

# A BACKGROUND NOTE ON **MUTUAL RECOGNITION MECHANISM** FOR TRADE-RELATED DATA AND DOCUMENTS IN ELECTRONIC FORM

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BACKGROUND



# BACKGROUND: WHY MUTUAL RECOGNITION IS NEEDED

- Paper documents provide a primary basis and medium for sharing information related to trade activities. Relevant stakeholders of trade activities, both public and private sectors, have developed institutional systems and ways to ensure legal admissibility and public recognition of information contained in paper documents. (Notarization is practiced for the legalization of paper documents being exchanged. Courts and insurance companies accept paper documents as evidence based on such legalization to ensure the protection of rights and legitimate interests of citizens and organizations, in case there is a conflict among parties involved)
- However, it is not guaranteed that legal validity of trade-related documents and data in the electronic form created in one jurisdiction would remain valid in another jurisdiction when they are exchanged across different jurisdictions.
- Ensuring the legal validity of e-documents and legal significance of electronic interaction in general is critical at both national level (within the single jurisdiction) and transboundary level (interaction of participants acting under jurisdictions of different states).



# BACKGROUND: WHY MUTUAL RECOGNITION IS NEEDED

- To make the exchange of trade-related documents and data in an electronic form valid, different jurisdictions should provide a (reciprocal) recognition of the validity of such data and documents whenever they are exchanged across borders.
- **Cross-border paperless trade requires a certain degree of trust.** Some countries have national infrastructures to provide trusted paperless interaction in different spheres: tendering, customs declaration, single window and others. These infrastructures are usually based on national legislation and may apply different technologies. Consequently, economic operators face obstacles when they engage in paperless trade across borders.
- To give the same effect as physical transactions to cross-jurisdictional electronic transactions, **a mutual recognition framework is needed, which can allow parties in different jurisdictions to exchange and recognize valid documents.** A mutual recognition framework may take into account certain aspects, such as identity, authentication, authorization, and others



# BACKGROUND: WHY MUTUAL RECOGNITION IS NEEDED

- The document intends to provide an overview of existing practices in arranging a mechanism for cross-border mutual recognition, mutual recognition of electronic communication and help readers better understand attributes that contribute to the establishment and operation of cross-border mutual recognition of electronic communication mechanism



# 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 scheme**
  - To achieve mutual recognition, a mechanism to ensure the integrity, non-repudiation, authentication, confidentiality and legal validity of electronic trade-related data and documents should be designed and implemented.
  - This scheme consists of 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.

# DEFINITIONS

- Cross-border mutual recognition arrangement/agreement
  - The objective of the Mutual Recognition Arrangement (MRA) is to ensure a mutually, regionally and globally recognized framework.
  - The arrangement might include such information as roles and responsibility of stakeholders, recognition mechanism, inspection bodies, which can be relied on to provide competent services, such as certification activities, testing, calibration, and inspection. In international trade, the MRAs promote cross-border stakeholder confidence, regulatory compliance and the acceptance of accredited conformity assessment bodies.



# DEFINITIONS

- Accreditation for cross-border recognition
  - Accreditation is the independent evaluation of intermediary bodies against recognized standards and requirements **to ensure their neutrality and competence.**
  - Through the application of mutually agreed standards, related governments and other stakeholders can have confidence in the electronic transactions provided with confidentiality, authentication, integrity, and non-repudiation.

# CROSS-BORDER MUTUAL RECOGNITION APPROACHES



# REVIEWED CROSS-BORDER MRA CASES

- **APEC TEL MRA**

- the APEC Telecommunications and Information Ministers agreed to streamline APEC-wide processes for the testing and type-approval of telecommunications equipment. This landmark arrangement, the **Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment** (APEC TEL MRA), was the first multilateral agreement of its type in the world.
- This arrangement is intended to streamline the Conformity Assessment Procedures for a wide range of telecommunications and telecommunications-related equipment and thereby to facilitate trade among the Parties. It provides for the mutual recognition by the importing Parties of Conformity Assessment Bodies and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies in assessing conformity of equipment **to the importing Parties' own Technical Regulations.**



# REVIEWED CROSS-BORDER MRA CASES

- **APEC TEL MRA**

- Party: an APEC member economy that agrees to participate in this Arrangement.
- Joint Committee: a committee of the APEC Telecommunications Mutual Recognition Arrangement Taskforce established for the purpose of managing the implementation of the MRA.
- Regulatory Authority: a government entity responsible for telecommunications **requirements** within an Economy.
- Designating Authority: a Government authority appointed by a Party for the purpose of **designating a Conformity Assessment Body** to perform Conformity Assessment Procedures under this Arrangement.
- Accreditation Body: a body that is **responsible for assessing and recognizing the specific competencies of testing laboratories and/or certification bodies** in accordance with international standards.
- Conformity Assessment Body: a body, which may include a third party or a supplier's testing laboratory, or a certification body, that is **designated to perform conformity assessment to an importing Party's Technical Regulations** under this Arrangement.



