Interoperability guidelines

Literature review and harmonization of attributes

Literature review (1)

Author(s)	Model	Attributes and measures of the model	
		Attributes	Measures or levels
TACD (Trans Atlantic Consumer Dialogue)	Mutual Recognition Agreements	- Regulatory uniformity	**1) Harmonization** **2) Equivalence** **3) External criteria (from importing country or 3rd party)**
Agudo J.	Mutual Recognition Agreements	- Mutual trust - Equivalence	
Gilbert LaVean	Spectrum of Interoperability Model	- Technical possibility	1) Interface ~ 4) Impractical
		- Management / control possibility	1) Separate systems placed under common management/control, thus becoming the same system ~ 6) Complete independence between systems
William A.	Interoperability		1) Federation 2) Harvesting 3) Gathering
Rolf Weber	Legal Interoperability	- Regulatory models	**1) Harmonization** **2) Standardization** **3) Mutual recognition (equivalence)** **4) Reciprocity** **5) Cooperation**
		- Normative Sources	1) Treaty 2) Standards 3) General principles 4) Self-regulation

Literature review (2)

- Researches on mutual recognition (or interoperability) attributes show somewhat similar views, but the definition of attributes (or its measures) has not been completely unified, such as inconsistencies depending on the researcher's purpose.
- Regulatory uniformity(TACD), regulatory models(Rolf Weber) and interoperability levels (William A) could be harmonized as **Mutual recognition methods**.
- As introduced, harmonization, equivalence and standardization are introduced as methods for mutual recognition. However, the level of mutual recognition methods is different from researchers. The major difference comes from how the researchers look at the standardization. This study takes the view of TACD and adds cooperation measure as the weakest level of mutual recognition method.
- Moreover, in the context of this research, Technical possibility could be interpreted as the **technical interoperability level** among MRA participating members.
- Summarized definition of mutual recognition attributes
  - **Normative sources**: International conventions, agreements or guidelines that set mutual recognition principles
  - **Mutual recognition methods**: the methods to recognize other country's mutual recognition target objects
  - **Technical interoperability level**: the interoperability level of MRAs(or sub-MRAs) under the guiding normative sources
  - **Management/control possibility**: The integrity level among the mutual recognition governing body, implementation body and recognition requirement owner

Comparison of two attributes groups

Attributes from cases

- An MR scheme Governing body
- An implementation body
- Owner of recognition requirements
- Legal instruments or governance rules set
- Target object being recognised
- Actualisation methods for recognition
- Trust mechanism
- Application coverage of recognition
- Interoperability guidelines

Attributes from literatures

- Normative sources
- Muutal recognition methods
- Technical interoperability level
- Management possibilities

Harmonized attributes with measures

Attributes of MRA	Measures 1) strong ~ 4) weak
Normative sources	1) Treaty, 2) standards, 3) general principles, 4) self-regulation
Mutual recognition (MR) methods	**1) Harmonization 2) equivalence, 3) external criteria, 4) cooperation**
Technical interoperability level	1) Same systems (or programs), 2) Compatible or completely interoperable systems, 3) Multiple Entry Points or gateways, 4) Separate systems (programs)
Management/control possibility (Integrity of the MR governing body and the implementation body)	Implementation body is 1) completely subordinate to, 2) highly subordinate to, 3) loosely subordinate to, 4) completely separated from the MR governing body
Trust mechanism (or compliance and assessment)	1) External evaluation, 2) Peer review, 3) self-review,
Coverage of recognition service	1) Mandated to use in the public domain, 2) highly recommended using in the most public domain, 3) adopted by one or a few public authorities, 4) private domain only

