

Legal Aspects of Cross Border Trade Facilitation



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Cross Border Trade facilitation & logistics

An average trade transaction involves 20 to 30 different parties, 40 separate documents, and around 200 data elements (30 of which are repeated many times across different agencies)

Key challenges include

- Legal enabling environment
- Level of readiness of border agencies
- Telecom, internet and e-payment infrastructure
- Challenges faced by SMEs
- Integration of postal services with border agencies
- Air connectivity
- Reach of logistics and postal delivery for remote areas
- New technologies

However, the post COVID world is seeing advances in many of these around the world...

Cross border ecommerce

The Luxor Resolution outlines the eight guiding principles for cross-border E-Commerce of which Advance Electronic Data and Risk Management and Legislative Frameworks are of particular interest

The WCO standards of concern are:

- ✓ Standard 1: Legal Framework for Advance Electronic Data
- ✓ Standard 10: Inter-Agency Cooperation and Information Sharing
- ✓ Standard 11: Public-Private Partnerships
- ✓ Standard 12: International Cooperation

For developing countries, setting up the enabling legal and regulatory framework also requires investing in new institutional mechanisms, including:

- those that enable electronic record management and archiving,
- providing legal certainty and basis for electronic messages,
- creating and empowering entities that can emit electronic signatures, put in place systems for protection of data, and work with the banking sector to enable electronic receipts and notices of payments.

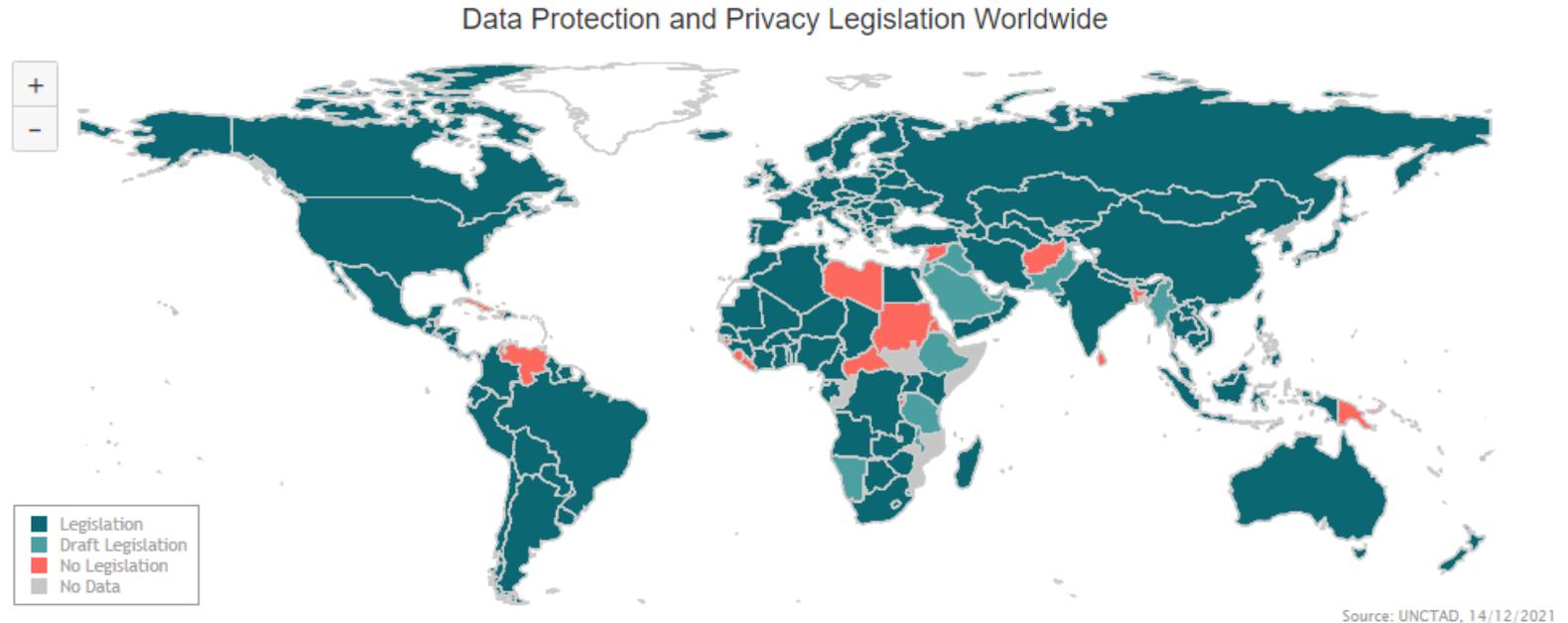
Legal environment for automation and e-commerce are also impacted by the legal tradition and attitude toward regulations, enabling laws, and liability issues. Some of this effect is dependent on the prevailing or historical economic model, the quality of governance and rule of law, and the political commitment. However, these factors also affect general law making.

Data protection and privacy

“as the law designed to protect your personal information, which is collected, processed and stored by ‘automated’ means or intended to be part of a filing system.”