### Economy A

RA  
DA  
AB  
CAB

### Economy B

RA  
DA  
AB  
CAB

### Economy C

RA  
DA  
AB  
CAB

### Economy D

RA  
DA  
AB  
CAB

RA -- Regulatory Authority  
DA -- Designating Authority  
AB -- Accrediting Body  
CAB -- Conformity Assessment Body

# REVIEWED CROSS-BORDER MRA CASES

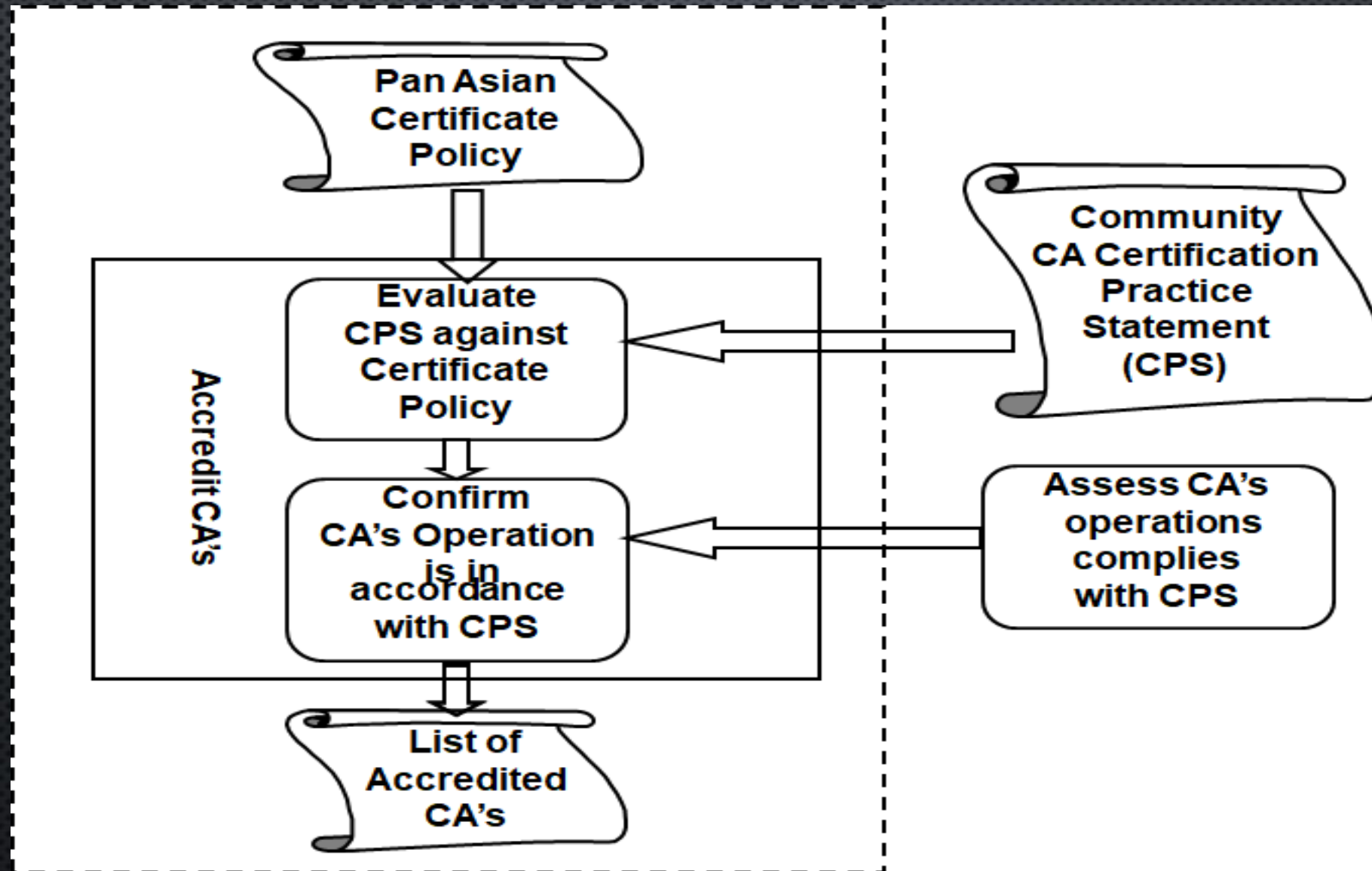
- ILAC (International laboratory Accreditation Cooperation) MRA
  - In 2000, the 36 ILAC's Full Members consisting of laboratory accreditation bodies from 28 economies worldwide, signed the ILAC Mutual Recognition Arrangement (ILAC MRA) to promote the acceptance of technical test and calibration data for exported goods.
  - The ILAC MRA was then extended to include the accreditation of inspection bodies. Nowadays, ILAC is the international organization for accreditation bodies operating in accordance with ISO/IEC 17011 and involved in the accreditation of conformity assessment bodies (CAB) including calibration laboratories (using ISO/IEC 17025), testing laboratories (using ISO/IEC 17025), medical testing laboratories (using ISO 15189) and inspection bodies (using ISO/IEC 17020).
  - Accreditation bodies are established in many economies with the primary purpose of ensuring that conformity assessment bodies are subject to oversight by an authoritative body. **Accreditation bodies**, that have been **peer evaluated as competent**, sign regional and international arrangements to demonstrate their competence. These **accreditation bodies then assess and accredit conformity assessment bodies** to the relevant standards.



# REVIEWED CROSS-BORDER MRA CASES

- **PAA PKI Mutual Recognition Framework**

- Certificate Policy (CP) prepared by the PAA Certificate Policy Authority contains the set of rules that govern the issuance and use of digital certificates, and indicate the applicability of the certificates to the communities within PAA. It specifies the Audit procedure, Revocation, Records archival and Certificate & CRL (Certificate Revocation List) Profiles, and others. PAA CP is the basis of the Mutual Recognition of Public Key Infrastructure that forms a part of conditions for periodical assessment of (accredited) CA, and each CA will need to ensure that their CPS complies with this Certificate Policy.
- CA Recognition Agreement is an agreement between PAA Certificate Policy Authority and each Certificate Authority contracted by PAA Service Provider in each economy. Under CA Recognition Agreement, **Certificate Policy Authority recognizes that the applicant CA is a conforming or accredited CA of PAA.**
- **CA and CPS (Certification Practice Statement)** Recognition Procedure defines the procedure to be used by the PAA Certificate Policy Authority to give recognition to the individual Certification Practice Statement (CPS) and Certificate.
  - Terms Of Reference of CPA defines a common PAA Certificate Policy (CP), a procedure for the recognition of CPS of CA against this CP, a procedure for the change management for the CP and the recognition procedure and it also administers the recognition and changes management procedure.
  - **PAA CP defines a set of rules as minimum and common criteria for recognition** for use within the PAA domain and trusted by the PAA members. CPS of a CA seeking recognition by PAA is assessed against this PAA CP. PAA CP sits on top of a CPS that cover different aspects (policy, legal, operational, technical).
  - Recognition procedures of PAA CP cover initial recognition and renewal and revocation of recognition.





