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**Economic and Social Commission for Asia and the Pacific**

First Meeting of the Interim Intergovernmental Steering Group  
on Cross-border Paperless Trade Facilitation

Bangkok, 1-3 April 2015

Item 4 of the provisional agenda\*

**Improvement of the draft text of the regional arrangement  
for the facilitation of cross-border paperless trade**

**Proposed amendments to the draft text of the regional  
arrangement for the facilitation of cross-border  
paperless trade**

**Note by the secretariat\*\***

*Summary*

The present conference room paper contains additional proposed amendments to the draft text of the regional arrangement for the facilitation of cross-border paperless trade.

The Steering Group is invited to review and consider the amendments contained in the paper.

**India**

1. Title

India would like to retain the word “framework” in the Title.

2. Article 8 Para 1 the proposal by Russia

India reserves its comments.

Article 10 Para 1

The deletion proposed by Republic of Korea, Islamic Republic of Iran and China:- India supports the deletion.

Article 12 Para 1 Proposal by Russia

Since the Paperless Trade Council is vested with the power to amend the Framework Agreement as per Article 20, India feels that the proposal for Ministerial level nominee which is in the current draft should be retained.

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\* E/ESCAP/PTA/IISG(1)/L.1.

\*\* This document has been issued without formal editing.

### Article 13 Proposal by India

Para 1: Timelines and extent of implementation to be linked to implementation capacity.

Article 16 Proposals from Russia and Korea regarding deletion of the Article and deletion of para 2 of the Article

India would like to emphasise that while considering these proposals the essence of the Article which is to ensure flexibilities to the Parties, especially LDCs and Land locked countries, to implement the Agreement, should not be lost.

### Article 19 Para 1

The minimum number of 5 prescribed for the proposed Agreement/Arrangement to enter into force should be substituted by “a simple majority” of ESCAP Member states.

### Article 20

In para 4 India would like to have a clarification as to what would be the corum for the Meeting as it says the amendment shall be adopted by two thirds majority present and voting.

## **Pakistan**

1. The Treaty may be titled as “Regional Arrangement for Facilitation of Paperless Trade”
2. Instead of a take it or leave it approach, expect in case of Art. 17, the signatories may have option of expressing reservation on any of the Article provided a time frame not extending beyond a reasonable mutually accepted period is specified.
3. In view of the fact that the objective is to facilitate trade, the steering group/committee may include private sector nominees
4. Member countries may be encouraged to make suitable changes in relevant laws to give legal cover to electronic transactions and to make them acceptable as evicence

## **Russian Federation**

1. Title of the Draft Agreement.

Taking into account the contents of the Draft Agreement, its main objectives and general principles, the most preferable title of the Draft Agreement for the Russian side is the “Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific”.

2. Article 2.

Clarification of the definition “Parties” is needed as well as of if the Agreement is applied to trade between legal entities, which are under the jurisdiction of the Parties.

In this regard, the Russian side offers to add words “and legal entities, which are under the jurisdiction of the Parties” into the article 2 after words “the Parties”.

3. Article 3.

It is necessary to add the following subparagraphs in the article 3:

«Trans-boundary trust space» means a combination of legal, organizational and technical conditions recommended by relevant specialized UN agencies (departments) and international organizations with the aim of ensuring trust (confidence in authenticity) in international exchange of electronic documents and data between electronically interacting Parties (subjects).

«Electronically interacting Parties (subjects)» means the entirety of public authorities, physical and legal persons interacting within relations arising from forming, sending, transmitting, receiving, storage and using electronic documents and data».

4. Article 5, paragraph 1.

Due to the fact that such legal categories as the “right to regulate” (paragraph 1 of the article 5), “improved regulatory compliance” (subparagraph “c” of the paragraph 1 of the article 5) don’t exist in the continental law system, their mentioning in the Draft Agreement can cause problems of their further law enforcement. Therefore, it is worth asking the ESCAP Secretariat to clarify definitions of the mentioned legal categories and to find them substitutes which will be appropriate for the majority of ESCAP Member States. Otherwise, use of the term “with recognition of the right to regulate” gives a right to Parties not to follow the Agreement and adopt a national law which could not comply with the Agreement. It may lead to contradiction with the provisions of *pacta sunt servanda* rule in accordance with Vienna Convention on the Law of the Treaties 1969. According to the article 26 of the Vienna Convention 1969 a Party may not invoke the provisions of its internal law as an evidence of its failure to perform a Treaty.

5. Article 8.

The article 8 states that the Parties shall mutually recognize trade-related data and documents in electronic form. However, it is not clear from the article what kind of documents (either official ones or between legal entities as an example) are considered here. Based on this concern, Russia asks the ESCAP Secretariat to give explanation of the contents of the article 8.

6. Article 8, paragraph 1.

Russia offers to delete the phrase «of a substantially equivalent level of reliability» and insert «of a formation of trans-boundary trust space for subjects of electronic interaction».