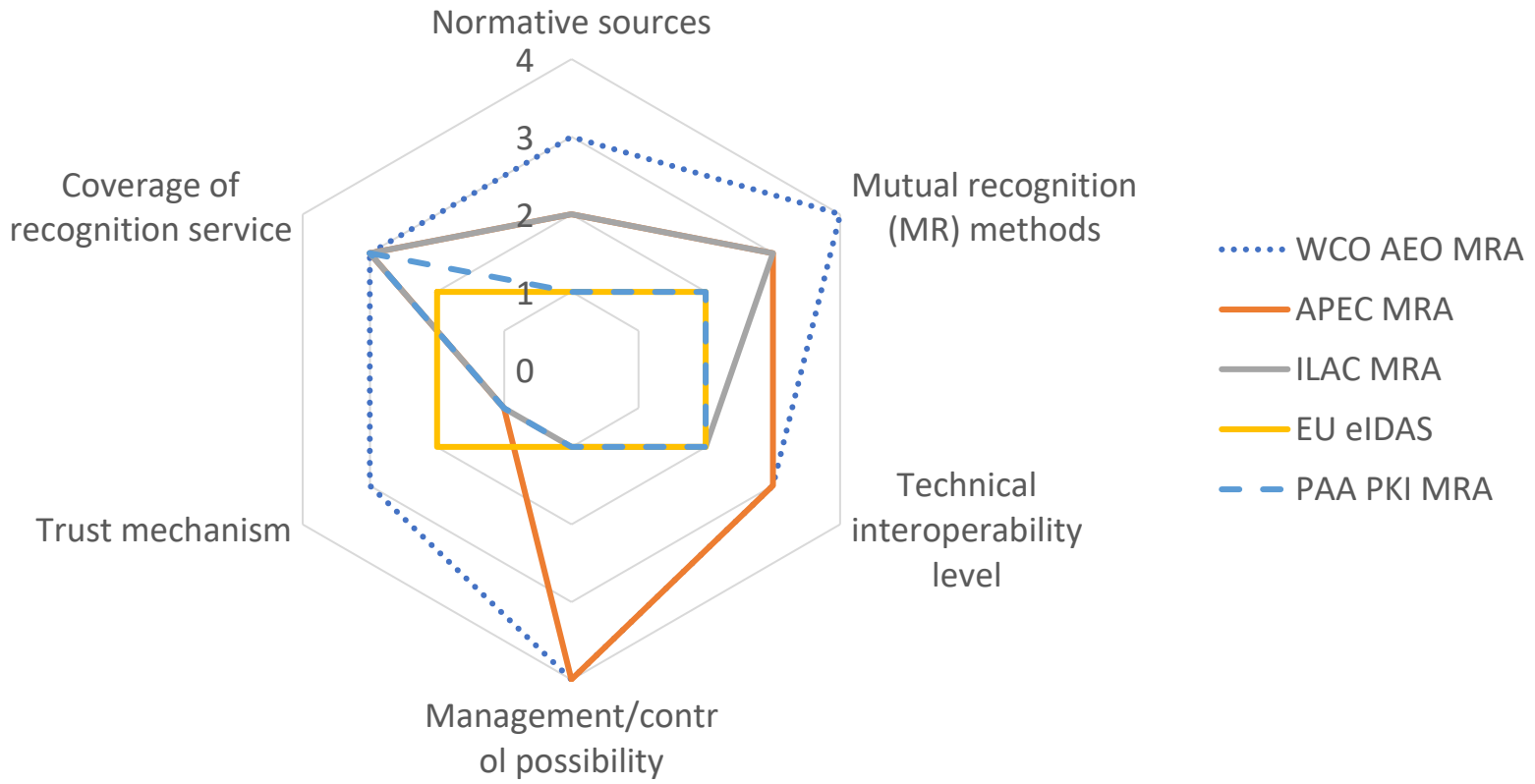
Application of attributes to MRA cases

MRA Attributes	WCO AEO MRA	APEC MRA	ILAC MRA
Normative sources	SAFE framework (3)	APEC Mutual Recognition Arrangement (2)	ILAC Mutual Recognition Arrangement (2)
Mutual recognition (MR) methods	Cooperation (4)	External criteria (3)	External criteria (3)
Technical interoperability	Multiple sub-MRAs (3)	Multiple sub-MRAs (3)	Compatible (2)
Management/control possibility (Integrity of the MR governing body and the implementation body)	WCO and customs of sub-MRA (4)	APEC and Designating authority/Accreditation body of sub-MRAs (4)	ILAC and ILAC arrangement council (1)
Trust mechanism (compliance and assessment)	Self review (3)	External evaluation (1)	External evaluation (1)
Coverage of recognition	Customs services (3)	Conformity services (3)	Conformity services (3)

Application of attributes to the MRA cases

MRA Attributes	PAA MRA	eIDAS MRA
Normative sources	PAA Mutual Recognition Agreement (1)	eIDAS Regulation (1)
Mutual recognition (MR) methods	Equivalence (2)	Equivalence (2)
Technical possibility	Interoperable (2)	Interoperable (2)
Management/control possibility (Integrity of the MR governing body and the implementation body)	PAA Steering Committee and PAA CPA (1)	EU Commission and supervisory body of Member States (MS) (1)
Trust mechanism (compliance and assessment)	External evaluation + peer review (1)	Peer review (2)
Coverage of recognition service	Private online services adopted by a few public authorities (3)	Public online services (2)

Comparison of MRAs



conclusion

Conclusion (1)

- This study examined the attributes that can express the characteristics and level of mutual recognition arrangement for cross-border paperless trade through literature reviews and case studies.
- Through this, six attributes (normative sources, mutual recognition methods, technical interoperability level, management/control possibility, trust mechanism and coverage of recognition service) are identified, and these attributes could validate different MRAs.
- By combining different combinations of these attributes, MRA models with different characteristics and levels can be created, which will help policymakers in consideration of a new MRA scheme.

Conclusion (2)

- **Efficiency and strong enforcement are critical to the successful implementation of the cross-border mutual recognition scheme.**
- **However, a look at the research on MRA revealed strong concerns about the infringement of sovereignty caused by a Mutual Recognition Agreement.**
- **The balance between efficiency, enforcement and sovereignty must be carefully considered before designing an MRA for the Framework Agreement**

Conclusion (3)

- **Individual objects of mutual recognition cannot be incorporated into the mutual recognition scheme until the organization, or its program, has been evaluated through peer review or audit by a senior organization for relevant management norms, rules and technical competencies required to meet the minimum requirements for mutual recognition. This is an important lesson for the members of the Framework Agreement with regard to designing the mutual recognition scheme.**
- **The findings from the target object of MRAs show that it might be necessary to consider including the mutual recognition of the electronic identity or authentication scheme as part of the Framework Agreement's mutual recognition arrangement to achieve the goal of promoting cross-border paperless trade under the Framework Agreement**

Questions for discussion

A. **What would be the most appropriate level of a mutual recognition method**
<u>1) Harmonization 2) Equivalence 3) External criteria 4) Cooperation</u>

B. **Coverage of recognition service?**
1) Mandated to use in the public domain,
2) highly recommended using in the most public domain,
3) adopted by one or a few public authorities,
4) for private domains only

Possible outcomes of this session

- **The standing committee may request the Secretariat and experts to deliver tangible Mutual Recognition schemes for further consideration**