# REVIEWED CROSS-BORDER MRA CASES

- **EU Mutual recognition of e-documents**

- Mutual recognition of electronic documents is governed by the Regulation (EU) no 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC electronic documents mutual recognition.
- Member States should **designate a supervisory body or supervisory bodies under mutual recognition agreements with another Member States**. Supervisory bodies cooperate with data protection authorities, for example, by informing them about the results of audits of qualified trust service providers, where personal data protection rules appear to have been breached. All Member States follow **common essential supervision requirements to ensure a comparable security level of qualified trust services**. All trust service providers are subject to the requirements of the Regulation.
- Regulation is applied in accordance with national rules on liability. Therefore, national rules on, for example, definition of damages, intention, negligence, or relevant applicable procedural rules are not affected.

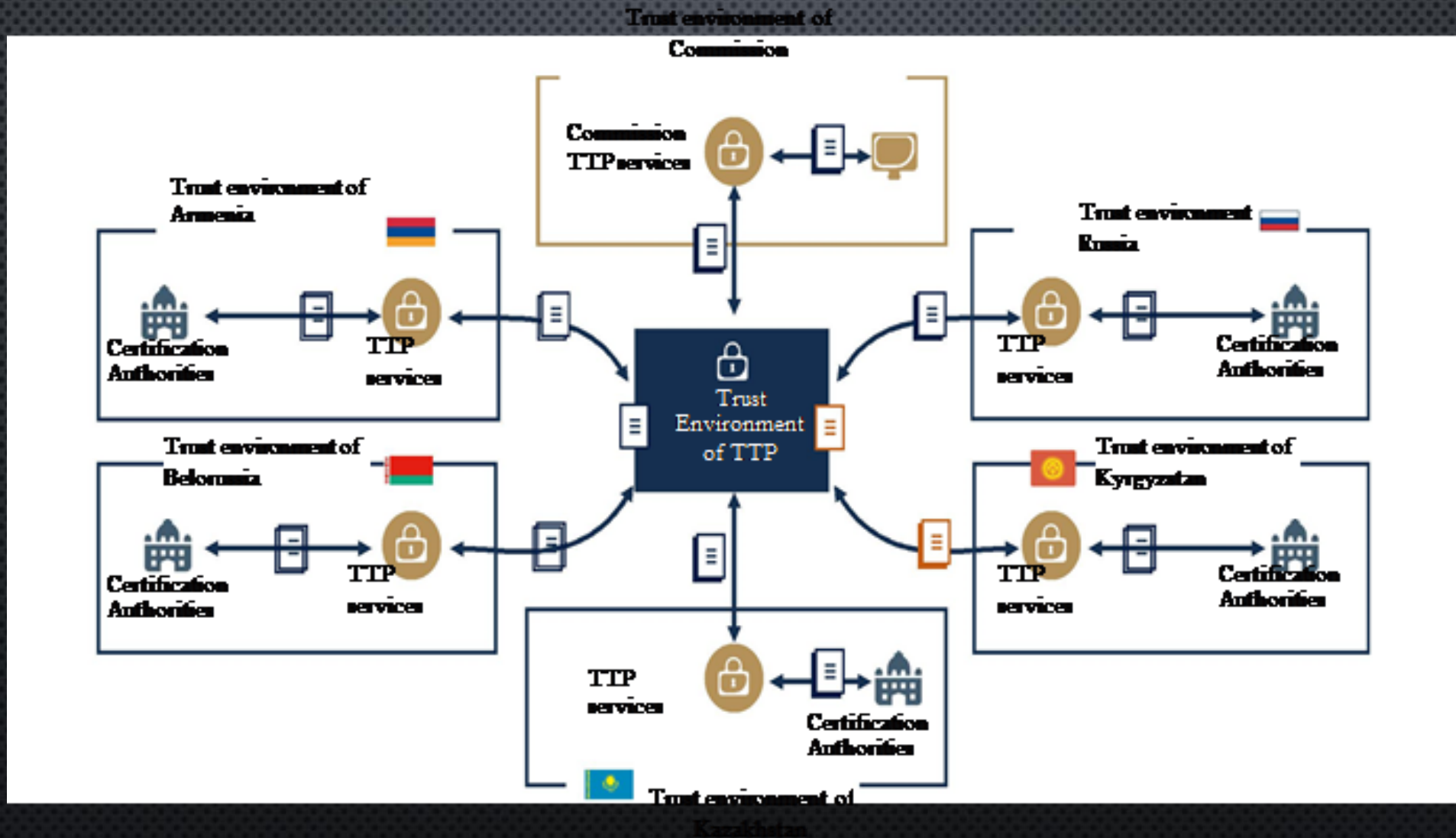


# REVIEWED CROSS-BORDER MRA CASES

- **EEC mutual recognition of documents in electronic form exchanged across borders**
- It is described in the Provision on exchange of electronic documents at cross-border interaction of Public authorities of Eurasian Economic Union member states among themselves and with the Eurasian economic commission from 28 September, 2015 № 125 and is applied in the terms determined by the Protocol on information and communication technologies and information exchange within the Eurasian Economic Union.
- The Relations arising in connection with an exchange of electronic documents are regulated by the Agreement of the Eurasian Economic Union from May 29, 2014. The electronic documents that are prepared according to the Provision are equivalent to the paper documents certified by the signature or the sign and seal. Participants of electronic documents exchange of EEC model are:
  - Commission;
  - Authorized bodies or accredited by them organizations;
  - Trusted third parties of member states and Commission;
  - Certification authorities of member states and the Commission, Certification Authority of trusted third party of the integrated system.
- EEC Commission **identifies general principles for mutual recognition of data and documents in electronic form** exchanged across borders between member countries.



# Transboundary trust environment of EEC



# LESSONS FROM EXISTING CROSS- BORDER MUTUAL RECOGNITION APPROACHES



## 9 ATTRIBUTES IDENTIFIED

- (1) an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme,
- (2) a legal instrument or a guideline set or agreed upon by participants,
- (3) an ownership of recognition requirements,
- (4) mutual or multilateral implementation bodies implementing such scheme or guideline,
- (5) the object of recognition,
- (6) an execution method for recognition,
- (7) a mechanism to maintain trust among participants,
- (8) cooperation with the private sector, and
- (9) technical standards or guidelines.

## 9 ATTRIBUTES IDENTIFIED

- (1) an international or regional stakeholder which governs the rule or provides principles for cross-border mutual recognition scheme,  
(who lead 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) 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

- (3) 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) mutual or multilateral implementation bodies implementing such scheme or guideline,
  - The stakeholders which implement mutual recognition process and system by the agreement or guideline.
  - Implementation body could be the owner of recognition requirements

## 9 ATTRIBUTES IDENTIFIED

- (5) the (target) 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) an execution method for recognition,  
(how to conduct)
  - The recognition can be made by the different method. A designation and accreditation are the common execution methods
- (7) a mechanism to maintain trust among participants,  
(how to maintain)
  - Operating and maintaining the trust is more important than initial implementation of mutual recognition. A mechanism to maintain trust among participants is highly depending on a legal instrument that the mutual recognition is based on.

## 9 ATTRIBUTES IDENTIFIED

- (8) cooperation with the private sector, and
  - The mutual recognition cases are mostly for the benefits of private sectors. A government can delegate the authority to the private sector through designation or accreditation of such authority
- (9) technical standards or guidelines.
  - In some case of mutual recognition scheme provides technical standards and guidelines