**Reference (for information).** The suggestion above is necessary to identify approaches and issues to be discussed in the context of development of a set of the Recommendations on forming and functioning trans-boundary trust space (TTS Recommendations) in related UN organisations. It intends facilitating the building of technical, institutional and legal infrastructure for practical use of the TTS Recommendations.

Legal regimes can be additionally supported by traditional institutes (governmental authorities, judicial settlement, risk insurances, notary ship and others) through mutual recognition of electronic documents secured by trusted infrastructural ICT services.

Established legal regimes can also provide for imposing special requirements on the material and financial support of the business activity of specialized operators in case of damage to their users, including cases of compromising personal data.

Issues of institutional guarantees and legal regimes for forming and functioning regional and global TTS-clusters as well as for functional services provided in the frames of these clusters are proposed to be considered in a separate UNCITRAL Recommendation.

Common provisions on forming and functioning of regional and global TTS clusters, functional services provided in the frames of these clusters as well as sets of trusted infrastructural ICT services can be considered in the UNECE-UN/CEFACT “Recommendations for ensuring legally significant trusted trans-boundary electronic interaction”.

- On the basis of interaction between different international unions the following actions should be taken:

- On the first stage, a group of states creates an isolated regional TTS cluster, including functional TTS services provided in the frames of this TTS, ensuring institutional guarantees for the subjects of electronic interaction within the legal regime specified by these states,

- On the second stage, the protocols of trusted interaction with other international unions are specified as related to mutual recognition of different legal regimes. This mutual recognition shall regard to institutional guarantees and information security requirements appertaining to each of the international formats, possibly based on information security gateway (ISG) being operated in the frames of a special legal regime and being common audited.

It is proposed to describe approaches to forming several types of information security gateways (ISG) as key elements of building a global TTS matrix connected with establishing and maintaining the neutral international environment.

#### 7. Article 8, paragraph 2.

Based on the suggestion above on the paragraph 1 of the article 8, Russia proposes to rephrase the text of the paragraph 2 of the article 8 in the following way: “The requirements for building, development, operating and performance of an audit of the trans-boundary trust space are prepared by the corresponding working groups of the Parties and adopted by the Paperless Trade Council”.

#### 8. Article 9, paragraph 1

Russia offers to delete the phrase “The Parties shall endeavour to apply international standards and guidelines in order to ensure regional and global interoperability in paperless trade and develop safe and secure communication protocols for the exchange of data” and insert the phrase “The Parties shall **endeavour to apply other international agreements**

**between Parties, including** international standards and guidelines to support regional and global interoperability in the paperless trade and to elaborate secure and reliable communication protocols”.

This suggestion will let the Parties of the Agreement to avoid the incurrance of liabilities of applying the clauses of international agreements/conventions/non-legally binding regulations, which they have not acceded to.

9. Article 9, paragraph 2.

Russia suggests to insert «**will endeavour**» and delete «are strongly encouraged» in the phrase «The Parties are strongly encouraged to become involved in the development of international standards and best practices related to cross-border paperless trade» to make the statement in the phrase less directive.

10. Article 11.

Russia reserves its position on the sentence in brackets in the article 11.

11. Article 12, paragraph 1.

Russia proposes to delete the phrase “ministerial-level nominee” and insert “**high-level nominee**” in sentence 1 of the paragraph 1 of the article 12.

12. Article 12, paragraph 5 and 6

Russia suggests to add the paragraph 5 in the article 12: “The Parties inform the ESCAP Secretariat through the diplomatic channels about their representatives in the Council, the Standing Committee and working groups” and add the paragraph 6 to the article 12 where describe in detail the decision making procedure in the Council, the Standing Committee and working groups.

13. Article 14, paragraph 2.

Russia proposes to delete the word “may” and insert the word “**shall**” in the sentence 1 of the paragraph 2 of the article 14. This is necessary to enhance monitoring and reporting on the implementation of main clauses of the Agreement by its Parties through implementation of successful projects in the process of cross-border exchange of trade-related data and documents in electronic form/

14. 14. Article 15, paragraph 1.

Russia supports the suggestion of the People’s Republic of Bangladesh and the Islamic Republic of Iran to insert the word «**may**» and delete «shall» in the sentence 1 of the paragraph 1 of the article 15.

15. Article 15, paragraph 1.

Russia asks to give the definition of the concept the “request and offer” in the article 3 of the Draft Agreement.

16. Article 16, paragraph 2.

Russia offers to exclude the paragraph 2 from the article 16 as it will be an extra obstacle for the parties to joining the Agreement and will unjustifiably bind the parties.

17. Article 17, paragraph 2-5.

Russia proposes to exclude the paragraphs 2, 3, 4 and 5 from the article 17 as they introduce the optional conciliation procedure which complicates the dispute settlement process between the Parties.

**Thailand**

1. In order to keep the objective and in line with the intention of this agreement, and to provide clear definition in Article 3, Thailand would like to propose definition of ‘Cross border paperless trade’ instead of paperless trade.

2. Thailand would like to propose addition of a new article as follows:

“Other agreement in force by provide that this Agreement or any action taken thereto shall not affect the rights and obligations of the contracting parties under and existing agreements or international conventions to which they are also contracting parties.”

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