Challenges:

- Impacts countries sharing of data (EU 95),
- cost to enforce data protection laws,
- the lack of public and private sector knowledge and cooperation on the issue.
- Lack of data protection regimes can raise trader concerns about integrity of payment systems and fraud,
- overly strict data protection laws can restrict activities such as investment, innovation, and emergence of new technologies

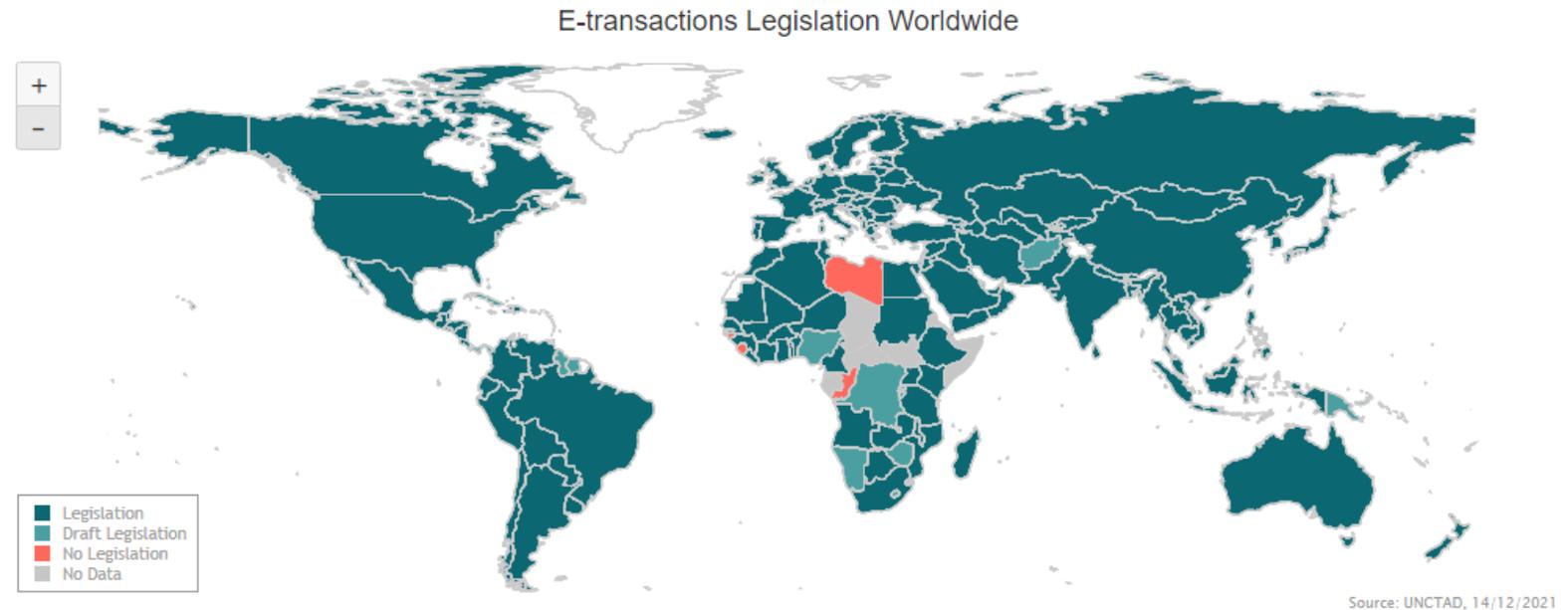


137 out of 194 countries had put in place legislation to secure the protection of data and privacy.

E-transactions Legislation Worldwide

Transaction laws provide electronic transactions with the same legal equivalence as paper-based transactions.

Without the adoption of such standards, traders lack legal certainty and legal validity for e-commerce transactions; paper is still submitted and stored leading to duplicative processes.



Adopted by 158 countries (81 per cent), of which 79 are developing countries and 29 are Least Developing Countries.

UNICTRAL has a convention and 2 model laws

Electronic Signatures, certification authorities and mutual recognition

Electronic signature is the broad term that encompasses various types of signatures in electronic formats and the methods used to create them. Because contracts in the e-commerce space are paperless, digital signatures provide integrity for an electronic contract and make it binding

Mutual recognition of certification authorities (who certify certain digital signatures) may be important in cross-border transactions where a country has decided to use a specific type of digital signature for cross-border transactions. However, two countries may have different standards' or certification authorities, and this is often seen as a difficulty when it is not really the case.

For instance, country A would not send a document across borders if it did not comply with its own standards. To accept the document in its jurisdiction Country B simply needs to have mutual recognition – not of the actual digital signatures – but of the process to generate the document. If the process does not involve a digital signature, it's just as good.

This is the approach ASEAN has taken to the exchange of electronic COOs (e-Form D) where there is no central certification authority or agreed digital signature standard.

UNCITRAL (2009) has prepared an extensive guidance document related to electronic signatures titled "Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods"

Data Retention, Electronic Archiving, Other Issues

Electronic archiving—the storage of electronic data and information—covers a wide range of areas.

For example, it includes the definition of the formats in which data will be stored and the requirements of national law such as those dealing with original documents that might be needed for subsequent use in an enforcement proceeding or in relation to possible civil disputes or, on a short timeframe, in post-clearance audit procedures (Customs).

Archived data must be secure and maintained in a form and format that will be legally enforceable later.

Many countries have created data retention schedules for certain types of information. This framework includes distinctions between data related to regulatory filings and data involving personally identifiable information. In the latter case, governments will sometimes define the maximum time for which such data may be retained and then require that they be destroyed.

Consumer Protection: In as many as 52 countries, it was not possible to obtain data, suggesting that online consumer protection is not being fully addressed. Out of 142 countries for which data are available, 115 have adopted legislation on consumer protection related to e-commerce. (UNCTAD 2021)

Cybercrime: 156 countries (80 per cent) have enacted cybercrime legislation. (UNCTAD 2021)

Electronic Invoicing: standards, formats, history, tax systems, types of platforms, SMEs

Electronic payment: Lack of automation, lack of single payment, types of payment (availability)

Thank you!