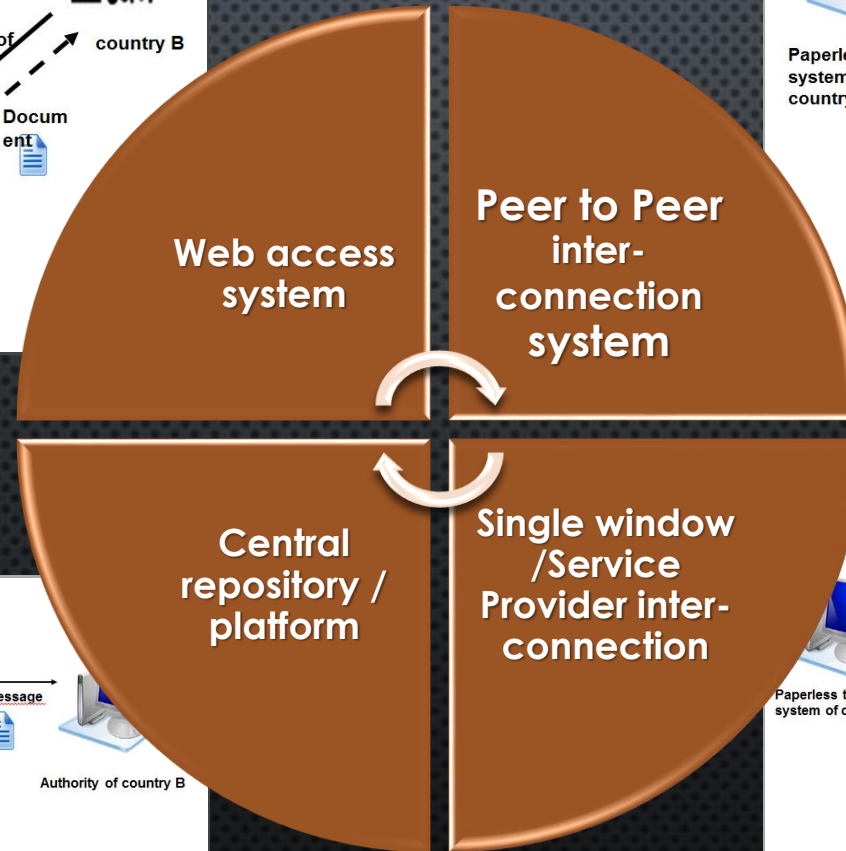
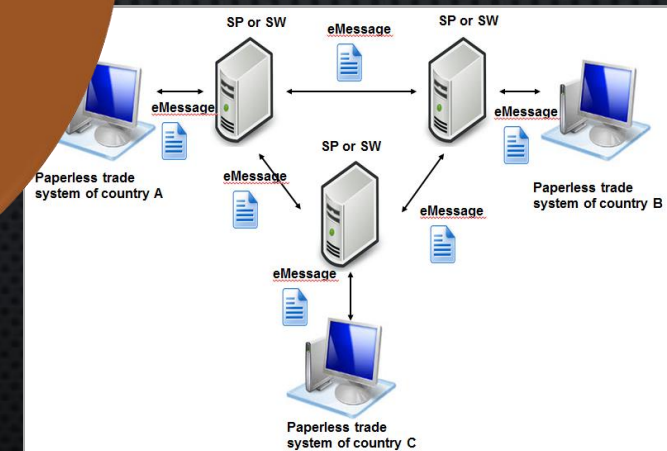
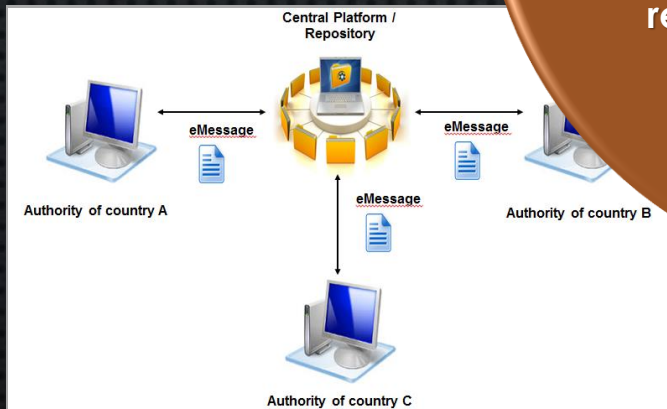
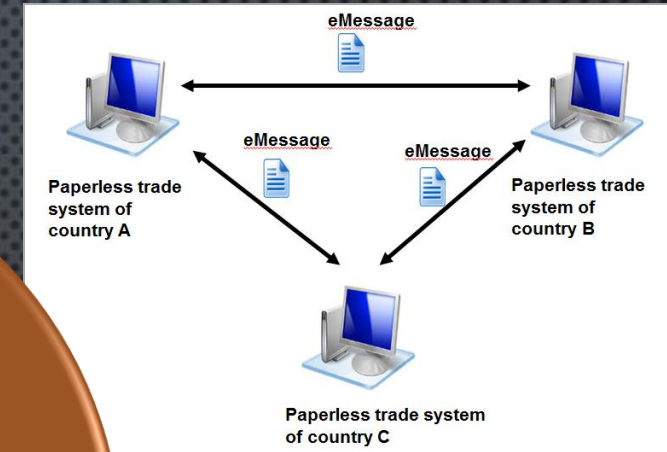
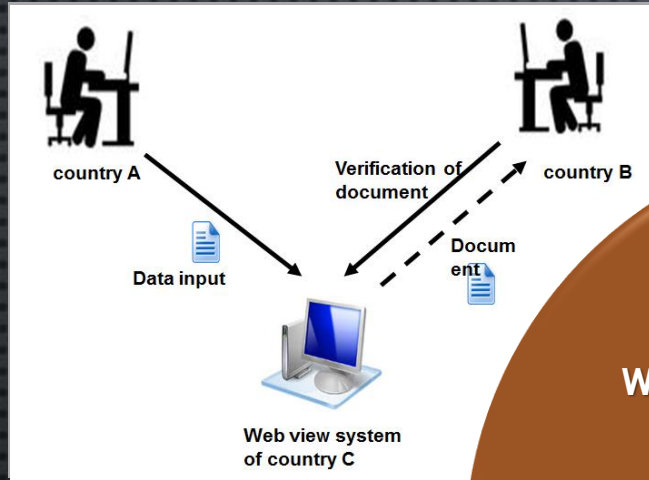


# 9 ATTRIBUTES OF CASES

Attributes		AEO MRA	APEC TEL MRA	PAA PKI MRF	EEC MRA	EU MRA
Overseer of Mutual Recognition Scheme and Principles		WCO	The APEC Telecommunications and Information Working Group Joint Committee	Steering Committee	EEC Commission	EU Commission
Convention, Agreement and/or Guidelines	Strong		The APEC TEL Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment	Mutual Recognition Agreement	Agreement	the Regulation (EU) no 910/2014 of the European Parliament
	Weak	WCO SAFE Framework				Regulation in accordance with national rules on liability
Owner of Mutual Recognition		Participating Customs (mostly bilateral)	The committee of the APEC Telecommunications Mutual Recognition Arrangement Taskforce and participating APEC member economies (bilateral)	PAA Steering Committee	EEC Commission identifies general principles for mutual recognition of data and documents in electronic form	EU Commission and members
Implementation body(ies)		Participating Customs (mostly bilateral)	Member economies' Regulatory Authority (bilateral)	PAA CPA (Certificate Policy Authority) and Certificate Authority	Authorized bodies of member states	Member State's designated supervisory body
A target object		Mutual Recognition of Authorized Economic Operators	Mutual Recognition of Certification Bodies and Mutual Acceptance of Conformity Certificate and Test Certificate	Mutual Recognition of Certificate Authority and Mutual Acceptance of Digital Certificate and Electronic messages	electronic documents	Mutual Recognition of electronic documents
an execution method for recognition		Accreditation	Designation and Accreditation	Accreditation	Accreditation	Designation
a mechanism to maintain trust		Strong compliance to a bilateral agreement	Strong compliance to a bilateral agreement and APEC TEL guideline	Strong compliance to Certificate Policy		Strong compliance to a agreement (audits of qualified trust service providers)
cooperation with the private sector		Public-Private Partnership	Public-Private Partnership	Private		
technical standards or guidelines			Importing country's technical requirements on the object(s)	Proprietary		

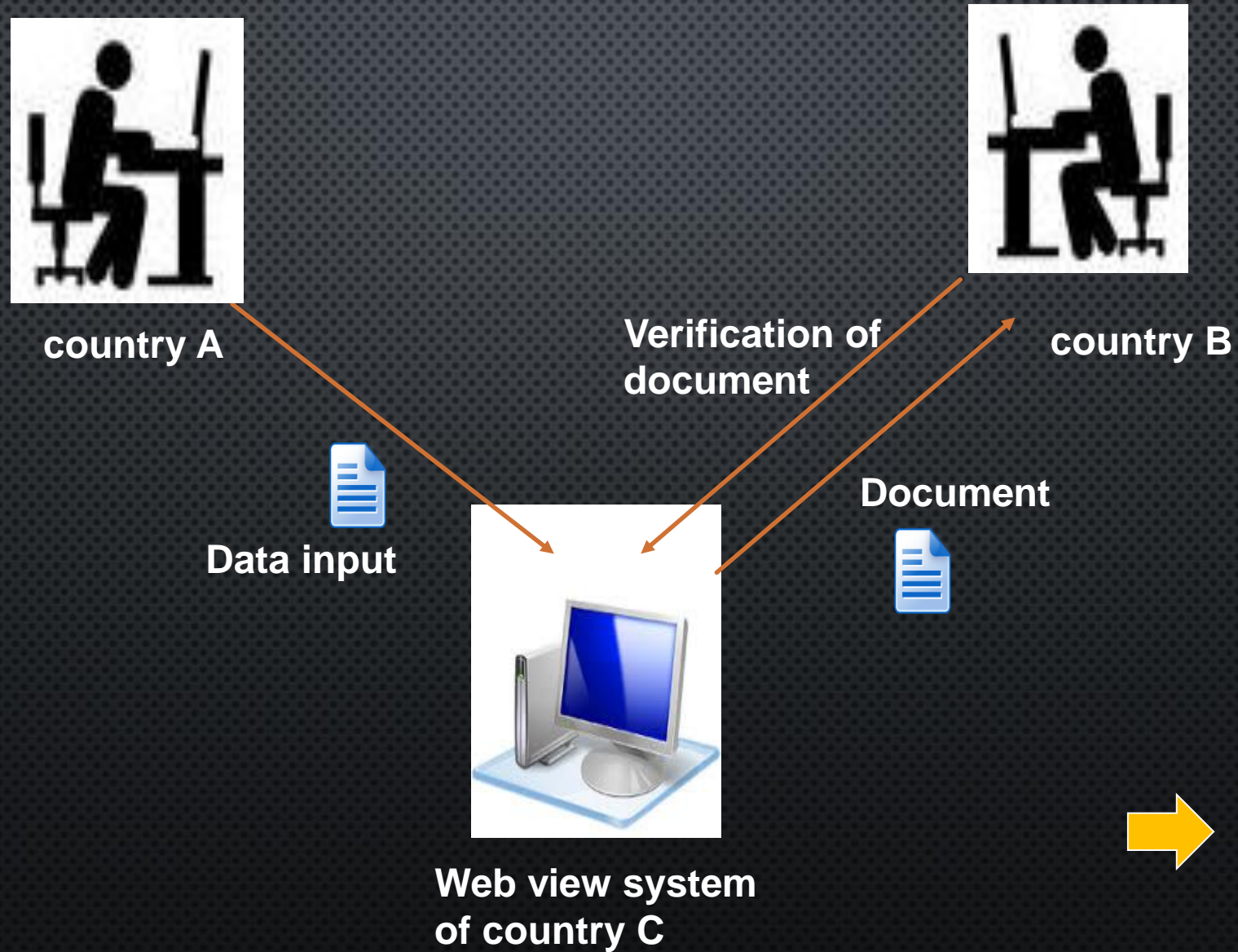
# CROSS-BORDER TRANSACTION MODELS

## CBPT Models

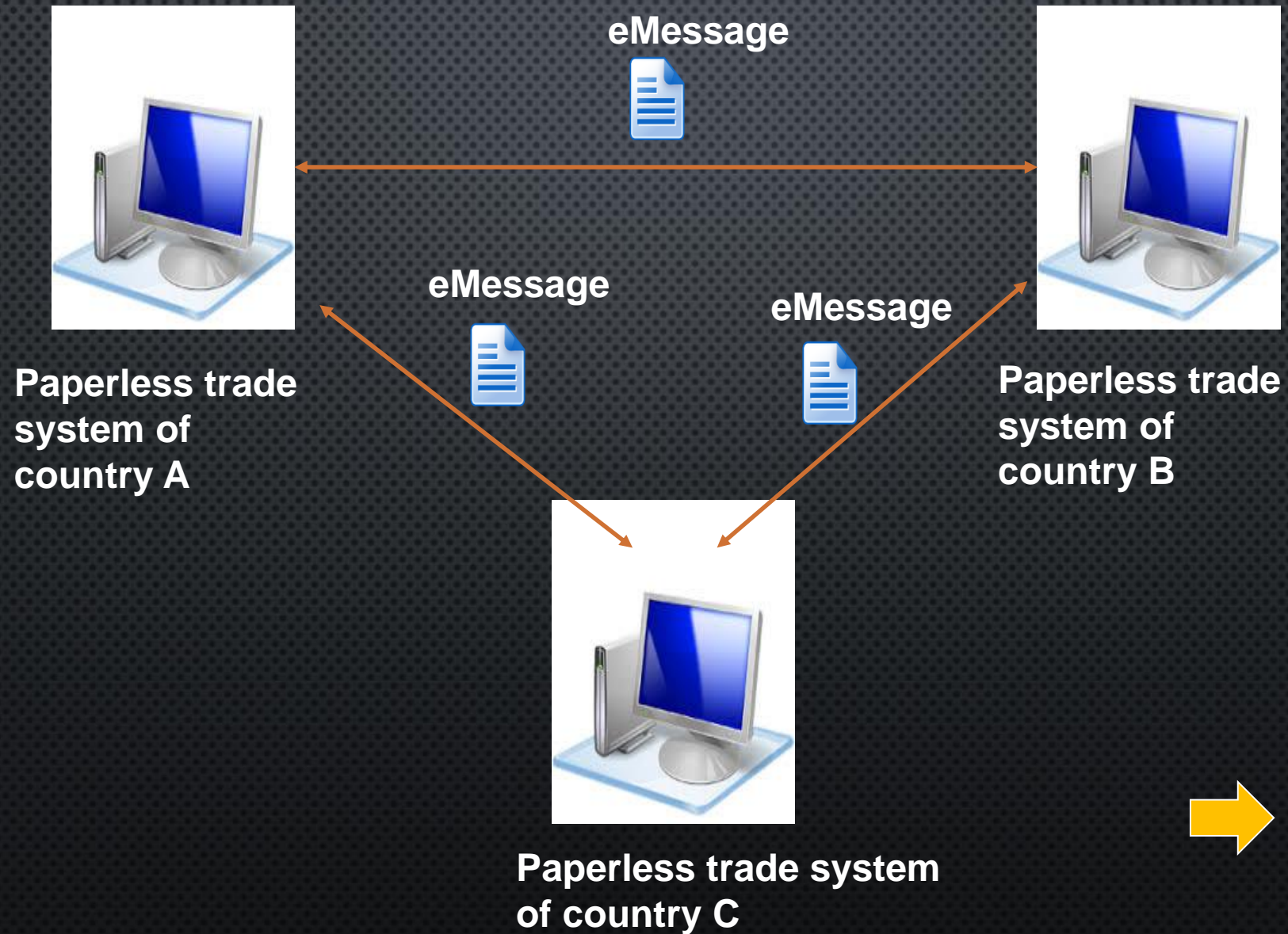




**Figure 1 Web access system**

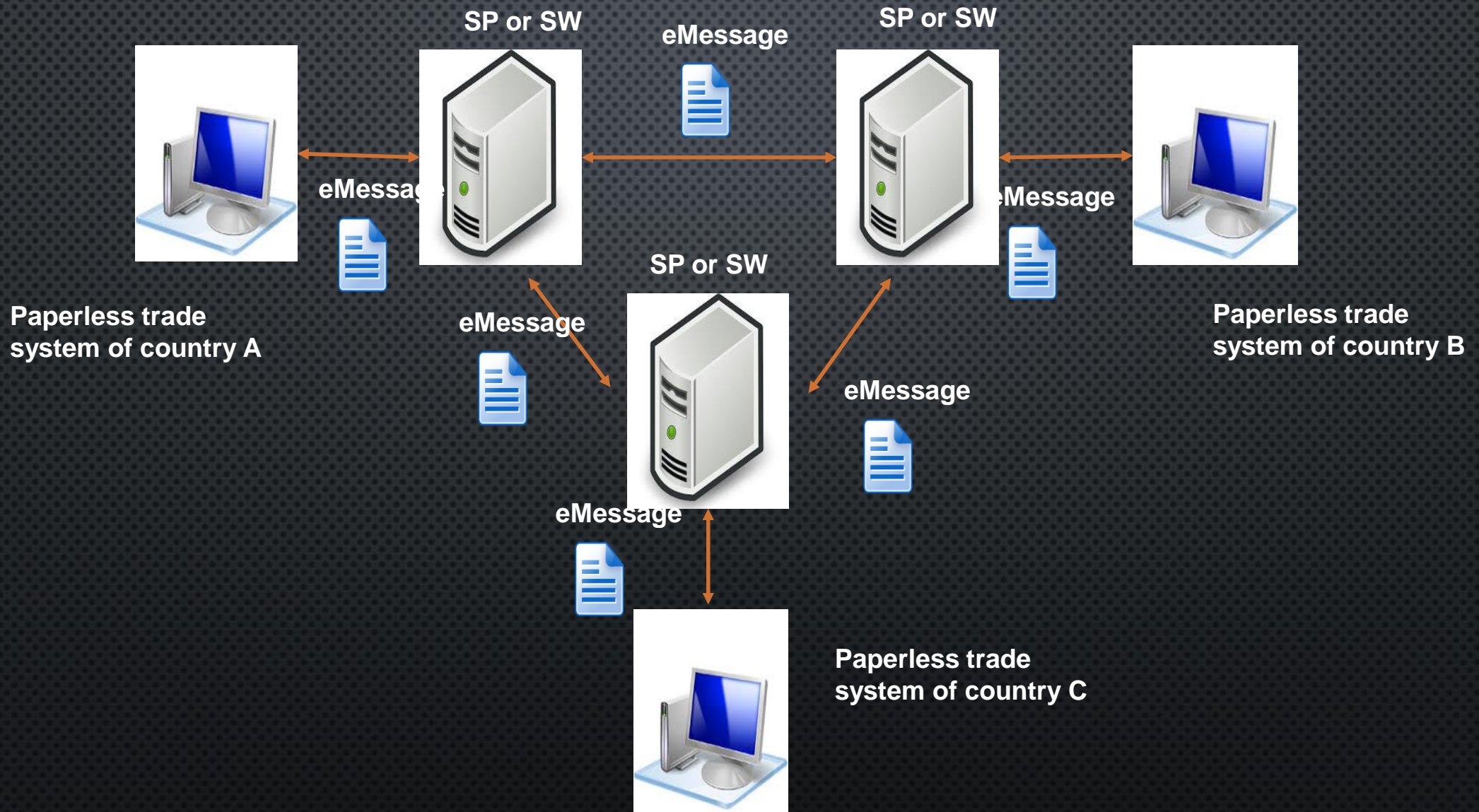


## Figure 2 Peer to Peer

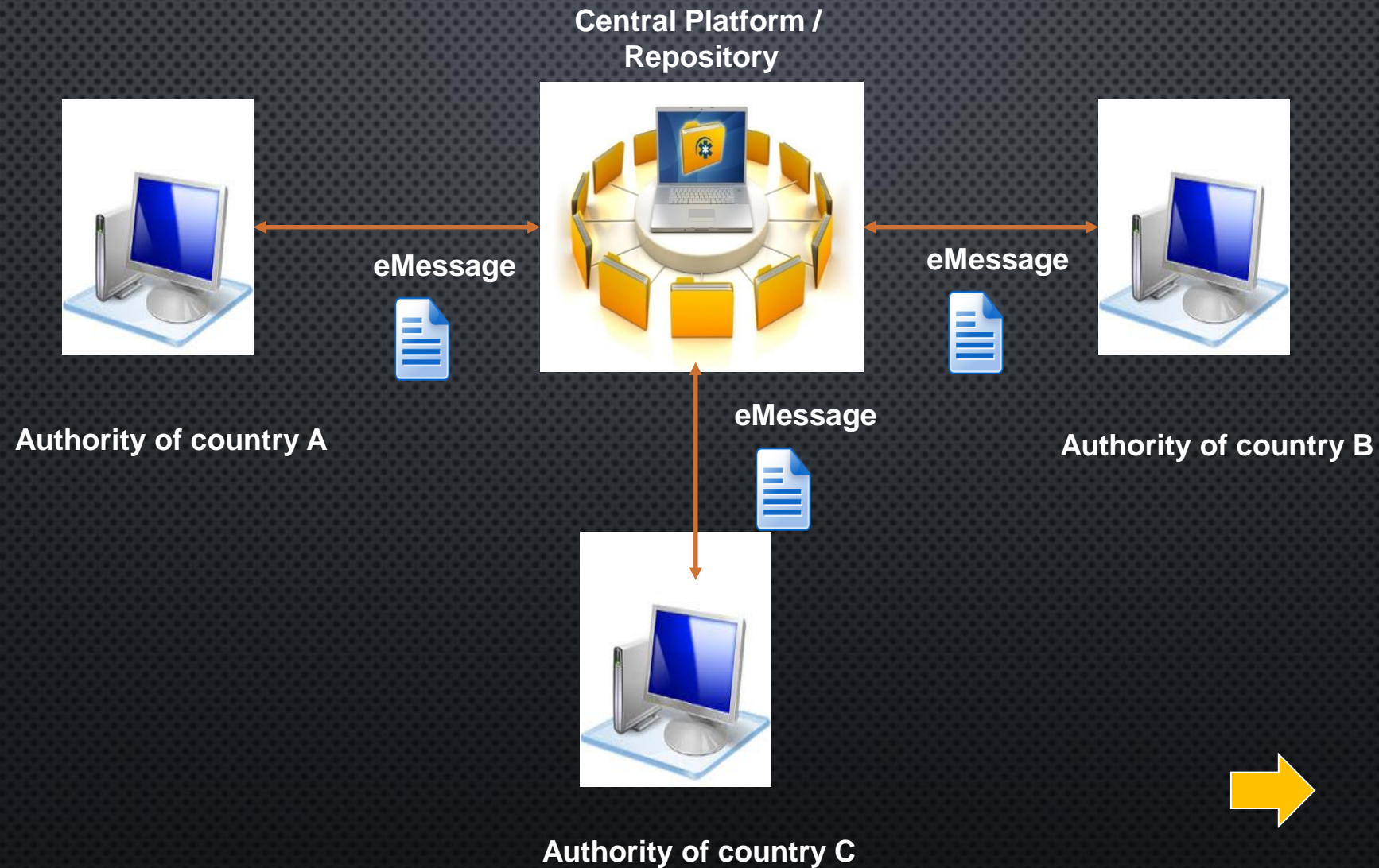




# Figure 3 Gateway to Gateway



# Figure 4 Central Platform/ Repository Model





# PRINCIPLES TO BE CONSIDERED

- Governance
  - (1) Whether to govern the Cross-Border Mutual Recognition (CBMR) rule or to provide principles for CBMR scheme and (3) where to put an ownership of recognition requirements
  - (2) Whether to have a strong central legal instrument or to provide a guideline(s)
  - Shall the FA establish a central governing rule and hold an ownership of recognition requirements (like the case of PAA MRA) or allow autonomy of the Individual member states for the ownership of recognition requirements (Like the case of APEC TEL MRA) under FA guidelines?

# PRINCIPLES TO BE CONSIDERED

- Recognition scheme
  - (5) What to recognize, (4) by who, (6) how to execute and (7) how to maintain it
  - Shall the FA define the object of the CBMR **as a data or electronic messages or an entity** which can generate, exchange or relay a data or electronic messages (or electronic certificate for signature)?
  - Shall the FA appoint an (either regional or national) accrediting body( or bodies) to execute and control CBMR scheme or let individual entity (or its data or electronic messages) be recognized directly without prior-accreditation procedure



# WAY FORWARD

- Identification of potential solutions (models) for cross-border mutual recognition of electronic data and documents mechanism for the framework with 9 attributes
  - Upon consensus of Working Group members on the attributes, possible models of Mutual Recognition of electronic data and document Scheme for FA will be reviewed and proposed

THANK YOU

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